HOUSE OF ASSEMBLY

Tuesday 8 April 2008

The SPEAKER (Hon. J.J. Snelling) took the chair at 11:00 and read prayers.

LEGAL PROFESSION BILL

The Hon. M.J. WRIGHT (Lee—Minister for Industrial Relations, Minister for Finance, Minister for Government Enterprises, Minister for Recreation, Sport and Racing) (11:01): I move:

That the sitting of the house be continued during the conference with the Legislative Council on the bill.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee.

(Continued from 3 April 2008. Page 2594.)

Clause 1.

Mr HANNA: I move:

Page 5, lines 3 and 4—Delete 'Scheme Review' and substitute:

Reduction in Weekly Payments and Other Matters

I have a couple of questions on the clause but, for the moment, I speak to the amendment. It is my belief that legislation should be plainly and truthfully characterised in the title. While it is true to say that the legislation has come before us as a result of a review of the WorkCover scheme, it is more accurate to say that it is about the reduction in weekly payments and other matters. It is about the reduction in weekly payments to injured workers.

The cornerstone of this piece of legislation is the reassessment of the capacity for work after 30 months (2½ years), and we know that the way that that reassessment is designed will result in almost all workers at that point being tossed off the system. As I have pointed out before, it will mean that they are either cast onto the social security net to receive commonwealth benefits or, if they have the good fortune to have a partner in employment, they may go down to zero income. They may end up receiving nothing at all.

So, I say that this is the cornerstone of this legislation because of the problem the government was sincerely trying to grapple with—that is, the ever-increasing unfunded liability and the ever-increasing total number of workers on the WorkCover scheme. Generalising just a little bit, we can see that, over the last decade, we have had something like 200 or 300 extra workers come onto the scheme. My point has been that the redemption facility available under the legislation has been extremely poorly utilised by WorkCover and its agents.

When I say WorkCover, I always mean one or more claims agents from time to time. WorkCover has poorly used the redemption facility. If you compare that to the way the self-insured employers have managed their schemes for their businesses, you will see that the redemptions have been well used by the big employers, and they have fully funded schemes, unlike WorkCover. The problem presented was an increasing number of workers on the scheme in total each year and an increasing number of workers in the bracket of, say, more than two years or more than three years, depending on where you want to measure it; in any case, an increase in the long tail of injured workers who are on the scheme long-term. That was the issue that the government sincerely wanted to tackle.

It is fair enough that the government wanted to tackle it, but it has done that by taking an amputation approach. This is like saying to the patient in the hospital, 'You've got a sore leg. We could treat it conservatively, and, over time, it will heal, but, there's a very quick way to remove the sore on the leg—that's amputate the leg.' That is what this 2½ year provision is about: dumping workers off the system 2½ years after injury.

That is why I think it is much more accurate to call it the 'Reduction in Weekly Payments and Other Matters Bill'. It refers to the cornerstone of this legislation, the goal of which is to reduce unfunded liability by simply tossing workers off the system.

The Hon. M.J. WRIGHT: The government does not support this amendment. The member for Mitchell has made some points in regard to speaking to his amendment, but he has not talked about things such as permanent impairment, where the lump sum will be increased to $400,000; provisional liability; the WorkCover Ombudsman; the code of claimant rights; and, so, the list goes on. We are strongly of the view that this is a balanced package; it is not just about weekly payments. There is a range of measures in the bill, and for that reason we oppose the amendment.

Mr HANNA: The minister overlooks the fact that, in the title I have suggested for the bill, I have referred to other matters that would cover the elements he is talking about. I want to take another tack here, and that is to refer to the clause itself, and take the opportunity to ask the minister a question about the bill as a whole. Is it true that, if this legislation is passed, as the government would wish it with government amendments, the average person injured on the road will receive more in damages than would an injured worker under this legislation?

The Hon. M.J. WRIGHT: I cannot be sure of that. I am not aware of the details of the CTP fund, but in regard to the package with which we have come forward, and compared to other jurisdictions, we think we have a very balanced package. Of course, Mr Clayton tells us that we will still have the most generous schemes.

Dr McFETRIDGE: Minister, you said on FIVEaa that the savings from the cutbacks of entitlements will be about $22 million. I understand that, because of the changes to the three stage step-down from the two stage, those savings will be less. Certainly, the CEO of WorkCover has expressed some concern that this will have an impact on the overall objectives of the changes in legislation. Can you tell us what you expect?

The Hon. M.J. WRIGHT: The actuarial advice is that, as a result of the amendment that has come forward, it will take an extra year to achieve the full funding. It was estimated to be from five to six years and it has now been reviewed and changed to six to seven years, so that is the effect. However, the same overall objectives will be achieved.

Mr HANNA: Because there is an amendment and a question on the clause, do I have three contributions or three on each?

The ACTING CHAIR (Hon. P.L. White): Three on the clause.

Mr HANNA: Do I also have three on the amendment?

The Hon. G.M. Gunn interjecting:

Mr HANNA: That is right.

The ACTING CHAIR: Member for Mitchell, you have three questions on the clause, and this relates to standing order 364, if you want to view that.

Mr HANNA: It is good to clarify this at the outset. I have an amendment to the clause and that is put as a separate question, so I believe I have three contributions left.

The ACTING CHAIR: It is a separate question, but the three questions are on the clause, not each question relating to the clause. You have the opportunity to respond to every question asked about your amendment.

Mr HANNA: I see. For example, if the member for Morphett asks me a question about my amendment, I would have the right to answer it on top of my three contributions on the clause.

The ACTING CHAIR: So I am advised.

Mr HANNA: I want to ask the minister another question about the effect of the scheme as a whole. Given that the Clayton report gave much emphasis to the Victorian legislation (and there are clearly a lot of aspects of this bill which are based on the Victorian scheme), I looked at the Victorian scheme figures. I know that somewhere—and this information was provided to caucus this morning in some detail—in the Victorian scheme you have something like 28 per cent of the payout from the fund going via common law payments, because in Victoria you have a limited right to sue the employer for wrongdoing.

Given that our scheme is not going to have that, as the government would wish it, even though the government's proposal would make our scheme marginally more generous in terms of step-down payments and lump sums, I suggest it would be fair to say that our scheme will actually be much meaner to workers than the Victorian legislation upon which the amendments appear to be based. The crunch, really, is whether the minister agrees with the following quote:

> We are actually making it fairer and more generous to workers.

Does the minister stand by that statement?

The Hon. M.J. WRIGHT: I thank the member Mitchell for his question. I think the figures that he quotes are about right in regard to common law. He also talks about what we are doing here. Sure, there are some elements of what we are doing that exist in Victoria but we are not simply copying the Victorian scheme. Clayton recommended very strongly to us that common law did not contribute to the objectives of the review. He talked about things like a lump sum mentality, that it was not conducive to return to work, that it was a lottery for workers, the costs of lawyers and so forth, so he had a range of reasons. Mr Clayton recommended to us that, even with the legislation that we put forward, ours would be the most generous of the state schemes.

Dr McFETRIDGE: I have a question for the member for Mitchell. This bill has been described with a number of different characteristics—everything from draconian to unworkable. Have any other titles been suggested to you?

Mr HANNA: Yes, a few names have been tossed around, and I have sounded this out with a few people concerned about the cuts that are in this bill. Probably the most notorious name that was put to me was to call it something like Rann's WorkChoices Bill, because this legislation has a lot of similarities with John Howard's WorkChoices legislation. In both cases, it leaves workers with less choice in the sense that, under this bill, after 2½ years workers are going to be cut off the system.

Another feature of it is that it is being enacted by a government without a mandate. John Howard went to the previous federal election without a mandate for the harsh WorkChoices legislation that he brought in, but he did it because he knew he could get away with it; he knew he could get it through the Senate. But clearly he did not carry the Australian people with him.

Similarly, it is the case with this legislation. Nobody would have voted for the Labor government at the last election (or any past election) believing that the entitlements of injured workers would be cut drastically. Absolutely no way can this government say it has a mandate for that. Premier Rann has to take responsibility for pushing this through simply because he believes he can.

He knows the Liberal Party will be compliant because it serves the interests of big business who are traditionally the supporters of the conservative party. The Labor Party seeks to etch out new political ground as the conservative party and the ruling party in this state. That is a fair enough aspiration, but it leaves behind most of those people who voted for Labor at the last election—that is my point about the mandate.

Thirdly, I believe that the carriage of the WorkChoices legislation through the federal parliament left Howard and his team with the perception that he was arrogantly trying to steam ahead further than what the Australian people would wish, and that tag of 'arrogance' stayed with him. I believe that will be the result of this legislation here and Labor backbenchers will suffer for it at the next election, even though they are duty-bound under caucus rules to vote for it.

So, I think that Rann's WorkChoices legislation would actually be a very apt title. However, I am not one for cheap gimmicks. I thought of something a bit more moderate between that and the proposal I have made of a 'reduction in weekly payments and other matters'. I thought that maybe 'cuts to injured workers and other matters' might be more appropriate, because clearly the overall effect of the bill is to cut payments to injured workers. It is certainly true of income maintenance—whether we talk about an 80 per cent or 90 per cent step down after three months or six months, it would not matter; the real guts of this bill is kicking workers off the system after 2½ years.

While I am at it, the minister made a point about the generosity of this legislation in saying that the prescribed sum is being considerably increased. I acknowledge that. That is a good thing in this bill. I am not saying it is all bad, although I must vote against it because it is bad on principle. The fact is that very few people, as we know, get up above 50 per cent in terms of whole body impairment, let alone 100 per cent; so, very few will get the rewards, if you like, of the increased prescribed lump sum.

We can debate that later in the bill, but it is not anywhere near as generous as what the minister makes out, with respect. I considered some other titles—probably more politically apt titles—but I have ended up with something very moderate and fair: Workers Rehabilitation and Compensation (Reduction in Weekly Payments and Other Matters) Amendment Bill.

Mr PISONI: I have a question for the mover of the amendment. Perhaps he could go into some detail as to where suggestions came from for other names for the bill and what they were.

Mr HANNA: I thank the member for his question. Unlike the government, I did consult quite widely when I was putting together my amendments, and I had a lot less time to do it than the government had in preparing this legislation. I did speak to members of trade unions; I spoke to injured workers, because I have several in my own electorate; and I canvassed it with staff and friends—the usual people that I would consult with. There was certainly a number of people who wanted something more extreme and incisive, but in the end I thought: let us have something moderate but accurate; it is about reduction in weekly payments.

Amendment negatived; clause passed.

Clauses 2 and 3 passed.

New clause 3A.

Mr HANNA: I move:

Page 5, after line 12—Insert:

3A—Amendment of section 2—Objects of Act.

Section 2—After subsection (1) insert:

(1a) Without limiting subsection (1), the primary objective must be to rehabilitate a disabled worker so that the worker can return to the workforce to the greatest possible extent as rapidly as possible (taking into account the nature and extent of the worker's disability and any other relevant factor).

(1b) In connection with the operation of subsection (1a), the Corporation or a self-insured employer (as relevant), and an employer from whose employment a compensable disability arises, must seek to achieve a disabled worker's return to work—

(a) in the worker's previous position, or in a position of at least equal status; and

(b) at a rate of pay that is at least equal to the worker's previous rate of pay.

Both the government and I believe that there could be improvement to the objects of the legislation. One of the critical things that we agree on is that there needs to be greater emphasis on return to work. In this regard, I believe that many employers have let the team down. When I talk to people in the community a lot of them will home in on the notorious cases of fraudulent workers, which are always highlighted in the daily newspaper if they ever arise. I must say I have not read of one for some time.

I am always ready to acknowledge that there is a very small proportion (maybe 1 per cent) of workers who are trying it on and who claim to be injured worse than they are, and so on. However, the same also applies to employers. There are some notoriously bad employers. One of the things that employers are particularly unhelpful with at times is getting injured workers back to work in that same workplace where they were injured. Part of this, I have to say, is because of the scheme itself, which seems to be set up as adversarial in nature, or at least that is the culture that has developed.

I do not believe that it was ever the intention underpinning the original legislation but, perhaps because of the types of claims managers that have inhabited WorkCover and the various claims management agencies over the years, there has been this adversarial approach and almost a presumption that the worker is bludging and needs to be forced back into some sort of employment, possibly with medical services almost forced upon them. Inevitably, that produces a reaction in even the best-intentioned worker, and it becomes an 'us and them' attitude.

Quite often, employers buy into this sort of conflict. A worker who goes off injured is seen as a liability and as someone who is unproductive, possibly also being seen as a bludger. This culture needs to be turned around. There is only a limited amount that we can do about that in parliament: it has to come ultimately from WorkCover and the claims managers. But we can, at least, set the basic direction to be followed by claims managers. That is why I believe there needs to be an amendment in these terms.

One of the critical things about this matter is not just setting rehabilitation as a primary objective of the legislation: it is essential to get workers back as rapidly as possible. Obviously, one needs to take into account the nature and extent of the disability suffered by the worker. One also needs to take into account the workplace. If it is a very small workplace involving a very limited range of duties that need to be performed, one can understand that it may be difficult if the worker's injuries prevent him or her from carrying out those particular duties, of course.

As I say, we are simply setting the strategic direction: something that will underpin the management of every claim, and I think that the primary objective has to be to rehabilitate workers so that preferably they get back to the same workplace, and as rapidly as possible. Members will see in the amendment I have moved that I also talk about achieving, where possible, a return to work in the worker's previous position, or in a position of at least equal status, and at a rate of pay that is at least equal to the worker's previous rate of pay.

One thing that happens in a lot of work sites is that the employer will be good enough to take back the worker—bearing in mind that they have a duty to do so—but say, 'If you can't do your pre-injury duties, we'll give you a job out in the shed packing boxes or opening envelopes, or something like that.' It might be something that normally would have a lower rate of pay or it might be that it is a function or a set of duties only available for two hours a day. Opening the mail might be something that is done for two hours a day, so the rest of the time the worker is not employed. What I am driving at here is that, wherever possible, we have to try to get the worker back, if not in the same position—because of the limitation of duties—in a position of the same status and of the same pay.

I reiterate that this is an objective: it will not always be possible, and we all understand that. However, if we do not set it out as an objective, it certainly will not happen. We at least need to have this to strive for so that, if injured workers are not going back to exactly the same position because they cannot precisely do those duties, or perhaps because they had an extended period off work and somebody else has actually had to be in that position to replace them, at least they should have a position of the same status and of the same pay.

That would accord with their dignity and, if it is possible for this to happen in the workplace, it means that the employer has a productive worker, hopefully back at work, and the worker will be happier and more productive because he or she has the same pay and the same status, even if it is different work. Again, I acknowledge that it will always be easier with a large employer involved.

It will be easier in the Public Service or a very large corporation where there are multiple positions. It will be much harder in small business, and I acknowledge that. That is why we are setting it as an objective; even if it is not always reached, it is worth putting there as an objective.

The Hon. M.J. WRIGHT: The existing government amendment achieves an objective similar to that proposed by the member for Mitchell, but does not go as far as that set out by him. Our amendment enhances the objects of the act by emphasising the importance of achieving a return to work, and reinforces that doing so is a shared responsibility between WorkCover and the employer from whose employment the disability arose.

In terms of the proposed amendment to enshrine the hierarchy of return to work within the objects of the act, the existing provisions of section 58B already prescribe an employer's duty to provide work, and the hierarchy of return to work is spelled out in the Workers Rehabilitation and Compensation Regulations 1996. We broadly agree with what the member for Mitchell is saying, but we do not think that this is the place to do what he is doing.

We think that other parts of the act achieve the member's intent, and they are better dealt with in the act rather than in the objectives. Broadly speaking, when the member for Mitchell talks about the importance of return to work and it being a part of the recovery, we are not in conflict. We very much support that and that is what this package is all about. However, for the reasons I have outlined, we do not support it being placed here in the objects.

Dr McFETRIDGE: Just on a point of clarification, this is on the member for Mitchell's amendment. I have three questions there, although I know that the minister spoke about his amendment then.

The ACTING CHAIR (Hon. P.L. White): I will put that subsequently, and he will formally move them.

Dr McFETRIDGE: The member for Mitchell's amendment states in new subsection (1b) that the employer 'must' (not 'should')—

> seek to achieve a disabled worker's return to work—
>
> (a) in the worker's previous position or in a position of at least equal status;

I know he acknowledges that in small business that would be quite difficult, and I will give a personal example here. When I owned my veterinary practice, I employed a vet who was injured and was unable to undertake the duties I would have required. There was just no way that my business could afford to employ a vet to replace her but then also get her back working in the

practice at the same salary she was receiving as a fully practising veterinary surgeon. I have an issue with the word 'must' there. Certainly, I have the utmost sympathy for any workers who want to go back to work and cannot do so because of their employer's hesitancy in taking them back into a suitable position that is available without having to create an artificial position. Can I just have a bit of clarification of the phrase 'must seek'?

Mr HANNA: I think that the key word for the member for Morphett is 'seek'. The obligation there is to seek to get the worker back to the same position or a position of equal status and equal pay. There is no penalty for employers if they do not do that under this clause anyway. If they do something else that is misbehaviour, it may be an offence under some other part of the legislation, but what we are doing here is setting the objectives.

There is no penalty for not reaching the objectives: it is an aspiration. The point is that the amendment does not say that an employer must achieve a return to work: they must seek to achieve it, and that is the critical distinction. I think that it is important perhaps to set out where this fits in with the other objects.

We already have a number of worthwhile objectives stated in the legislation. There is no doubt that the objective of rehabilitation is already there. It is stated very simply in terms of seeking effective rehabilitation, but this has not worked; we know it has not worked. A culture of encouraging rapid return to work in conditions where the worker has some dignity has not worked. Therefore, we need to spell it out a bit more.

There are numerous objectives, already stated in the legislation, that talk about reducing the cost of work injuries, such as effective administration of the scheme, ensuring that the scheme is fully funded, and so on. But the reason I have set this up as a primary objective is that everything else falls into place if you get this right because, if you are getting workers back early, you are going to have cost-positive cost implications for the scheme, you are going to have efficiency in the administration, and you are going to have less cost overall to the community of employment-related disabilities. I just want to reassure the member for Morphett about that.

Perhaps if I give a couple of examples of why it is so is essential to get workers back rapidly and to have that stated as an objective. One case brought to my attention recently was an injured worker with a shattered wrist. It took nine months of asking EML (the claims agent) to get a response about whether they could have a modification to their car so they could drive the car—and that would ultimately save the claims manager and the scheme money because otherwise they were paying for taxis to medical appointments, and so on. That is just one example of how the culture of rapid return to work is just not there at present. A number of my amendments later on, such as extending the excess to be paid by employers from two weeks to four weeks income maintenance, are practical ways of achieving the same objective.

Another reason it is important and why employers should at least try to get workers back early is the psychological sequelae of being off work for a long time. There is some WorkCover advertising going on at the moment—I have heard it on the radio—where the bloke is sawing and a tender, caring woman's voice is saying, 'Now that feels better, doesn't it?', or something like that. The point of that advertising is that getting back to work early is a positive thing. We can all get on with it: the worker can get on with it; the employer can get on with it.

It is well documented that high rates of depression and other variations of mental illness follow when workers are off work for a long time. So, it is essential that, in clarifying the objects of the act, we achieve, first of all, that it becomes an overarching objective to get workers back to work; secondly, that this be done rapidly; and, thirdly, that, where possible, it be done in the same workplace and, preferably, with the same status and pay. In this way, the worker is going to be happy; the employer is therefore going to be happier with the worker; and we are going to have less money paid out of the scheme.

The committee divided on the new clause:

AYES (3)

Gunn, G.M.	Hanna, K. (teller)	Such, R.B.

NOES (41)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Fox, C.C.	Geraghty, R.K.	Goldsworthy, M.R.

Griffiths, S.P. Hamilton-Smith, M.L.J. Hill, J.D.
Kenyon, T.R. Kerin, R.G. Key, S.W.
Koutsantonis, T. Lomax-Smith, J.D. Maywald, K.A.
McEwen, R.J. McFetridge, D. O'Brien, M.F.
Pederick, A.S. Penfold, E.M. Pengilly, M.
Piccolo, T. Pisoni, D.G. Portolesi, G.
Rankine, J.M. Rau, J.R. Redmond, I.M.
Simmons, L.A. Snelling, J.J. Stevens, L.
Venning, I.H. Weatherill, J.W. White, P.L.
Williams, M.R. Wright, M.J. (teller)

Majority of 38 for the noes.

New clause thus negatived.

New clause 3A.

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

Page 5, after line 12—Insert:

3A—Amendment of section 2—Objects of Act.

Section 2—After subsection (2) insert:

(3) The corporation, and the employer from whose employment a compensable disability arises, must seek to achieve a disabled worker's return to work (taking into account the objects and requirements of this act).

This clause places an obligation on WorkCover and the employer from whose employment the compensable injury arose to achieve a disabled worker's return to work. It enhances the objects of the act by emphasising the importance of achieving a return to work and that doing so is a shared responsibility between WorkCover and the employer from whose employment the disability arose. As I said earlier, the emphasis on return to work I think we agree upon and, as I also said earlier, the government amendment does not go as far as the member for Mitchell's amendment.

Dr McFETRIDGE: We all obviously agree that early return to work is beneficial and we are all aware of the consequences of having to wait around and not be treated as you think you should when you are trying to recover from an injury. So, getting back to work is vital, but that work has to be available and it should be suitable work. What obligations are there on employers, or penalties, to ensure that injured workers are returned to work if that work is not available or if there is no suitable work available?

The Hon. M.J. WRIGHT: The obligations and penalties the member refers to are covered in section 58B—the responsibilities to get the worker back to work—and also the government has an amendment coming up later in regard to an additional penalty that will be put in place. It is all about rehabilitation and return to work. With respect to the member's question about suitable work, that would be something the agent would have responsibility for—to try to ensure that there is suitable work.

Mr PISONI: I am particularly interested in the definition of the employer in this amendment. I can recall a situation many years ago when a small business employer took on a staff member who had recovered, if you like, from a disability that was caused by a previous employer. That was not declared, but it was considered to be ongoing; however, the new employer did not realise it was ongoing. Maybe the employer should have asked the question and not given the guy the job in the first place; however, he did not. The work that the employee was doing then caused a relapse of the ailment. Would the employer responsible for the rehabilitation in this instance be the first employer where the ailment was caused initially, or would it be the employer from where the ailment was reactivated?

The Hon. M.J. WRIGHT: I thank the member for his question. As the member would be aware, all employers have a responsibility to get employees back to work but, in regard to the precise question, it would depend upon the injury. If it was a secondary injury, it would probably be the second employer, but if it was the primary injury, it would probably be the original employer.

Dr McFETRIDGE: On the same issue of getting injured workers back to work quickly; in his report Mr Clayton says that the corporation itself should be taking a much more active role, and yet the government does not seem to have put an emphasis on that part of the Clayton report. So, we still have the situation where the case manager has to approve the rehabilitation and return to

work programs. There has been a lot of criticism—whether it is fair or unfair—about the way the case managers in EML have been mishandling cases. I hope that is not true, but certainly if Mr Clayton has suggested that the corporation should be somehow more accountable, perhaps that is something that should be considered.

The Hon. M.J. WRIGHT: I thank the shadow minister for his question. It is an important question, because rehabilitation is critical if we are going to be successful. We are, of course, establishing the $15 million return to work fund, and that will be in part about retraining and rehabilitation. Via another bill that is before the parliament (the governance bill) we will also be putting in place performance agreements and the WorkCover charter. So, I think these things point to not only greater emphasis on rehabilitation, but also the responsibility that the corporation will have for rehabilitation.

In regard to EML, I would also hope that that criticism is not justified. EML as the claims manager has an important responsibility and must ensure that it gets claims management right. I think we can be confident that, since the regulations were changed and there are greater penalties and also benefits in the contract, there is, generally speaking, better claims management than we have had previously. If there are problems, then WorkCover needs to iron them out.

Mr HANNA: Just before my substantial contribution in relation to the government amendment, I am very interested in the matter to which the minister has just referred; that is, the clauses in the contract with EML in relation to what they get rewarded for and what they get penalised for, because clearly, in my view, the current system of the stick and the carrot has not been working. The emphasis has not been on rapid return to work and appropriate use of redemptions. I ask the minister to spell out what they get bonuses for and what they get penalised for?

The Hon. M.J. WRIGHT: I do not have all the detail in front of me, but, generally speaking, I think I can give the honourable member an answer which he will appreciate. Bonuses are provided for increasing the return to work and meeting targets, and service delivery between WorkCover and EML would also qualify for a bonus. Of course, the prime one is better return to work rates. Obviously, penalties would be incurred if they are not achieving the aims that have been established in the contract.

There has been some criticism of EML. How much of it is warranted, I am not sure. Certainly some examples have been brought to my attention and about which I have asked WorkCover to give me some information. Can EML do better? Yes, probably they can. They are doing better than the previous four claims managers that we had in place. The advice that I have received is that that is the case; that is, they are doing better. They are about two years into the contract and obviously are working through a whole range of issues.

The Hon. S.W. KEY: In relation to return to work in this clause, it is my understanding that, despite the fact that there has always been the philosophy of workers returning to work—and I think it is something that we in this chamber all support—there have not been any prosecutions of employers regarding return to work. I certainly know from personal experience that there have been plenty of breaches of workers not being able to return to work. Could the minister address that question and also say how that fits in with the new bill and also his proposed amendments?

The Hon. M.J. WRIGHT: I thank the honourable member for her question. I know that she has a very strong interest in this area not only in relation to this question but also workers compensation and occupational health, safety and welfare. She was a former shadow minister in this area, of course. I am aware of the criticisms regarding no prosecutions. Previously, WorkCover has imposed a supplementary levy on businesses that are breaching section 58B.

Of course, what we are proposing, which we will debate later, is a new fine of up to $25,000 for employers who are not complying with section 58B. The comment is correct, and will, I think, potentially go a long way to rectifying that situation. When I say 'potentially', it would be the hope that, of course, all businesses comply with section 58B. However, if they do not, we have an amendment coming forward later in the bill which is a new fine for not complying with that section.

Mr PISONI: If the main reason suggested by the government for the blow-out in unfunded liability is the number of partially incapacitated workers who continue to be in receipt of weekly payments of income maintenance years after sustaining a compensatable disability, why does this government believe that the answer is to take the drastic step 2½ years after the injury is sustained; and why is there not a greater focus upon claims management and rehabilitation in the early stage?

The Hon. M.J. WRIGHT: Many things are important here. The honourable member spoke not only about the work capacity review but also, of course, about claims management. I would say that, as best we can, the contract in place ensures important things such as the early diagnosis of the claim. Provisional liability is also in the bill, and all those factors will play an important part in making sure that there will be an early return to work. I have said consistently that, for a number of years under both governments, we have not done well enough at getting people back to work, and that must be the focus of the turnaround in the culture of the organisation.

Mr HANNA: I think that we need to set this debate in the context of the existing objects of the act. As one might expect, there are a number of pretty general statements. The act currently seeks to achieve a reasonable balance between the interests of employers and the interests of workers. Well, I think that will be seriously upset by this legislation. More relevantly, the act already states that there is an objective to provide for the effective rehabilitation of disabled workers and their early return to work. The purpose of my amendment was to point out that that has not really been working. However, my question to the minister becomes: how will the government amendment add anything? There appears to be a duty—at least an aspiration—for the corporation and the employer to seek to achieve return to work; but, of course, immediately the rider is added to that, 'taking into account the objects and requirements of this act'.

The requirements of the act, I presume, are the statutory obligations, such as section 58B; and, if this legislation passes, requirements such as provisional acceptance of claims. It is very difficult for me to see how this amendment—stressing that the corporation and the employer have a role in return to work—is any different from the current aspiration that there be effective rehabilitation and early return to work, because, after all, who else would be pushing that process apart from the worker, the employer and the corporation through their agents? I am really struggling to see how this government amendment will advance the cause at all. I will not disagree with the amendment, but I just cannot see the value of it.

The Hon. M.J. WRIGHT: What we are doing is re-emphasising the responsibilities of WorkCover and the employer in getting people back to work. However, it is not as prescriptive as the member for Mitchell's amendment. It is putting it into the objects and re-emphasising the responsibilities of both WorkCover and the employer.

Mr HANNA: In that case, I ask the minister what he has against the concept of an objective which would say that the employer must seek to return the worker to work either the same as pre-injury or of the same status and pay. I know that question, in a sense, has been dealt with after discussion of my amendment, but why has the government not sought to include that in its own amendment?

The Hon. M.J. WRIGHT: I think I said in an earlier answer that some of what the member for Mitchell has put forward already exists in the regulations. Also, I would say that our focus is on general obligations whereas perhaps it would be fair to say the member for Mitchell's amendments are more specific, and some of them are covered in the regulations.

New clause inserted.

Clause 4.

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

Page 5, after line 17—Insert:

(1a) Section 3(1)—definition of arbitration officer—delete the definition.

(1b) Section 3(1)—definitions of conciliation and arbitration officer and conciliation officer—delete the definitions and substitute:

conciliation officer—see section 81;

This amendment relates to broader changes to dispute resolution. The purpose of this technical amendment is to support government amendments to be moved later where the arbitration stage of dispute resolution is being abolished. This technical amendment supports later government amendments in the bill. Others would share the view that there was widespread discussion about whether arbitration should be in the dispute resolution process. It was recommended by Mr Clayton but, largely, as a result of consultation that the government held, the views were reasonably common in that it could increase the amount of disputation. Of course, that is something we are trying to avoid.

The CHAIR: This is a very long clause, so I indicate that I will allow three questions on each of the amendments and then three questions on the clause overall.

Mr HANNA: I indicate that, on this occasion, I am in furious agreement with the government. The interesting thing is that, in its consideration of cost cutting, and so on, the government came to the same conclusion as I did, working in the interests of the welfare of injured workers. The conclusion is that the arbitration system has not been working. We find that there are very few matters that are able to be negotiated successfully at the arbitration stage, so it introduces just another stage of the dispute resolution process, which has become unnecessary. The goal of a lot of litigants is to get to the judicial determination stage. Either arbitration is not being taken seriously, because it is not being seen as a definitive disposal of the issues, or there is just a lack of willingness to negotiate.

I do not think that we should be unfair on injured workers if they are not prepared to give things up at that arbitration stage, because often for them it is a matter of their livelihood, particularly if the success or failure of the claim is in issue and they will potentially be without income. On the other side of the coin, my experience is that employers very often have deeper pockets and can withstand a longer drawn out dispute resolution process.

I have known of a number of employers who have been willing to drag out the arbitration process and then take a lengthy series of points in judicial determination as well. In fact, there are one or two employers who are notorious for not even turning up to the first arbitration meeting, thus wasting the worker's time and resources—usually they are in a position where they have to pay a solicitor to come along, and some employers just do not turn up. In other words, they are dragging out the process, knowing that they can bear the cost of doing that better than can the worker. Even where there are unions representing workers, their funds often pale in comparison with the funds available to larger corporations and the self-insured employers. The conclusion we have reached is the same: we might as well do away with arbitration. It just has not worked as we had idealistically thought that it would.

I would like to note at this point the work of a former review officer, Frances Meredith, who spent a lot of time analysing the review process. I think that she (and most of us) would probably share the view that it would be great if arbitration worked and we could get rid of most of our disputes at an early stage by agreement, but it just does not seem to happen in this arena. We need a fairly quick passage through to a definitive resolution of the dispute—and I refer to judicial determination as a definitive resolution of the dispute, even though that may be subject to appeal. I think that there should be limits to conciliation—it should not be a drawn out process—and, certainly, I agree that we can do without the arbitration process.

Amendment carried.

Mr HANNA: I move:

Page 6, after line 10—Insert:

(4a) Section 3(1)—After the definition of dependant insert:

designated common law liability means a liability at common law within the ambit of section 54(1)(b);

This is a critical amendment, and it will be a test clause for the concept that we should have a right, limited as it may be, for workers to sue negligent employers. Rann and his government will be aware that I am putting forward a proposal to allow for workers to sue negligent employers, in very limited circumstances. It is critical to the government's argument that it is producing the fairest and most generous scheme in Australia. They were Premier Rann's words when he was interviewed on radio. He said, 'We are actually creating the fairest and most generous scheme in Australia.'

Any comparison with the other states rests on an understanding of the common law right that workers enjoy in those states. In 1992, I think, this parliament abolished the right of workers to sue negligent employers. Members would be aware that, in the history of the scheme, the right to sue negligent employers was retained in the 1986 legislation, but the damages were capped and the payment for any such damages was paid within the scheme. So, the levy that employers paid, which was essentially an insurance premium, was to cover their statutory payments to injured workers, but it was also to cover the payment of common law damages, which were capped.

In 1992, the Labor government did not have full control of the parliament, and the abolition of common law rights was pushed through. The original deal that was brokered between employers and injured workers in the mid-1980s was one that rested on workers having a limited right, at least, of common law entitlement. In other words, in the late 1980s any worker could sue their employer for damages, but those damages were somewhat limited by statute. It is those very rights that were taken away in 1992.

Of course, despite there being a whole bundle of rights forgone by workers, the statutory entitlements, which were there to balance the fact that you could not sue someone for negligence, have been progressively eroded. They were stripped back in 1994-95, when the Liberal government was in power, and now this legislation goes even further than the Liberal cuts of 1994-95. This Labor government legislation actually outdoes the Liberals in terms of taking rights away from injured workers, yet there is no right to sue the employer for negligent behaviour to make up for that.

When comparisons are made between South Australia and Victoria, or South Australia and other states, it is generally overlooked (I suppose deliberately) by Premier Rann and the others who speak for the government that there are common law entitlements in those other states. Citing the briefing note that was given to caucus members this morning, there was a very clear demonstration of statistics in the Victorian legislation: the amount that was paid out for negligent employers causing injuries to workers was about 28 per cent of the Victorian scheme.

The Rann government is bringing in a similar sort of scheme to that in Victoria. It is cutting workers' rights here to make it closer to Victoria but without the right to sue negligent employers, which they have in Victoria and which actually makes up about 28 per cent of payments to injured workers. So, it will be a system that is a lot more harsh and cruel to injured workers than that in Victoria. I use the Victorian example because it has been repeatedly set up as the benchmark in the Clayton report and repeatedly by the Premier and his mates on the Labor front bench.

I have introduced a scheme of common law entitlements. It is very limited and modest. I suggest that, even to qualify, injured workers must have a 25 per cent whole body impairment, and that will cut out most workers straightaway. On top of that, I suggest that there has to be a statutory breach or something called 'gross negligence' on the part of the employer, and there is some judicial explanation of those terms. The fact is that it is intended to be a slightly higher benchmark than common law negligence as previously applied in South Australia.

The scheme, as I am putting it forward, is one where employers would get insurance for common law claims, insurance to cover their own negligence, outside the WorkCover scheme. Where, at the moment, employers go out into the private marketplace and buy public liability insurance, I am suggesting that they would have to pay in addition for their own negligence, bearing in mind the extremely strict circumstances in which common law claims might be made.

It means that bad employers will be punished if they behave badly. If employers leave unsafe machinery or unsafe work practices unchecked in the workplace then very quickly there will be injuries and, as a result of that, higher premiums, because private insurers will not muck around; they will come back with a higher premium for those who misbehave—for those who do not care sufficiently for worker safety.

For the record, I refer members to my amendments 54, 55, 81 and 82, which cover the essence of the scheme that I am putting forward. If you look at those later amendments, you will see that I am suggesting that there is an obligation on employers to have such insurance so that insurers can pay out on common law claims when they do arise. Secondly, I am suggesting that the corporation be an insurer of last resort. I believe that was there in the 1971 legislation. I could be corrected on that; it was a bit before my time, but it is comparable to what we have in our motor vehicle accident legislation, whereby the Motor Accident Commission is the insurer of last resort if a driver is driving uninsured. We need that for injured workers' protection.

This is a critical clause. If the Rann government is going to strip away the rights of workers and to seek to chuck them on the scrapheap after 2½ years, then the least we can do is allow injured workers to sue negligent employers. Most employers will not have anything to fear, but those who show lack of care in the workplace should be open to common law claims, in other words, workers exercising their rights to seek damages for the wrongdoing done to them by bad employers. That is what this set of amendments is about. I take this as a test on the principle that there should be a least a common law right to sue in limited circumstances if these other benefits are to be taken away from workers.

The Hon. M.J. WRIGHT: The government opposes this amendment. We are not in favour of reintroducing common law into the South Australian workers compensation system. As the member for Mitchell said, it was in, I think, 1992 that common law was largely taken out of our system. We also argue that it is contrary to the goal of return to work which, of course, we have already spoken about and will continue to speak about as we work our way through this particular bill.

Common law tends over-compensate minor injuries and significantly under-compensates more serious injury compared with long-tailed statutory arrangements, such as they exist in South Australia. The prerequisite requirement of having to demonstrate fault for access to common law damages departs from the philosophical no-fault basis of statutory workers compensation schemes. The relatively high transaction costs associated with common law means that it is a less efficient mechanism for delivering benefits to injured and ill workers than statutory benefit arrangements.

Interestingly, the review does not support the introduction of common law. Mr Clayton would argue that it is the antithesis of getting people back to work, that it is a lottery and, as such, did not propose it. Like redemptions, access to common law would seriously compromise the success of the other proposals and would lead to cost escalation in the medium term.

It is correct that the member for Mitchell has put forward a proposal which has some gates around it. He talked about the 25 per cent of whole body impairment, the need for it to be gross negligence and also that it does not require WorkCover to cover the common law but it would be done by individual employers. Of course, they would need to go out and get insurance. It is my understanding that that would be a significant increase in costs for them to do so. That would vary, of course, from business to business, but it would certainly increase costs.

Because we have a no-fault system, that it is the antithesis of return-to-work, that it can be a bit of a lottery, and, of course, that it can become a bit of a jamboree for lawyers as well, we oppose the amendment moved by the member for Mitchell.

Dr McFETRIDGE: The introduction of common law, as far as I am aware, has not been proposed by any union officials who have spoken to me and certainly not by any employer groups, as I understand it. Only in the last few days, a group of lawyers actually started raising the issue of common law being reintroduced.

My understanding is that no separate public liability insurance policy is taken out by employers in Victoria. They contribute to the costs of a common law claim as part of their WorkCover levy. I would like an explanation as to how that works in Victoria and an indication as to why it would not be a disadvantage and incur extra costs for employers here. As we all know, it is a no-fault compensation scheme and there are, I think, some circumstances where employers could be at risk through the lottery, as Premier Rann described it in 1994 in his 'Limbs, Lungs and Lives' book.

He described workers compensation as a lottery then; the minister described it as a lottery last week when he was talking about the case management (or mismanagement, as people may see it) by EML of some of the cases; and we now find that Mr Clayton also has described workers compensation as a bit of a lottery. We do not want workers using common law to buy a ticket in yet another lottery. It is certainly something the opposition will not be supporting. I am interested to see how it works in Victoria without adding extra imposts to WorkCover premiums, as well as a separate public liability insurance.

Mr HANNA: The member for Morphett raises a good question. How can this work in Victoria and yet the Labor government says it would not work here, or it should not work here. In Victoria, payments to workers as a result of common law claims are being made out of the scheme. Employers are paying for that through their levies and yet the levies in Victoria are less than here. Certainly, from the point of view of funding the scheme, workers and employers are not going to be worse off by having a common law entitlement.

The interesting thing about this scheme, which the minister seems to have overlooked in his answer—if I may say, with respect—is that the fund will benefit from what I am putting forward. Yes, employers will have to go out and pay maybe a few thousand dollars a year to get insurance against claims of negligence. However, if the government's legislation otherwise goes through, levies are going to drop by a half to three-quarters of a per cent. That is the whole point of the government legislation: it is a quick fix to get a cut in employer levies before the next election.

If common law claims are implemented, in the way that I am suggesting, look at what will happen: there is a right of recovery in here so that where WorkCover has paid out money for a lump sum under section 43, and income maintenance under the other provisions of the legislation, and then a worker successfully sues for common law, the money that has been paid out can effectively be recovered by WorkCover. So, the actual funding of the scheme is going to improve.

We are shifting the cost from the scheme and the worker on to negligent employers. Out of the three groups, who would you rather have pay for the cost of work injuries: the whole body of

employers, through their levies across the WorkCover Corporation scheme; injured workers who, under government legislation, are missing out on benefits; or, employers who are negligent? They are the ones who should be paying—those who are less careful in the workplace; those who have unguarded machines; those who ask workers to pick up 30 kilograms at a time; those who leave risks in the workplace where people can bump into something or where things can fall on them, and so on. They are the ones who should be paying—employers who are acting negligently.

Even then, I would put in a test that says 'gross negligence', so presumably that is something more than just being simply careless. If my scheme is adopted, it will be a benefit financially to our WorkCover fund and whatever extra employers are paying in terms of their private insurance to cover common law, they will be getting back in reduced levies because there will be a benefit to the fund. Who has something to fear? Not an employer who is careful in the workplace nor an employer who makes all the machinery guarded and who has careful processes in place to ensure that workers do not injure each other or themselves; those who have something to fear from what I am putting forward are those careless, wanton employers who disregard the safety of their workers.

In answer to the question from the member for Morphett, it is not only possible to have a common law scheme funded by a no-fault scheme, such as we have, or a comprehensive scheme whereby people pay their levies to the central fund and it pays out on common law claims, and have lower levies like they do in Victoria, but I am suggesting a scheme whereby our statutory scheme (the WorkCover unfunded liability) will actually benefit from the common law scheme because it is shifting the cost onto negligent employers.

The Hon. S.W. KEY: I wanted to ask the member for Mitchell a question in regard to common law. My understanding is that, in the mid-1980s when the Workers Rehabilitation and Compensation Act was introduced along with the industrial health, safety and welfare legislation, there was not only the philosophy of no fault but also there needed to be a proper health, safety and welfare program within the state to look at prevention and, where necessary, there would be an inspectorate and industry advice to try to stop injuries, accidents and diseases from occurring. That was certainly the philosophy in the mid-80s and, in some ways, it was an honour to be part of that debate.

One of the reasons for not supporting common law at the time, as I understand it—and this would not be the only argument—was that basically a number of workers, and those workers who were represented by their unions, would not have access to what could be extremely high legal costs. My question is twofold: one, why can't we look at the health, safety and welfare act as a more positive way of trying to prevent and follow up with the industry; and, secondly, would your clause (if passed) make common law more accessible to the basic worker and, if they did have a trade union representative, their trade union?

Mr HANNA: Yes, I think the point is well made about occupational health, safety and welfare and the need to police our ideals in that regard. I acknowledge that the Labor government has hired a lot more inspectors and, presumably, that is doing some good in improving standards throughout our work sites. But we know, time and time again, that there are employers who get away with murder, or pretty close to murder. To cite one of the examples that was put to me recently, a butcher's apprentice was left to work on an unguarded machine. He was a young lad and he lost his hand. I do not know what work he will get in the future. He does not have a great education, but you do not have much demand for one-handed butchers, and that was a case where the guard should have been on the machine.

No amount of policing or inspectorates will stop some scoundrels trying to get away with shortcuts like that. So, yes, you need all of that—the inspectorate, penalties for those who create unsafe situations—but now we are looking at the compensation side of it. In answer to the other part of the member for Ashford's question, the fact is that, under the scheme I am proposing, the statutory benefits are going to be there as a baseline, so you will have your section 43 payment (less for most workers under this legislation than previously); you will have income maintenance, even though it will pretty well cut out at 2½ years for most workers who survive on the scheme that long, but you will have that as a baseline. Common law would be something for the seriously injured to go for on top of that, because the damages they would receive would be in excess of what they would take as their statutory entitlements. So, it is almost to go for a top-up, in a sense, to have what they would have achieved prior to 1986 if they had sued for common law.

They are not double-dipping, they are not getting the statutory benefits and the common law, but where they take advice that there is a good claim for negligence and that the damages would mean that they would be in a better position than the statutory benefits, under what I am

proposing they would be able to sue for common law, give back to the corporation what they have got from the corporation and keep the extra.

I know legal costs are involved in that and I acknowledge that one of the risks has always been that if you take a case and lose it then you can be worse off than if you had not taken the case at all. That is the case with rights right across the board for injuries: the same will happen if you are in a car crash or even if you sue for victims of crime compensation. If you hire a lawyer and you end up missing out you can end up paying legal costs, and they can be a heavy burden.

I am relying on the fact, which I know to be true, that most lawyers are actually fair dinkum. Most lawyers will give fair and honest advice. You will always get a couple of shonky ones, and the government loves to harp on that, but the reality is that most trade union officials who are well versed in the area and most lawyers who practise in the area are going to give good advice, and they are not going to send people chasing up after a pipe dream which is going to end up being a heavy legal bill.

Dr McFETRIDGE: Member for Mitchell, two of the big issues that are always raised when you go into the area of people suing under common law are: one, that the lump sum they get paid in the end is about the same as what they would have got had they stayed in a scheme where redemptions could have been paid out. Secondly, there is the issue of the legal costs involved: would they be capped or would some other limitations be put on the legal services available? What would happen there?

Mr HANNA: As to legal costs, the usual rule in our courts would apply, that the winner's costs are mostly paid by the other side. So, for successful claims the negligent party—usually, in effect, their insurer—would end up paying most, if not all, of the worker's costs. The problem area lies where the worker takes a claim and it is unsuccessful.

I can give an example of that. I had a case many years ago where someone slipped on the floor. Now, the court cases kind of go both ways: in some cases it can be negligent to leave a pool of slippery liquid on the floor in work premises and sometimes it is not because there is actually an adequate system of cleaning and it was just bad luck, in effect. There are cases where the worker might be advised to sue for negligence, in good faith, but the judge might say: no, really that was not negligent.

Sometimes it is not until you get well down the litigation process before you find out if something is more likely than not to be found negligent. So, there is that risk in there—I acknowledge that. But, for the most part, what the worker stands to gain, if well advised, is going to be more than what is there in the statutory scheme.

The reason that common law claims were left in the scheme in 1986, even though the amount that could be paid out was capped, was because it was anticipated that in a lot of cases the statutory entitlement would be less than the amount you would get as common law damages. So, I would be confident in putting this forward, that seriously injured workers who are faced with negligence in the workplace would benefit.

The committee divided on the amendment:

AYES (2)

Hanna, K. (teller)	Such, R.B.

NOES (41)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Fox, C.C.
Geraghty, R.K.	Goldsworthy, M.R.	Griffiths, S.P.
Gunn, G.M.	Hamilton-Smith, M.L.J.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Pederick, A.S.	Penfold, E.M.	Pengilly, M.
Piccolo, T.	Pisoni, D.G.	Portolesi, G.
Rankine, J.M.	Rau, J.R.	Redmond, I.M.
Simmons, L.A.	Snelling, J.J.	Stevens, L.
Venning, I.H.	Weatherill, J.W.	White, P.L.

Williams, M.R. Wright, M.J. (teller)

Majority of 39 for the noes.

Amendment thus negatived.

Mr HANNA: I move:

Page 7, lines 1 to 5—Delete subclause (15)

The situation in relation to allowances for workers is currently that there are certain allowances which are prescribed under the legislation. These are relevant to the calculation of average weekly earnings. Subclause (15) of clause 4 allows for certain payments received by workers to be disregarded in the calculation of average weekly earnings.

These allowances could be any one of a very wide variety of things. They might be allowances concerning the worker's tools; they might be concerning transport which the worker necessarily uses in order to complete their duties; it might be an allowance to do with some feature of the work which involves payment to other people, whether it be travel expenses or admission to a venue for which one has to pay—it could be any number of things.

That is why the scheme, so far, has taken the approach of prescribing certain allowances so that they are not taken into account in relation to average weekly earnings. If you have a compensation scheme which is meant to compensate people because they are injured and they cannot go to work, why would you not compensate them as fairly as you can for everything they get at work which they can no longer get?

It is a very simple principle which I seek to resolve with my amendment by providing that allowances received by the worker should be included in the calculation of average weekly earnings. Clearly, the government amendments seek to simplify the calculation of average weekly earnings. I am actually trying to simplify that even further.

Rather than have ministers rule certain payments in or out, let us just have them all in. That is done on the basis that, if an employee goes to work and receives wages, super, and allowances, we should try (as best as we can) to put that worker back into the situation that they were in at work before they were injured—if, indeed, they have been injured and can no longer go to work. It is as simple as that. It just seems to me that the government's approach is actually taking something away from workers, and I want to ensure that that cannot be done through this amendment.

The Hon. M.J. WRIGHT: The government opposes the amendment. It is important to distinguish between normal allowances paid in exchange for the worker's qualifications, skill and labour and allowances paid to reimburse the worker for an expense incurred in the course of employment. The former are included in average weekly earnings, but the latter are called 'prescribed allowances' and are often excluded from average weekly earnings.

Most things that are prescribed are done so by regulation. It makes little or no sense to have some allowances prescribed in section 3 of the act and others prescribed by regulation. It would be much better to put them in a single instrument, and regulation is the better alternative.

There are numerous types of allowances and benefits in modern workplaces, and these change all the time. It is important that the government has the flexibility to adapt the scope of prescribed allowances to keep pace with social and industrial changes. Regulation, rather than legislation, is the appropriate tool for this to occur. Either way, the government does not plan to broaden or narrow the scope of prescribed allowances.

There are numerous types of allowances and benefits and, as I have said before, these change all the time. It is important that the government has that flexibility to adapt the scope of prescribed allowances to keep pace, and regulation, rather than legislation, is the appropriate mechanism to do this.

Mr HANNA: Which allowances does the minister plan to prescribe so as to exclude them from average weekly earnings? I suspect that the effect of the government position is to discriminate more against blue-collar workers than those who are on salaries because of the various allowances for tools, clothes and so on that often go with blue-collar work.

The CHAIR: The question is that amendment No. 5 moved by the—

The Hon. M.J. WRIGHT: I have an answer for the member for Mitchell.

The CHAIR: The member for Mitchell does not get to ask the questions at the moment. He moved the amendment, so people can question the member for Mitchell but not question the minister on that amendment.

Mr HANNA: On a point of order, Madam Chair, I understood that, after putting the amendment, the clause would be put directly.

The CHAIR: After the amendments have been dealt with, the clause overall will be open for discussion.

Mr HANNA: This is in line with your earlier ruling; yes. Thank you, Madam Chair.

The Hon. S.W. KEY: I want to ask a question of the member for Mitchell with regard to prescribed allowances. My understanding is that one of the positive things in this bill is that the earnings of an injured worker in the previous year would be taken into consideration and seen as the average weekly earnings.

I guess my question to the member for Mitchell is whether his interpretation of this bill is that prescribed allowances would not be included in whatever is considered to be the average weekly earnings of an injured worker in the previous year to try to, as I understand it, make sure that people's overtime and other allowances and payments on top of their basic wage are taken into consideration. Having done a number of cases myself, trying to demonstrate an established pattern of overtime, I would be very interested to hear whether what the member is saying with regard to allowances is within the meaning of the bill that has been put forward by the minister.

The CHAIR: The question before the house is the member for Mitchell's amendment. Therefore, questions of the honourable member or a brief response by him are in order. The member for Mitchell has the call.

Mr HANNA: Thank you. To answer the question, I think we need to go back to what the bill is doing—and, indeed, back to what the act currently does. There is a definition of 'prescribed allowance' in the act, as the honourable member well knows, and that current definition specifies a number of things which must be included, in a sense: special expenses incurred by the worker in the course of employment, special rates paid on an irregular basis (I am not sure whether or not that would be a living away from home allowance, perhaps) or by way of site allowances. Then there is the catch-all provision 'other allowances or benefits prescribed'.

In the bill the government seeks to scrap that and have what seems to be just the last part of that clause included, 'prescribed allowance' meaning 'any amount received by the worker from an employer by way of an allowance or benefit prescribed for the purposes of this definition'. That implies—to me at least—that the things specified under current legislation are not intended to be maintained in the same way by the minister after this bill is passed. That is why I asked the minister what he intends to prescribe in terms of allowances, because obviously that will be important.

The member for Ashford is correct in thinking that these allowances would not normally be taken into account in average weekly earnings if the government has its way. So, to me that is a way of reducing average weekly earnings.

Amendment negatived.

Progress reported; committee to sit again.

[Sitting suspended from 12:58 to 14:00]

HOUSING TRUST WATER METERS

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition): Presented a petition signed by 34 residents of South Australia requesting the house to urge the government to ensure all Housing Trust households are provided with their own individual water meters in order that they might monitor and control their own water use and pay SA Water for the accurate and appropriate usage.

BUS SERVICES

The Hon. R.B. SUCH (Fisher): Presented a petition signed by 50 residents of South Australia requesting the house to urge the government to implement a comprehensive bus service

to serve the Aberfoyle Park, Happy Valley, O'Halloran Hill area, reinstate bus service No. 618 to the Marion Shopping Centre and enter into consultation with residents regarding bus services.

PAPERS

The following papers were laid on the table:

By the Deputy Premier (Hon. K.O. Foley)—

Regulations under the following Act—
Protective Security—General

By the Minister for Health (Hon. J.D. Hill)—

Natural Resources Management Board Levy Proposals 2007-08—Report by the Natural Resources Committee of Parliament—Government Response
Regulations under the following Act—
Controlled Substances—Sale of Petroleum Products

By the Minister for Water Security (Hon. K.A. Maywald)—

South Australian Water Corporation—Charter February 2008

By the Minister for Consumer Affairs (Hon. J.M. Rankine)—

Regulations under the following Act—
Liquor Licensing—
Bordertown Area
Ceduna and Thevenard

SA WATER CHARTER

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security, Minister for Regional Development, Minister for Small Business, Minister Assisting the Minister for Industry and Trade) (14:04): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.A. MAYWALD: Under the Public Corporations Act I am required as the minister responsible for SA Water to review the corporation's charter annually, in consultation with the Treasurer. The charter is effectively a general direction to the corporation from the government which sets out the government's strategic objectives, priorities and requirements for the corporation's board. I am pleased today to lay before parliament a revised charter which strengthens SA Water's links to the state government's sustainability agenda. SA Water's strategic objectives regarding sustainability have now been incorporated into the charter to ensure its commitment to providing a sustainable and secure water supply and minimising its impact on the environment in accordance with government policy.

The revised charter makes transparent the links with the legislative obligations of the corporation and also more explicitly defines the interrelationship between the government, the board of SA Water and the chief executive. The revised charter makes direct reference to water conservation and requires SA Water to play its part in supporting the objectives, targets and priority actions in South Australia's Strategic Plan.

SA Water forms an integral part of the state government's long-term water security planning. SA Water is instrumental in delivering key projects to ensure our long-term water security, including the $1.1 billion desalination plant; the $300 million interconnector; increasing our water storage capacity in the Mount Lofty Ranges; increasing the reuse of our waste water to 45 per cent through projects such as the $60 million Glenelg-Parklands pipeline; a $270 million upgrade of the Christies Beach Waste Water Treatment Plant; the $21 million Torrens aqueduct replacement project; and the $24 million home rebates scheme.

The Chief Executive of SA Water has been appointed to the recently established Water Security Council, which I chair. Consisting of chief executives from key state government agencies as well as independent experts, the council will provide an ongoing formal vehicle for issues of strategic importance on water security. Professor Rob Lewis, previously Executive Director, SARDI in PIRSA has been appointed as the interim Commissioner for Water Security for a period of four months pending the appointment of a permanent independent commissioner. Professor Lewis will

lead the Office for Water Security in the government's water security policy agenda and will report directly to me as Minister for Water Security.

Delivering long-term water security remains a top priority for the South Australian government and SA Water plays a vital role in achieving that security. SA Water already has a strong commitment to sustainability and the environment, and the revised charter underpins and strengthens that commitment.

SOCIAL DEVELOPMENT COMMITTEE

The Hon. P.L. WHITE (Taylor) (14:08): I bring up the 27th report of the committee, entitled 'Inquiry into the South Australian Certificate of Education'.

Report received.

VISITORS

The SPEAKER: I advise members of the presence in the gallery today of students from Annesley College (guests of the member for Unley).

QUESTION TIME

POLICE COMPLAINTS AUTHORITY

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:08): My question is to the Premier. Does he accept the Coroner's concerns expressed yesterday in respect of the Wilson case about the need to review the effectiveness of the Police Complaints Authority, and how does the Coroner's finding impact on his personal opposition to an independent commission against corruption?

The opposition has proposed a model for an independent commission against corruption which would subsume the Police Complaints Authority and change the relevant law. The government told the house on 12 February 2008 that we do not need such an independent authority because, as the Attorney-General said:

> South Australia has several very good anti-corruption bodies, including the Ombudsman, the Anti-Corruption Branch of the police, the Auditor-General and the Police Complaints Authority.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:10): Can I say that the Coroner does not and did not recommend an independent commission against corruption. There is no mention of that, as far as I am aware. What he did say was that there was a failure in police procedures in relation to the Wilson case—a serious failure. I can announce to the parliament today that I have spoken to both the Attorney-General and the Minister for Police, and there will be an immediate review of the Police Complaints Authority and an immediate review of the Police Complaints Authority legislation. If the Leader of the Opposition is doing what I think he is doing, that is, making allegations of corruption against the police, then let him have the guts to say so, because I do not believe that is the case. We have an outstanding police force in this state. The Coroner did not accuse the police of corruption and he knows it.

TECHPORT

The Hon. L. STEVENS (Little Para) (14:10): Will the Premier update the house on the progress of major works at the Techport facility at Osborne and on how local companies and their employees are benefiting?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:11): Just to fill members in on what happened, the commitment to invest in Techport was a critical part of our bid, South Australia's bid, to win the air warfare destroyer contract. What we could have done was said, 'Okay, we will build the facilities—the ship lift and so on, the transfer system—and hand it over to the successful bidder, the Australian Submarine Corporation.' However, we wanted it to be a multi-user facility—to develop a precinct that was available not only for the ASC but also for a range of other defence companies—and so we are currently in talks with companies from the United States and Britain, with a view to their locating at Techport.

Techport was a critical reason why we were successful in beating the Victorians to secure the biggest defence project in Australian history and, of course, we then went on from there to beat Sydney to win the systems centre. It was exciting to visit the Techport facility today to see the rapid progress of works occurring on site. Taking place before our very eyes is a transformation of the

Osborne site that will help sustain a transformation of South Australia's economy to provide rewarding, secure and skilled jobs for the future.

The state's investment in Techport is already paying dividends and these will grow well into the future. We are investing more than $300 million in state-owned infrastructure at Techport to support the $8 billion air warfare destroyer contract, as I say, the largest defence contract ever awarded in Australia's history. At Techport, we are creating a naval industry hub, with:

- a common user shipbuilding facility comprising the largest ship lift in Australia, indeed, the largest ship lift in the southern hemisphere, together with a transfer system and wharf;
- a 35 hectare supplier precinct where suppliers and subcontractors can locate and develop strong supply chains, and;
- a commercial and education precinct that will include a Maritime Skills Centre to provide the trade and technical skills required, as well as the high technology AWD Systems Centre, an engineering centre of excellence that will integrate all the complex elements of these vessels into a successful build program.

I am told that there are (or will be) over 200 people on site working to build Techport. This is expected to grow to 250. Work on the common user facility began in August last year and, when completed, will have:

- a wharf that is 213 metres long and 25 metres wide;
- a runway and dry berth, with a rail-based transfer system allowing movement of modules and completed ships and vessels around the site, and;
- a shift lift that is 156 metres long and 34 metres wide, and capable of lifting a vessel (I think) about 18 metres (roughly 60 feet in the old imperial parlance) and supporting a vessel of up to 9,300 tonnes. Eventually—and this is being developed by Rolls Royce in conjunction with local suppliers—it could be expanded and developed to lift a much bigger ship—the equivalent of a small aircraft carrier such as an amphibious ship.

Also, a joint venture of McConnell Dowell and local company Built Environs has the $180 million contract to build the Common User Facility. On average, 2,400 tonnes (or 1,000 cubic metres) of concrete is poured every two weeks and, to date, 11,000 tonnes has been poured. Another 38,640 tonnes—or, putting it into more understandable parlance, 6,100 cubic metres—is still to be poured for the wharf, ship lift, runway and dry berth. The concrete comes from Readymix's Brompton plant, with some also coming from the company's Osborne plant. I am told that 2,500 piles will have gone into the completed site and, to date, I think maybe 1,700 piles or more have been driven into the ground at Techport.

As Techport's anchor tenant and as it gears up to build the air warfare destroyers, the Australian Shipbuilding Corporation (ASC) is spending $100 million on upgrading its shipyard. At its peak the ASC's upgrade will employ about 350 workers directly in terms of constructing the new facilities. Of the more than $300 million budgeted specifically for the development of Techport, I can announce today that contracts worth nearly $250 million have already been let, and the amounts paid to the various contractors to date already exceed $80 million.

Some of the other local companies that have used their extensive South Australian operations are Candetti Constructions for building the Maritime Skills Centre; Leed Engineering and Construction for the construction of the head works; subcontractors for Rolls Royce, such as RPG Australia ($10 million to supply the steel and build the platform); Mayfield Engineering for the provision of the motor control centre; and a range of other companies. I can announce also that considerable progress has been made. The project is moving ahead on time, on budget and due to be completed and opened in about February 2010.

CHILDREN IN STATE CARE INQUIRY

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:17): What a convenient time for the opening! My question is to the Premier. Have police at all times during his government's tenure acted promptly and thoroughly to investigate issues of child abuse, such as those raised in the Mulligan report? In his findings, Commissioner Mullighan refers to sex parties involving paedophiles and young people in state care, and said:

> The problem still exists. In July 2007 the department identified 16 children living in residential units as frequent absconders who are considered to be at high risk from sexual exploitation.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (14:17): This government is the government that faced up to the shameful history of child sexual abuse in this country. It was this government that faced up to those matters, and the way in which we faced up to it was important, because it was the design of the inquiry—

Members interjecting:

The Hon. J.W. WEATHERILL: I hear them say that we were dragged kicking and screaming. What we steadfastly rejected at all times was a royal commission which would have turned into the sort of circus that would have had no-one coming forward. It would not have had the degree of disclosures which we have seen through the Mullighan inquiry. The great success of this inquiry is the confidence that Commissioner Mullighan was able to build between himself and those people who came forward. It was the deliberate design of the inquiry and the choice of the Commissioner that those opposite resisted which was, indeed, the great success of the inquiry.

The reason that we have 170 of these individuals, the victims of these foul crimes, who have disclosed their allegations (which have now been referred to our police) involving many hundreds of perpetrators is a direct result of the Mullighan inquiry and the decisions taken by this government. Where have they been referred? They have been referred to the Paedophile Task Force. And why is there a Paedophile Task Force? Because this government set one up. Why is there indeed anything to investigate? It is because this government removed the ridiculous barrier to prosecuting those people who committed their offences before 1982.

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: I want to contrast that with the conduct of members opposite. A very interesting document has just come into my possession. It is a document which has been buried for a number of years. The document is dated October 1999 and is titled, 'Stage 1 of the Evaluation of the Department of Human Services, Strategic Planning and Policy Division, Alternative Care Evaluation Report'. It is a detailed report into what is described as 'the crisis that exists within our alternative care system'.

This was a very difficult report to find, because there were only rumours of it. In fact, it was actually buried. It was not filed but, rather, buried in a way that was calculated to ensure people could not find it. Multiple copies were made of this report for the purpose of dissemination. What happened to those multiple copies? They were destroyed. What does this report catalogue? It catalogues a system of alternative care in absolute crisis and on its knees.

I will give members opposite a little taste of what they were presiding over and what they deliberately sought to cover up. The report, amongst other things, states:

> The system appears to be stretched to the limits, with inadequate numbers of placements and placement options...FAYS services are crisis-driven and unable to always provide ongoing support to children in care...The pressure in the system, created as a result of the imbalance between supply and demand, are most critical...There is no evidence (and this is very important) to suggest that any improvements have been made—to the contrary—there are indications that things are getting worse.

The contrast is that we face up to the difficult issues and we respond to them. Those opposite bury the difficult issues and seek to come in here and cast aspersions on us.

SOUTH AUSTRALIAN ECONOMY

Ms PORTOLESI (Hartley) (14:22): Will the Treasurer provide an update of the performance of the South Australian economy; and is he aware of any reports and statements concerning our economic performance?

Members interjecting:

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:22): Thank John Howard, did they say?

The Hon. P.F. Conlon: He lost, didn't he?

The Hon. K.O. FOLEY: The Libs hate losing, but as we just heard from the minister, those opposite were a woeful government. I am pleased to provide details of a number of reviews on the South Australian economy.

Dr McFetridge: It is booming; we know that.

The Hon. K.O. FOLEY: The shadow minister is telling us that it is booming. That is not what the Leader of the Opposition is saying. That is not what Marty is saying; look at the face on him. He cannot believe it. Can I defer to the honourable member to answer the question? He has just told us that it is booming. I thank the shadow minister for transport for telling us what the Leader of the Opposition will not tell us, that is, the economy is booming. I am pleased to provide details of a number of recent reviews on the performance of our economy.

An honourable member interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Hudson Recruiting, which is a very large national recruitment agency, recently released one of its regular reports. The findings summarise nationwide research, totalling 7,195 employers who were personally surveyed. The survey was in relation to hiring expectations of Australian employers over the forthcoming quarter. In relation to 445 hiring managers in South Australia, the report reveals a 2.1 percentage point increase from the first quarter of 2008.

The result represents the highest confidence level on record for South Australia and the sixth consecutive quarter on quarter increase in employer sentiment. So the member for Morphett is right: this economy is booming.

An honourable member: Imagine what it would be like under a Liberal government.

The Hon. K.O. FOLEY: Yes, imagine what it would be like under a Liberal government. Well, we know what it's like: it goes down—big budget deficits, recessions—we know what you're like in government.

The construction, property and engineering sector recorded an increase of 16 percentage points on the last quarter. Additionally, the manufacturing sector recorded an increase of some 15.3 per cent. The results show that 95.3 per cent of SA employers surveyed planned to either increase or maintain existing staff resources.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: She has to talk the economy down, doesn't she? She just has to knock, knock, knock.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: We had a population growth last year.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: As we know, KPMG have already said in its business costs benchmarking study that we are the lowest business cost jurisdiction in all of Australia. What we have also found is an annual trend employment growth of some 21,500 or 2.9 per cent over the past 12 months to the end of February.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: The deputy leader is knock, knock, knock. She has nothing positive to say about the economy—but then she is a lawyer.

An honourable member interjecting:

The Hon. K.O. FOLEY: Sorry, a Liberal lawyer. Unemployment reached a new trend low of some 4.6 per cent since monthly labour force surveys commenced in 1978. The ANZ Bank expects that the current tight conditions in the labour market will continue well into 2008. That will see further market signals for more people to come into South Australia to meet the burgeoning economy. The reality is that, despite the Leader of the Opposition and despite the Deputy Leader of the Opposition, any smart-minded, objective person is telling us that our economy is booming.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Delusional! The deputy leader says that to say that our economy is booming is delusional. Is that what you are saying? That it's delusional? What did we hear last Tuesday night in this chamber from the member for Morphett? Having just said that anyone who says our economy is booming is delusional, what did the member for Morphett say? Quiet now, let's hear this. The member for Morphett said:

> Let us now have a look at the average weekly earnings in South Australia. The lowest level of unemployment on record in South Australia—

thank you, Duncan—

> is something that we need to be aware of. We are certainly aware of it when we are looking at capping average weekly earnings, particularly now with the mining boom and with the defence contracts being pushed—

so well, I might add—

> by this government. It is an interesting position to be in.

So says the member for Morphett. He said more. He said:

> We have an economy that is absolutely booming.

I say to the member for Morphett, thank you for honesty and an objective analysis. We have the deputy leader saying that it is delusional to suggest our economy is booming; Marty, who will knock us at any moment—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Sorry?

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Marty just told her to be quiet.

The SPEAKER: Order!

The Hon. K.O. FOLEY: Even Marty is getting sick of her.

The SPEAKER: Order!

The Hon. K.O. FOLEY: Sorry, sir. Even the leader is getting sick of the deputy leader interjecting. He just put a hand on her shoulder and said, 'Shut up'.

The SPEAKER: Order!

The Hon. K.O. FOLEY: How do you feel? He has just told you to shut up.

The SPEAKER: Order!

Ms CHAPMAN: On a point of order, Mr Speaker.

Members interjecting:

The SPEAKER: Order! I will hear the point of order.

Ms CHAPMAN: The deputy leader accused the leader of placing his hand on my shoulder. It is completely untrue.

The SPEAKER: Order! The Deputy Premier will return to the substance of the question.

The Hon. K.O. FOLEY: I have finished, sir.

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition.

FORENSIC PATHOLOGISTS

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:30): It's a fool's paradise over there, just a fool's paradise. A ship of fools!

Members interjecting:

The SPEAKER: Order!

Mr HAMILTON-SMITH: My question is to the Premier. Has the Premier considered—

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: I warn the member for West Torrens.

Mr HAMILTON-SMITH: Ask the members for Mawson and Light that question, Tom.

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition will ask his question.

Mr HAMILTON-SMITH: Has the Premier considered the impact of the decisions of the Medical Board that two of the state's leading forensic pathologists withheld evidence in two Supreme Court trials and the impact of personal statements made by the Attorney-General on the matter last week?

Last Wednesday, the Medical Board made a finding of unprofessional conduct against Dr Ross James for his withholding of evidence during the Keogh murder trial. This came on top of the board's earlier finding of unprofessional conduct against Dr Colin Manock in the same matter. The latest finding of the Medical Board is in stark contrast to the Attorney-General's statements to the house on 1 April 2003, when he said in relation to the same matter, 'There is no reason I should not accept Dr James' opinion on this.' Finally, the Attorney-General's personal outburst on the case during a media conference last week raised questions about the involvement of himself and his personal lawyer, the Solicitor-General, Chris Kourakis in the matter.

Members interjecting:

The SPEAKER: Order! The Attorney has the call.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (14:32): It is most interesting that the Leader of the Opposition would put the Parliamentary Liberal Party at the disposal of Bob Moles and Graham Archer in now campaigning for Henry Keogh's release. It is in stark contrast to the principled position previously taken by the member for Heysen—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen says she still thinks Henry Keogh is guilty. She confirms that, and—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. Foley interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: For her principled position, the member for Heysen has already been vilified by Graham Archer and *Today Tonight*, but I congratulate her on her position. It is a surprise to see this switch to get a little bit of favourable coverage on *Today Tonight*. Personally, I think that the Leader of the Opposition is buying the favourable publicity at too high a price.

Mr Williams interjecting:

The SPEAKER: The member for MacKillop will come to order.

The Hon. M.J. ATKINSON: The first thing to say is that this evidence was given in the 1990s when forensic science was administered by a Liberal government. That is the first thing to say: that the evidence that is being criticised is more than 10 years old, and it was given entirely under a Liberal Party administration. The second thing to say is that both Drs Manock and James have retired and there are new people in charge—

An honourable member: What's that got to do with it?

The SPEAKER: Order!

The Hon. M.J. ATKINSON: —of Forensic Science SA. The third thing to say is that I think that the Manock and James matters should be treated entirely separately. Dr James is very highly regarded throughout the legal profession—

The Hon. J.D. Lomax-Smith: Hear, hear!

The Hon. M.J. ATKINSON: —and I note my colleague, the pathologist, the member for Adelaide, interjects 'Hear, hear!' That's right, and my understanding is that Dr James will appeal this finding. I will comment after that appeal is concluded.

DENTAL HEALTH

Mr PICCOLO (Light) (14:35): My question is to the Minister for Health. What action is the government taking to make dental health care more accessible for South Australians?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:35): I thank the member for his question, and I acknowledge the member for Light's great interest in health issues. The government is committed to improving the access of all South Australians to oral and dental health care, and since coming to power this government has allocated an additional $36.5 million to the provision of public dental health services. We have also implemented effective demand management strategies, which focus resources on prevention and early intervention.

These measures have seen the average waiting times for general public dental health care fall from a high of 49 months, under the former government, in 2002, to 22 months currently. It is expected that the new federal government's introduction of the commonwealth dental health program will see further significant reductions in public dental waiting times, and even allow concession cardholders to receive regular checkups and preventive care.

We do, however, remain mindful that over 80 per cent of adult South Australians pay for their own oral health services on a private basis, with or without the assistance of dental insurance. A significant part of the government's plans to ensure that dental care remains accessible and affordable, for private and public patients is to review the dental practice regulations and, in particular, the role of dental therapists.

The current regulations restrict dental therapists to the treatment of children. We are currently consulting with professional bodies about lifting these restrictions to allow dental therapists to treat adults as well as children, as already occurs in many parts of the world, including the United Kingdom and New Zealand.

Dental therapists can be and are trained to provide many aspects of high quality basic dental care. The treatment of adults by dental therapists would be on the prescription of a dentist—I will repeat that: would be on the prescription of a dentist—who has examined each patient, and would be under the dentist's supervision.

While South Australian children enjoy one of the very best government dental services for children anywhere in the world, we know that levels of dental care drop significantly once children enter adulthood. As children, of course, eligible for the school dental service, 99 per cent of primary school aged children and 97 per cent of secondary school aged children receive dental care within a two-year period.

This provides our state with the best oral health care system in Australia for children. Unfortunately, 33 per cent of 25 to 44 year olds report that they have avoided or delayed dental care as a result of cost. We also know that a shortage of dentists in rural areas is an obstacle for many South Australians seeking dental care. In South Australia we have more dentists per capita than in any other state. We do, however, have a problem with the distribution of dentists between urban and rural areas and the inner and outer metropolitan areas of Adelaide.

For the benefit of members, I will just reveal these figures. In South Australia, there are 54.5 dentists per 100,000 population, and they are distributed in an uneven way. For example, in Adelaide there are 65.7 dentists per 100,000. These are figures from the Australian Institute of Health and Welfare, from 2003. In outer Adelaide it is 17.9; the Yorke and Lower North it is 15.9; Murraylands, 27.5; South-East, 26.2; Eyre, 37.7; and Northern, 27.1. So, Adelaide is okay, but the rest of the state, the outer Adelaide area and the country areas, have a below average distribution of dentists.

We are also aware that there are access issues for the residents of aged care facilities. Restricted access to dental care is an alarming trend, because, as with any medical condition, oral health problems can become far more serious, and consequently far more expensive to resolve, if they are left untreated.

We believe that dental therapists can help alleviate a shortage of dentists in rural areas and provide routine dental care in the aged care sector. The expanded use of dental therapists will also serve to reduce cost pressures in dental care and allow dentists to concentrate on more complex dental issues.

Dental therapists are qualified professionals who are currently required to undertake a Bachelor of Oral Health, accredited by the Australian Dental Council. This is a full-time, three-year university degree. We are currently in discussion with the Australian Dental Association and other organisations to progress the implementation of these changes.

FORENSIC PATHOLOGISTS

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:40): My question is again to the Premier. Do the findings of the Medical Board of South Australia that two of our most senior forensic pathologists have engaged in unprofessional conduct give him cause for a lack of confidence in the court cases involving evidence given by them; and, if so, what action does he intend to take in response to these developments? In November last year and March this year the Medical Board delivered findings that Dr Colin Manock and Dr Ross James had engaged in unprofessional conduct and had withheld evidence from two major trials. The pathologists named have carried out thousands of autopsies and appeared as expert witnesses in hundreds of trials.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (14:40): Of course I am concerned if it is sustained at the end of the day that pathologists working in the court system did not do their job properly or withheld evidence, but I do not think the Leader of the Opposition gives a true picture of the case of Dr James.

An honourable member interjecting:

The Hon. M.J. ATKINSON: Manock is a quite different matter, and I gather that will be reheard soon and, when it is reheard, we will know where we stand. If, indeed, the allegations of the Leader of the Opposition and *Today Tonight* are upheld against Dr Manock, I will share their concern.

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: What it does not mean is that Henry Keogh is not guilty, which is what—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen interjects that is right. I wish the member for Heysen would step the Leader of the Opposition through criminal law and procedure. So, instead of looking like a smacked backside, the Leader of the Opposition should be quiet and to listen, because—

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: I am sorry? Could you repeat it?

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: A fairy. Okay. Mr Speaker, alas, so many people who watch the *Today Tonight* program have never been given—not in recent years—a fair picture of the evidence on which a jury convicted Henry Keogh. What is remarkable about *Today Tonight's* coverage since 2004, I think, is that there is almost no mention of the life insurance policies, the lovers, the lies—non-pathology evidence on which Keogh was convicted.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: And the member for Heysen agrees.

Mr Williams interjecting:

The SPEAKER: Order! The member for MacKillop will come to order!

The Hon. M.J. ATKINSON: Whether a conviction is unsafe will be determined on the whole of the evidence, not just the pathology evidence. So the member for Heysen, I am sure, in a

quiet moment after question time, will be able to step the leader and the deputy leader through criminal law and procedure.

Mr Hamilton-Smith interjecting:

The Hon. M.J. ATKINSON: The Leader of the Opposition interjects, 'Let the case be reviewed.' As a matter of fact, the Keogh case has been reviewed time and again by the Court of Criminal Appeal, by the High Court, and by successive solicitors-general. It is probably the most picked over case in South Australia's legal history. So, when he asks whether the Henry Keogh case will be reviewed, I think the Leader of the Opposition is taking the Liberal Party into very dangerous tabloid territory, and I caution him against it.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: I wish that the Parliamentary Liberal Party would have some compassion for the Cheney family. I wish they would show some respect to Anna-Jane's mother and father and her brother, and not get themselves in this mire.

When Dr Manock's case is heard and finalised and there is a finding, if there is a finding of unprofessional conduct I will comment at that time and, if it is sustained, I will share the concern of those who have criticised Dr Manock's conduct.

On the question of Dr James—which I think is a quite different matter—the finding against Dr James was that, though he was not asked the question, he did not volunteer certain information. One of the things that witnesses are told when they go to court is, 'Listen to the question and answer the question.' That is probably why—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: That is why so often journalists and politicians do not make particularly good witnesses. What they are told is, 'Listen to the question and answer the question.' Dr James—

Ms Chapman: A professional witness.

The Hon. M.J. Atkinson: Now the member for Bragg, the Deputy Leader of the Opposition, is personally attacking Dr James. I would urge her to read the Medical Board decision and then wait for the result of the appeal. Dr James has a reputation throughout the legal profession—both prosecution and defence—for having an open-door policy, for speaking frankly to both sides, and for being an objective witness. We will see what the result is when the appeal is determined.

GUARDIANSHIP BOARD

Mrs REDMOND (Heysen) (14:47): My question is to the Premier. What steps has the Premier taken to ensure that the newly appointed President of the Guardianship Board has not been given the highly paid position as a result of his candidacy for the ALP in the 2002 election? The appointment of Jeremy Moore as President of the Guardianship Board was gazetted on 27 March 2008. Mr Moore was a candidate on the ALP's Legislative Council ticket in 2002. He takes over from the person who had been acting in the position as president of the Guardianship Board for eight months, had been deputy president for eight years, but was not even given the opportunity to apply for the position.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:48): From memory, Mr Moore has been a critic of this government—in fact, a considerable critic of this government and me, but I guess that is why we also believe in appointing people like Dean Brown to advise us on water; David Wotton; reappointing Frances Nelson; why I came out and strongly supported the appointment of Amanda Vanstone to the position as Ambassador to Rome; and I have to say that—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —I thought it was extraordinary that I was not joined by members opposite. In this regard I mention also the appointment of Robert de Crespigny, who had been heavily involved with the Liberal Party, as chair of the Economic Development Board and Caroline Hewson as a member of that board. Those appointments and, of course, the appointment to our government of Rory McEwen, the head of the National Party in this state, shows that we are bigger people and that we are prepared to appoint people on the basis—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —of ability rather than on the basis of their party origins. That is the difference between us.

INDUSTRIAL RELATIONS COMMISSION

Mr WILLIAMS (MacKillop) (14:49): My question is to the Premier. Premier, did you or any of your ministers engage in discussions regarding the timing of the ALP State Council meeting in the context of proposed changes to the WorkCover legislation and the appointment of the AMWU union official, Paul McMahon, to the Industrial Relations Commission? As foreshadowed by the opposition in the house on 4 March, the industrial relations and legal communities have raised concerns that a deal had been done to deliver an appointment for a union official in return for an agreement to delay the ALP State Council and any embarrassing debate on changes to WorkCover laws. After the opposition raised the issue, the government brought forward two names to the appointments committee, and then used the minister's authority to make the predicted appointment.

The SPEAKER: Order! I point out that that question is completely out of order. However—

The Hon. M.D. Rann interjecting:

The SPEAKER: Order! However, given that the member for MacKillop has laid allegations in the house, it would be unfair of me not to give the minister an opportunity to respond.

The Hon. M.J. WRIGHT (Lee—Minister for Industrial Relations, Minister for Finance, Minister for Government Enterprises, Minister for Recreation, Sport and Racing) (14:50): They are silly allegations. They are unfounded. They have no basis whatsoever. All the honourable member has to do is lean over and speak to his colleague sitting on his left-hand side. The government put in place a panel. Of course, that panel was represented by Business SA, SA Unions, the Commissioner for Public Employment—

Mr Williams interjecting:

The SPEAKER: Order! The member for MacKillop is warned. Has the minister finished his answer?

The Hon. M.J. WRIGHT: Nearly, sir. It was also represented by the shadow minister for industrial relations and the Hon. Bernard Finnigan from the Legislative Council. I met with that committee on a confidential basis to consider the appointment that was made and, to the best of my knowledge, State Council has not been delayed at all.

LABOR PARTY FUNDRAISING

Mr GRIFFITHS (Goyder) (14:52): My question is to the Minister for Water Security. Has the minister, a National Party MP, agreed to become a fundraiser for the Australian Labor Party? SA Progressive Business Incorporated is a Labor Party fundraising body chaired by Nick Bolkus that offers private briefings with state and federal Labor ministers in exchange for the payment of large sums of money ranging from $500 to $10,000. This month businesses have been asked to pay $500 per person to attend a 1½ hour twilight briefing on water security from the minister on Thursday 17 April.

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security, Minister for Regional Development, Minister for Small Business, Minister Assisting the Minister for Industry and Trade) (14:53): It is an incredibly interesting question. I go to all sorts of forums representing all sorts of different people around the state to spread the word in relation to what this government is doing regarding water security. It is entirely appropriate that I speak to as many people as I can about water security and what is necessary. I undertake that role on a free-of-charge basis to all sorts of community groups right around the state, and it is entirely

appropriate to do so. I will seek advice on the particular event to which the member refers, but at this point in time, it is one of the many functions that I go to and will continue to do so.

HOUSING SA

Mrs GERAGHTY (Torrens) (14:54): My question is to the Minister for Housing. Will the minister outline how the state government is making it easier for people to access housing services?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (14:54): I thank the honourable member for her question. I know that she has a keen interest in public housing and has always been a strong advocate for public housing, and community housing tenants. Tenants and home buyers can now access a range of new, free computer terminals at major Housing SA offices to help them find the accommodation and housing services they need. We have also launched a new website, www.housing.sa.gov.au, which has links to information as wide ranging as affordable homes on the market to concessions available for Housing SA tenants. This new way of providing access to our services coincides with the start of Housing SA's new service system. Housing SA has expanded its traditional role as a manager of tenancy and property to become a brokering service for housing and support services. We now have teams of housing officers who are multiskilled and who can assist with all kinds of services.

Of course, for our existing tenants these are still the people to go to with any tenancy-related issues, such as rents, maintenance and queries about housing services, but they do much more than that now. Our housing officers help with:

- community housing information and referrals;
- private rental assistance, including bonds, and liaison with real estate agents and landlords about vacancies;
- planning to buy a house, including information on HomeStart's EquityStart, Breakthrough Loan and other innovative home loan products.

Also through that website I mentioned, one can gain access to the Property Locator website, which, to remind members, is that place where we list homes for a limited period of time before they go on the open market to allow people on low to moderate incomes to get first crack at those homes. Further, our housing officers help:

- if people are experiencing a housing crisis; and
- referral to local support services, such as financial counselling or home assistance for older tenants or people with a disability.

This is about turning Housing SA into the first place to which South Australians go for assistance with any housing issue rather than an office of last resort, as has been the case in the past. Services will be tailored to people's needs to support their current living arrangements and then to help them move towards their future housing dream. And by this, I mean everything from support for people in need, through public and community housing, affordable private rental and specific services for older people, Aboriginal South Australians or people with a disability, through to home ownership options. It is a continuum of housing. It is the A to Z of housing that we are now offering, and our new website and publicly available computers will make it easier for people to access our wide range of services.

The SPEAKER: The member for Morphett.

The Hon. K.O. Foley interjecting:

TRADE UNION GRANTS

Dr McFETRIDGE (Morphett) (14:57): You just make sure you balance the budget without borrowing anything, okay? My question is to the Premier. Has the Premier—

Members interjecting:

The SPEAKER: Order!

Dr McFETRIDGE: —received the first report, due last January, on how trade unions have spent $3 million given to them by a cabinet decision in December 2006, and what steps has he

taken to address requirements of the Auditor-General regarding administration of the grants? In December 2006 the government granted $3 million to trade unions from an occupational health and safety fund within SafeWork SA. The Australian Electoral Commission's website reveals that many of these unions provided significant funding support to the ALP during the 2006 election campaign. In his 2007 report, the Auditor-General noted that the recipients of the grants are required to provide specific accountability statements on how the money is spent. The minister has advised this house that the first of those accountability statements was due last January.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:58): Suddenly, just for a couple of days, the opposition was pretending that it was a friend of the unions, although no-one on this side of the house believed that. But it is very interesting, and we remember some of the big grants that were given to businesses and industries, including—

An honourable member interjecting:

The Hon. M.D. RANN: Yes, there was Motorola, and a whole range of others. We remember how the TAB was sold for a song. They talk about an ICAC. Imagine an ICAC into the sale of the TAB or the—

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The Premier will take his seat.

The Hon. K.O. Foley interjecting:

The SPEAKER: Order! The member for MacKillop has a point of order.

Mr WILLIAMS: The point of order is one of relevance, sir. The question was specifically about the report that was due to be tabled in January.

The SPEAKER: I uphold the point of order. The Premier will return to the substance of the question.

The Hon. M.D. RANN: It is very interesting that you never criticise grants to industries, only to the unions that you pretend are your new best friends. Anyway, I will get a report for the honourable member.

The SPEAKER: Order! The member for Frome.

The Hon. R.G. KERIN: I rise on a point of order, sir. I just happened to notice that the Deputy Premier said that half our former colleagues would be in gaol, and I ask him to withdraw that comment.

The SPEAKER: I did not hear that remark.

The Hon. K.O. FOLEY: Sir, I withdraw.

The SPEAKER: Order! I did not hear the remark but we can move things along if the Deputy Premier has withdrawn the remark.

CHILDREN IN STATE CARE INQUIRY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:00): Will the Premier explain why the police department has refused to investigate allegations that a person known as Mother Goose has raped and indecently assaulted young boys when a request was specifically made by Commissioner Mullighan to do so?

The Hon. K.O. Foley interjecting:

The SPEAKER: Order, the Deputy Premier!

Ms CHAPMAN: The public claim by Brad Shannon that police have failed to investigate this person after he provided evidence to Commissioner Mullighan's inquiry is well known. His evidence includes allegations that he was raped at age 14 years, that Mother Goose admits he was with the boy but denies the rape and, further, that 'Mother Goose has a brother high in the police department'. Yesterday, he claimed that police would not investigate the matter unless he signed a waiver that he would not take action against Mother Goose. That is all on the public record.

When no action was taken, Commissioner Mullighan wrote to Mr Mal Hyde on 19 July 2005. The letter states:

Some time ago I took evidence from him and forwarded a copy of the transcript to Assistant Commissioner Fahy. Police officers under his direction investigated Mr Shannon's allegations of being raped many years ago by a person known as Mother Goose.

The letter names the person who is accused—and I will not be repeating that—and then continues, 'The rape was alleged to have occurred in Walkerville.' He then encloses a further transcript. The letter continues:

He can see no reason why this man should not be charged with rape. He would like to speak to an appropriate member of the police about the matter as soon as possible.

After referring to another issue, the letter continues:

I am not aware of any reason why the investigation has been brought to an end promptly.

Then by letter dated 8 March 2006 Commissioner Mullighan wrote to Mr Brad Shannon advising him—

Mrs Geraghty interjecting:

Ms CHAPMAN: Listen up! The letter states:

I write to inform you that the investigation into Mother Goose continues and I am hoping to be able to provide further information to the police in the next few weeks.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:02): I will ask the Minister for Police to request a report from the Police Commissioner on this matter. However, let us contrast what we have done in this area compared with our predecessors. I know the Leader of the Opposition is very proud of his role as a minister in the previous Liberal government. In our first month in office we commissioned the Robin Layton inquiry into child protection; and then we acted upon her recommendations. We introduced tougher penalties for paedophiles. We introduced tougher parole conditions for repeat paedophiles.

We lifted the insidious prohibition that prevented people being prosecuted for paedophile offences prior to 1982—which your government refused to lift. I could not see the difference between child sexual abuse in 1983 and child sexual abuse in 1981. My view is that I do not care when they commit the offence—whether it was in the 1930s, 1940s, 1950s or 1960s—the people responsible should be brought to justice. Therefore, the difference between our six years and your eight years in government is that we lifted the lid on child sexual abuse in this state while you covered it up.

CHILDREN IN STATE CARE INQUIRY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:04): My question is to the Minister for Families and Communities. Why has the government not agreed to immediately investigate child abuse in the state's north and other Aboriginal communities following Commissioner Mullighan's statements that the abuse extends beyond the APY lands?

When the Children in State Care Commission of Inquiry was amended last year to include the APY lands, the opposition urged the government to widen the terms of reference of the inquiry to include other Aboriginal communities and not to limit the investigation to the APY lands. The government did not do so and, although Commissioner Mullighan has not yet released his report on the APY lands, he said in the report tabled last week about children in state care that further investigation was needed of these APY lands and that it should be extended to the other areas.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (15:05): One of the valuable parts of the approach that we took with the Mullighan inquiry was not to wait until the conclusion of the inquiry to act on a range of his intimations. Commissioner Mullighan did not wait until the end of his inquiry to draw to our attention matters that needed to be drawn to our intention or, indeed, to the attention of the police. A range of police investigations in relation to criminal conduct involving children has been occurring in not only remote Aboriginal communities but also Aboriginal communities in some of our regional areas.

Remarkably, some of these investigations (given the difficulties associated with these matters) have led to prosecutions and convictions. That is a very substantial achievement. We are

not waiting for the report be tabled; we are actively investigating allegations of abuse in those communities. We will, of course, reflect upon what further steps need to be taken in light of Commissioner Mullighan's further report, which we will receive at the end of this month.

LITERACY AND NUMERACY

Mr RAU (Enfield) (15:06): My question is to the Minister for Education and Children's Services. What is the government doing to support teachers who are working to improve the literacy and numeracy skills of South Australian students?

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education and Children's Services, Minister for Tourism, Minister for the City of Adelaide) (15:06): I thank the member for Enfield for his question. I know he has been a great advocate for getting back to basics in teaching and improving the teaching of literacy and numeracy in primary schools within his electorate. Teachers, of course, are the cornerstone of our schools and preschools, and the Rann government is committed to supporting our teachers as they work tirelessly to help students achieve their full potential every single day.

Since being elected this government has put a strong focus on improving the literacy and numeracy skills of all students. To assist teachers in government schools to teach literacy and numeracy a new electronic Datamart will be available, providing them with online access to literacy and numeracy test results for their students. Datamart will include detailed information on the year 3, year 5 and year 7 numeracy and literacy tests and, from this year, will also include year 9 test results.

This new Datamart will assist teachers to track the performance of their students and intervene early in any areas of concern or areas that require more attention. Last year the database and software were trialled in six schools. By the end of 2007 Datamart was rolled out to all government schools and training is continuing to be offered this year with 500 teachers and principals having already been trained to use this system.

Teachers are now able to access detailed information regarding the performance of individual students in the tests, including their answers to particular questions. Schools will be able to compare their performance in the tests with other schools across the state. Of course, security and privacy features of Datamart allow that schools can only access their own students' test results. More importantly, when a student moves to a different school, the new teachers will be able to access their results electronically. This will ensure that any difficulties that a student may have do not go undetected when they move to a new school.

Datamart is part of the Rann government's efforts to lift South Australia's student skills in all areas of literacy and numeracy. In addition to Datamart, this government has funded more teachers to reduce class sizes as well as providing $35 million for our Early Years Literacy Program. The Rann government is committed to ensuring that all students reach or exceed national benchmarks in literacy and numeracy, and Datamart is just another tool to assist our teachers to achieve that goal.

WHYALLA STEELWORKS

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (15:09): I lay on the table a copy of a ministerial statement relating to dust targets at OneSteel's Whyalla site made earlier today in another place by my colleague the Minister for Mineral Resources Development.

SA AMBULANCE SERVICE

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:09): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: I am pleased to announce that the incoming chief executive of the South Australian Ambulance Service has been selected. Following a comprehensive recruitment process (which included an exhaustive national and international executive search), Mr Ray Creen will commence in the role in July this year.

A paramedic since 1985, Mr Creen's previous role as Director of Patient Services with Kent Ambulance Service saw him move the service from the third worst performing in England to the

fourth highest performing in just two years. Mr Creen arrived from the UK to take up the position of Deputy Chief Executive and Director of State Operations for SA Ambulance Service in 2005.

In that time, Mr Creen has been instrumental in instigating new initiatives to ensure that the state's ambulance service continues to improve its service to the South Australian community. Mr Creen has demonstrated that he has the vision and capability to move SA Ambulance Service forward to a new level that will not only enhance the performance of the service but will also contribute to meeting the challenge faced by the health service generally.

I would also like to take this opportunity to acknowledge the significant contribution of the outgoing chief executive, Mr Chris Lemmer, over the past 40 years. Chris started as a volunteer ambulance officer at Elizabeth in 1968 and commenced full-time employment with the ambulance service, then St John, in 1975 as an assistant accountant.

Mr Lemmer has undertaken a variety of administrative and operational roles at SA Ambulance Service. Amongst his many achievements in that time, the amalgamation of 64 independent country ambulance services into a single state ambulance service in the early 1980s stands out as testimony to his managerial and people skills.

In 2002, Mr Lemmer was appointed chief executive of SAAS and has built and developed a talented, effective and professional team that is strategically focused and well positioned to meet future challenges. I would like to take this opportunity to thank Mr Lemmer for his contribution to the SA Ambulance Service and wish him the best of luck in the next phase of his life. I also offer my congratulations to Mr Creen and look forward to working closely with him on continuing to enhance the state ambulance service.

GRIEVANCE DEBATE

MURRAY LAKES CLEAN-UP

Mr PENGILLY (Finniss) (15:12): On Sunday 6 April, my wife and I got a great deal of pleasure from assisting in the Clean Up the Lakes Day down at Goolwa. Indeed, we were out on Hindmarsh Island and I think that it is worthy of the house to note the enormous effort that was put into this particular day. I know that it went further up the lakes and other organisations and other towns, but it certainly was a great display of community spirit down there on Sunday.

I got tangled up with the Goolwa Rotary Club and we cleaned up bags and bags of rubbish, buried untold numbers of moorings, brought in wharf piles out in the middle of the lake, and generally cleaned the area up and, of course, that was in tandem with numerous other service clubs and community groups that assisted on that day.

Along with my colleague the member for Hammond and his family, we enjoyed a barbecue put on by the Rotary club at Rankine's Landing. I think that it is most significant that the community banded together in such a way to clean up the almighty mess that is down there, which has been brought to light by this appalling drought that has impacted so heavily on the Murray system.

The question that was asked by a number of people is why, further up the river, are people continuing business as usual, to a certain extent, with 32 per cent of their allocation of water, whereas down in our area there is none, and what water is there is indeed rapidly becoming unusable for any sort of purpose whatsoever. I think that it is an absolute disgrace that six years after this government came in, still not one single drop of water has been put in place to replace the water that is needed for Adelaide. It is currently being pulled out of the Murray, and the Lower Lakes and those communities are being sacrificed and treated with disdain by this Rann government.

One thing that really caught our attention on the day—and I think it is something that should be followed up—is the plight of the long-neck tortoises, which is just quite incredible. Some 100 long-neck tortoises were brought into a recovery place on Hindmarsh Island where local volunteers took up to an inch and a half of bristle worm off their backs and from under their legs. These poor little devils are dying. They are coming out of the salt water onto the banks, and they are covered in bristle worm. I am not an expert in the anatomy of tortoises, but my understanding is that they breathe by moving their legs which activates a diaphragm—they do not have lungs—and this bristle worm is covering them up to the extent that they cannot move, so they are dying.

Ms Breuer interjecting:

Mr PENGILLY: It is actually very profound, and certainly I think the member for Giles would have had the same depth of feeling as I did to see these poor things brought up there. They

brought in a hundred and they recovered. They cleaned up a hundred and put them into freshwater, and after an hour it was just amazing to see how they came back to life and they were taken further up the river. If they cleaned up a hundred, there would be thousands, if not tens of thousands, dying down there. The question I would put to the house, and that I put to the government is: what is the national parks organisation doing about it? I could not see that they were active. Apart from taking them up the river, they did not seem to have had any part in cleaning them up. They may well have had in other places, and I will stand corrected on that.

However, it was community groups and volunteers who were doing the work, and I thought that it was just a terrific example of cleaning up man's mess and fixing up those tortoises and giving them another chance of life further up the river. I know that the member for Hammond's children were absolutely captivated by it. I hope it never happens again, but the fact that the opportunity came to clean up 100 or so years of man-made mess down there was unique. The mess down there on those flats is just absolutely amazing. What is down there by way of rubbish and wrecks of boats, and this and that and everything else, will continue, and my one big concern is that in 12 months' time there will be even more of the lakes exposed and we will be at even more risk of acid sulphate soils, and the concern, of course, is where this is going to finish. One thing that will fix it up is many, many months of rain, and we sincerely hope this will be the case. I do not think there is any question on either side of the house that this drought will not break, and that will be attended to. But it is going to take a lot to fix it up.

Time expired.

ROMA MITCHELL COMMUNITY LEGAL CENTRE

Ms CICCARELLO (Norwood) (15:17): Today I would like to take the opportunity to speak about a truly extraordinary organisation in my electorate which exemplifies the concepts of community service and social justice. This organisation is the Roma Mitchell Community Legal Centre, and it probably does not come as a surprise to many that it is principally run by lawyers. I know that lawyers often suffer from a bad reputation, and that there are many jokes about lawyers, but I can state that not all lawyers are just interested in the mighty dollar. There are many who are prepared to use their knowledge and expertise to help those who might be disadvantaged or socially isolated to have the means to participate and to have the access to legal help they otherwise might not receive.

This is clearly the case with those who volunteer their time and considerable expertise to the Roma Mitchell Community Legal Centre. The centre commenced as the Norwood Community Legal Centre in 1979 after a group of local solicitors giving pro bono legal advice and assistance in their offices formalised this pro bono legal aid in a single association, under the guidance of the then new local Labor member for Norwood, Greg Crafter. And 28 years later, despite no longer being funded as a community legal centre body and remaining entirely dependent on volunteer support, it still remains strong in providing the following services: legal advice, counselling, referrals, legal and human rights information, community legal education, and reconciliation services.

It does this by offering three main objectives: the Evening Legal Advisory Service; the Daytime Roma Mitchell Human Rights Volunteer Service; and Placements from the Mission Australia Work for the Dole program and the Continuing Legal Education Series.

The Evening Legal Advisory Service began almost from the centre's inception and continues to this day to be the core function of the community centre. This service operates every Monday and Thursday between 6 to 7pm at the centre, where clients are offered interviews for 15 minutes. All legal assistance is provided by 15 to 20 private lawyers who donate their time and expertise free of charge. And if you work that out it means that, over the last 28 years, the centre has been able to assist over 11,000 people.

The administration of this evening service and the myriad of responsibilities which go with fielding inquiries and visits throughout the day is undertaken by the Human Rights Volunteers Service, which, in addition to this, also promotes its own agenda of advancing human rights and reconciliation in the community.

This service consists of law students from Adelaide and Flinders universities, Mission Australia placement workers, and other members of the community. These volunteers obviously work very hard, and I am reliably informed that the centre receives more than 1,000 inquiries per year and appointments are fully booked up to two weeks in advance. The fact that the centre is unfunded yet still manages to provide these services is fantastic, and I commend the many men and women who give their time so selflessly.

My association with the legal centre dates back to its inception and I am privileged to be a member of its management committee. I have enormous faith in the centre's ability and willingness to assist others and have referred many constituents to it over the years, as have people from other areas. I am pleased that the Rann government also acknowledges the fine work that the centre continues to do in my electorate. This year I have presented the centre with grants from the Premier's Community Initiatives and Volunteers Support Fund to assist them in their work, and I look forward to presenting them with many more in the future.

I am enormously proud to have the Roma Mitchell Community Legal Centre in my electorate and I take this opportunity to acknowledge and commend the tireless work undertaken by the chairperson (Philip Lineton) and the treasurer and convenor of volunteers (Patrick Byrt). Patrick is a frequent visitor to my office and I continue to be impressed by his passion and enthusiasm for human rights and social justice. The Norwood Payneham and St Peters council obviously agrees with me because, this year, Patrick was awarded the Australia Day Citizen of the Year. To Philip and Patrick and all the dedicated and enthusiastic volunteers who make up the Roma Mitchell Community Legal Centre, I offer my congratulations on a job well done. They are very well known and respected within the community and, again, I congratulate them on the work they do in helping disadvantaged people in our community.

TAXIS, COUNTRY

The Hon. G.M. GUNN (Stuart) (15:21): I rise today to highlight difficulties brought to my attention by the taxi industry in country South Australia. I received a letter from Des's Cabs, which is based in Whyalla and Port Augusta, with some units in Adelaide. It states:

> Attention all users of South Australian Transport Subsidy Scheme Vouchers.
>
> The country taxi industry in South Australia needs your assistance.
>
> Whilst the South Australian Passenger Transport Act requires all passenger transport operators to be accredited there is no accreditation category in the act specifically for country taxis.
>
> Instead of fixing the act the department of transport is labelling us as a type of 'hire car' and wants us to get accreditation in this class. One of the problems with being a hire car is that hire cars are not legally allowed to pick up passengers unless the passenger has—

Ms Breuer: That is all sorted.

The Hon. G.M. GUNN: I am not sure that it is, because the point I want to make is that there are two sets of rules, one up in our area and one down in the south.

Ms Breuer: It has been sorted out.

The Hon. G.M. GUNN: I do not think it has been, has it? Anyway, there is a bit more I want to say about it, before I was so rudely interrupted by the member for Giles—once to distract me, and you know that it takes a lot for me to get back on the track again, because it takes me all week to work myself up to make a speech.

The Hon. M.J. Atkinson: To get the courage to speak.

The Hon. G.M. GUNN: Correct, Attorney-General.

Ms Breuer: We all know you are shy.

The Hon. G.M. GUNN: I have been here a bit longer than you. The letter continues:

> Hire cars aren't allowed to pick up passengers by chance as they come out of shopping centres, hotels [etc.]
>
> Also, hire cars are not legally allowed to accept South Australian Transport Subsidy Scheme vouchers from their passengers.
>
> At present the continuing acceptance of these vouchers by country taxi operators is in jeopardy as some country taxi operators...have not been paid by the state government for vouchers they received...12 weeks ago! Country taxi operators, like any other business, cannot continue to do this indefinitely without receiving payment from the government.
>
> Country taxi operators want to be recognised by the state government as country taxis. We want to continue to operate as country taxis, to continue to be able to accept your South Australian Transport Subsidy Scheme vouchers, and to continue to receive regular payments for these vouchers from the state government.
>
> Please support us by completing the attached letter and either forwarding yourself to the address in the letter, or by handing it to your taxi driver—

so they can hand it on to the government. It was brought to my attention that this particular difficulty has been caused by one person in the bureaucracy who thinks that these taxi operators are going to get an unfair advantage.

He has a typical left-wing attitude that people are not allowed to be successful in this country. That is what I am told; the fellow has a chip on his shoulder. But I am also told that, because of the extra representation down in Mount Gambier, the taxi operators in his area did not have this problem, yet those operators in other parts of rural South Australia—particularly in the regional centres—have faced this particular difficultly.

So I want to be assured by the minister not only that these people are treated fairly but that their situation is treated quickly and they are not put at a disadvantage. There is no rhyme or reason for what has happened. My view is, of course, that taxis should be regulated and operated by local councils. That should do it. They are the people on the site. There is in many parts of the state a shortage of country taxis, so we should be encouraging them to get people to further invest in this industry, not putting obstacles in their way to stop them.

I know that in Port Augusta, particularly at night, we have had difficulties: there have been problems involved with people waiting for taxis outside hotels and attracting attention; they have been told to move on, and all sorts of difficulties have arisen. So what we should be doing is encouraging the taxi industry to put more cars on to operate, not allowing bureaucrats to get in their way and prevent them from providing a badly needed service to the community.

Taxis are part of the public transport sector. They are absolutely essential. We all use them from time to time, and therefore we should be encouraging people to be involved, not putting unnecessary barriers in their way. I am personally concerned at what happened and so I therefore say to the minister: if there are still difficulties, fix them and make sure the same law applies to all South Australians, not just to isolated groups, because there was no rhyme or reason to discriminate.

Time expired.

SCHOOLS, PHYSICAL FITNESS

Mr BIGNELL (Mawson) (15:27): I rise today to talk about physical fitness amongst our school students and, in particular, one program that has been very successful in the Willunga region for the past five years. Anyone driving past Willunga High School on a Friday afternoon in term 1 or 4, will see up to 300 students from schools in the area out there playing tag rugby league.

It is a very popular outing for students in the area. It started out, as I said, five years ago with just 20 students going for a game after school, and in that time it has grown to more than 300 students and the range of schools has gone across to Seaford and up into your electorate as well, Madam Deputy Speaker, with the children from Morphett Vale also taking part in this competition. There are 28 teams, spread across three divisions; years 8 and 9 are the top division and there are two levels of primary school below that. We see students from Tatachilla, Aldinga and Seaford schools and, of course, from Willunga Primary School, Willunga High School and McLaren Vale.

I would particularly like to pay tribute to one particular gentleman, Paul Crate, who is the physical education teacher at Willunga Primary School. It was his idea to get this off the ground a few years ago, and I think it has grown beyond even Mr Crate's expectations. It is a wonderful success in terms of getting not only all these children out there but their parents as well. They have a barbecue and it is a very social as well as sporting occasion in the local region.

The students are charged $20 for a season, and so far they have not received any government money: they have not asked for any government money and have not received any, although I would like to change that. The people concerned have done such a good job of getting kids out there participating in sport; in these days of high levels of childhood obesity, I think it is very important that we have active young members in our community, and those playing tag rugby league are certainly doing that.

It is not just those who are good at sport who are doing well at tag rugby league either, because I find you do not have to be the fastest runner or the most nimble person in the team to actually do well at this sport. It is a sport that suits a range of levels of physical fitness and levels of ability. The other advantage is that it is not just for those who are playing the game. So far, 30 high school students have been trained to be referees. I think that, if you talk to any administrator in any sport, one of the really tough things is to get kids and even older people involved in refereeing or

umpiring, and so it is admirable that, over the past five years, 30 students from Willunga High School have trained to be referees.

They also get paid for going out there, which I think is another good thing. This all comes out of that $20 subscription. More than 50 people—parents and again high school students—have been trained as coaches over the past five years, as well. It is very encouraging, particularly for the high schools students, in that it teaches them some very valuable skills. There is a couple of other local legends, if you like, including Chum Reed, who has been involved with the Willunga footy club, a very successful football club. It has won the local flag for the past four years in a row. Chum has probably dedicated 40 to 50 years of his life as a trainer for the Willunga Football Club. He is in charge of first aid and, if any of the kids suffer an injury or a strain, he is there.

I really want to thank Chum, and other people in the local community, who give up their Friday afternoons not only to help out the current crop of students who are playing the game but also to ensure that this competition grows year on year. Willunga Primary School is the current champion in the girls' rugby tag and also the boys' rugby tag. Congratulations to both those teams. They have been the state champions for the past two seasons in a row. Two years ago, the Premier met with the team at the Adelaide Oval when they received their shield for the first time.

Marty Prichard, who has been very involved in the coaching, has also done a great job, as has Dave Cohen, who has been instrumental in setting up these competitions around the state. I think that, considering the various skills you need to play rugby tag, it sort of mixes Aussie rules, soccer, rugby league and rugby union all into one sort of homogenised game.

The DEPUTY SPEAKER: The member's time has expired. The member for Goyder.

The Hon. M.J. Atkinson: Hear, hear! A good member.

REGIONAL DEVELOPMENT BOARDS

Mr GRIFFITHS (Goyder) (15:32): I appreciate the comments from the Attorney. I want to take a few moments to reflect upon some issues which are affecting the regional development boards, the 13 boards which function in regional South Australia. I will declare that I was previously a board member on two of those boards: the Yorke Regional Development Board and also the Northern Regional Development Board; and I spent some time on one of the committee groups with the then Pirie regional (now Southern Flinders, I think). It has been brought to my attention by the Hon. John Dawkins (the parliamentary secretary to the Liberal leader on regional development) that the funding agreements upon which these boards rely—and I believe that they are five-year funding agreements—expire on 30 June.

These 13 boards operate across the state and they do wonderful work. They offer some valuable opportunity for start-up business advice to people looking for that first chance in life to create their own business and to be in charge of their future; and they provide a lot of important information to people who have an idea of what sort of business they want to run but do not know how to get it going. They provide a lot of support and assistance with training and employment needs, and they certainly help with the development of regional infrastructure, business networking assistance, major project support and the important lobbying that must occur at all levels of government to get as much money as they can in the regions.

These five-year funding agreements, in some cases, actually expired June last year, but a 12 month extension was granted to bring in a common expiry date of 30 June this year. I am told by the Hon. John Dawkins that, during estimates last year, minister Maywald confirmed the fact that, yes, she was supportive of it. At that stage, it was her intention to bring in draft agreements for the consideration of the regional development boards by October 2007, but, here we are, early April 2008, and still no signed agreements in place. It is critical that these agreements be put to the boards as soon as possible and that agreement be reached.

I will relay my own local situation. The District Council of the Copper Coast is a wonderful area in the Goyder electorate which is growing enormously. One community—Moonta, Moonta Bay and Port Hughes—is projected to increase its population from probably 4,500 to 16,000 by 2020. The Copper Coast council has decided, after a five-year hiatus of its not being a member of the regional development board structure, to come back into the fold.

That has been gratefully acknowledged by all players in the area because they recognise the strategic importance of the Copper Coast. They have had a provisional arrangement in place for probably the last six months. However, there is now a bit of frustration from my point of view that we have the one council in the state which was not a member of the regional development

board structure but which is prepared to come back in, but the Yorke Regional Development Board and the other 12 boards that assist in the state are frustrated by the fact that they do not have a signed agreement in place. The great risk of not having funding agreements in place is that it puts their local government partners in a position of some uncertainty about what level of financial commitment they must make to the boards for the new financial year.

It also means that staff, who are traditionally employed on relatively short-term contracts (only for the period of the funding agreement, sometimes for as short a period as two years), may not be sure of their future. I have seen minister Maywald open Regional Development SA conferences and speak positively about the future of all the regions. I respect that fact, but I would hope that the minister is able to ensure that draft funding agreements are presented to the boards as soon as possible. There may be some issues associated with the fact that the Treasurer in the house last week talked about the tightness of the budget as it approaches and the fact that the unfunded superannuation liabilities are causing some difficulty because of negative return on investments and that $120 million needs to be made up. However, as a person who proudly represents a regional area of South Australia, I believe it is important that these boards get the money they need.

I am further advised that the funding agreements that had been in place have remained quite static for the last 10 years. My hope is that (and I am sure this has the support of the regional development boards and all the people who live in those areas) core funding will be increased, because having more dollars available allows these development boards to be creative in what they can do and provide some real job opportunities in all the areas of the state. Regional South Australia has done it tough. The drought has made it very hard for people, and they need the business advice that the regional development boards can confidently provide to help give job opportunities to young people and to help create those training programs.

It is my hope that minister Maywald will ensure that, as soon as possible (and I hope that it is within a few weeks), draft agreements are presented to the boards and that we have signed funding positions in place to allow them all to have the surety that, as from 1 July 2008, they have a further five years in place, and that they can keep their good staff as they move forward.

Time expired.

HARMONY DAY

Mrs GERAGHTY (Torrens) (15:37): Today I rise to talk about the recent Harmony Day celebrations I attended at Northfield Primary School. First, I was very grateful that the school invited me to attend its Harmony Day celebrations. It is a wonderful school, and the students and staff take Harmony Day seriously and celebrate the cultural diversity of their school and the local community. I know that the school is determined to promote peace and harmony within the school and the broader community. I congratulate the school (under the leadership of its principal, Sharon Broadbent) not only for organising the Harmony Day celebrations but also for its active participation in promoting world peace.

On the day, Northfield Primary School was formally recognised as a Save the Children Alliance United Nations Global Peace School, and it was awarded the UN flag and a certificate in recognition of its achievement. This is truly a wonderful achievement. The journey to the school's acknowledgment as a global peace school commenced in 2005 when the staff of the school chose to undertake the Pathway to Peace Program and attended a training conference in Brisbane. The training program provided the framework for the school to build its Peace Building and Child Rights Program, which operates across the reception to year 7 curriculum. Pennington Primary School became the first UN Global Peace School in 2005, Thebarton Secondary School was the second school in South Australia to qualify for the award in 2007 and more schools in our local communities are undertaking the program.

The program involves the establishment of a network of schools and communities choosing to be proactive and introducing into their ethos and daily operation: peace building, child rights, understandings and practices. Save the Children Australia (South Australian Division) provides the personnel and programs to assist with this opportunity. To become a UN Global Peace School the students and staff of the school community share the responsibility of becoming global citizens and advocate for positive change in children's lives by:

- implementing the Save the Children Child Rights Program;
- reviewing teaching and learning practices and curriculum outcomes;

- choosing two relevant units in the Save the Children Speaking Out Program;
- completing and advertising the program; and
- ensuring the program in an ongoing manner to be involved in the UN peace celebrations by providing opportunities for staff, professional development and preparing a portfolio.

Harmony Day is one of the many ways in which the school community celebrates its diversity with all its members. I was delighted that, on the day, Northfield Primary School was able to show the many visitors its rich cultural diversity, which includes both staff and students from some 42 different nationalities, including our Aboriginal community, Vietnamese, Arabic, African, Indian and French communities, as well as numerous other backgrounds. I am proud to see this school leading the community in developing tolerance and understanding between these diverse cultures and I am proud to have the school in my electorate. It is not always easy being peace makers, but the school conscientiously undertakes peace-building programs in every aspect of its daily operations in the classroom, in communications with students and parents and in its association with the wider community.

As I said to the students, Australia is one of the luckiest countries in the world and it is extremely important that we acknowledge our nation's cultural diversity. We in Australia have a lot in which we can rejoice when it comes to rich cultural history. Migrants, many of whom were refugees fleeing oppression in their home countries, have added greatly to Australia and we are learning from their experience. The students at Northfield Primary School will certainly be future leaders and decision makers, and participating in the activities of Harmony Day teaches them to understand how it is important to work together and take pride in our rich cultural diversity and history.

I am extremely proud of the students and staff of this wonderful school. Again, I congratulate them. It was a pleasure to watch the children perform, interact with each other and delight in the differences that their cultural diversity has brought to this wonderful school.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 2614.)

Clause 4.

Mr HANNA: I move:

Page 7, line 11—After 'currently suited' insert:

of comparable status and with comparable remuneration to the employment in which the worker was employed immediately before the occurrence of the relevant compensable disability

The context here is important. In 1995 when the Liberals sought to cut workers' benefits, one of the things that was introduced was the two-year review. It was designed to kick workers off the system after two years. It did not really work from their point of view. It did not really work because the claims managers were not very smart about putting forward notional types of employment. The scheme they set up was that if the claims manager said they could do a certain type of employment, such as a car park attendant's job, then, if the car park attendant could earn $400 a week, that would be deducted from the notional weekly earnings; so the worker got paid less.

They did not apply it in a very clever way and there were some tribunal decisions along the way which suggested that a lot more work had to be done to show that a person could do such a job. For example, someone might have a bad back. The claims manager thought, 'We can flick them off the system by saying they could do a car park attendant's job.' But when the argument took place and evidence was given it was found that a car park attendant does have to sit in a chair for a certain amount of the time—and not every injured worker can do that. Maybe they have to handle cash or carry things around—not every injured worker can do that—so the intention of kicking a large number of workers off the system after two years was not really achieved. I am glad about that.

However, the Labor government is coming back to finish the job. The Labor government is coming back to do more than the Liberals did in terms of cutting the pay of injured workers. It is doing that with an artificial notion of suitable employment. It says that, if there is a job that the worker can do, bearing in mind a range of factors—it does not have to be available, it does not have to be work which would accord that particular worker dignity, it can simply be pulled out of a

hat—and, if the worker has some capacity then, essentially, they can be kicked off the system and get nothing.

Members will note the really significant difference here between what the Rann Labor government is doing and what the Liberals did in 1995. At least in 1995, under the two-year review, if there was a partial capacity for some work and the worker was not doing that, then income maintenance would be reduced by that amount. There is a kind of logic to that. It is a bit like Centrelink: if you can work, but you do not work, you can be breached. That was the kind of logic behind it. However, this is much harsher because, if there is some capacity to work and one of these fantastical phony jobs is dreamed up by the claims manager and the worker is not going out to do that job, the benefits can be cut completely. That is why it is so much harsher than what the Liberals did in 1995.

The amendment that I am moving here is really just tinkering around the edges, but it is a start. I am suggesting that one of the requirements of suitable employment be that the job proposed for the worker must be of comparable status and with comparable remuneration to the employment in which the worker was employed immediately before the injury. In other words, I am saying to the claims managers, to the corporation and to the government: 'Don't come up with a job for a professional person or a salesperson who has never worked in a factory that they can be a machinist, or that they can be an electrician. Don't come up with something fantastical. Come up with a job which would accord with that worker's experience: a job of the same status and the same pay.'

You will find that, if you can come up with a job that exists with the same status and the same pay, you will probably find that a worker with appropriate training and rehab will actually want to take that job—and everyone will be better off: the worker will be better off; the employer will be happy because the worker is productive; and we will not have that worker on the compo scheme. This amendment is basically to add a requirement to that notion of suitable employment to say that it should be a job of comparable status and pay.

The Hon. M.J. WRIGHT: The member for Mitchell, as he has already outlined, is talking about the definition of 'suitable employment', and he wants to add some words to what is in the government's legislation. We oppose this amendment because it would significantly narrow the definition of the term such that employment could not be considered suitable unless the type of work, classification and wage were at least equal to the worker's pre-injury employment.

This goes beyond the existing legislation. However, in the bill that is before parliament, when we talk about 'suitable employment'—and I will quote from the bill—what the case manager needs to take account of is the following: the nature of the worker's incapacity and previous employment; the worker's age, education, skills and work experience; the worker's place of residence; medical information relating to the worker that is reasonably available, including any medical certificate or report; if any rehabilitation programs are being provided to or for the worker; and the worker's rehabilitation and return-to-work plan, if any. That is quite comprehensive.

The provisions regarding suitable employment and work capacity assessments are fundamental to the bill and are drawn from the recommendations of the Clayton report. These provisions are estimated by the actuary, Mr Walsh, to result in the greatest cost savings to the scheme. If the provisions are significantly changed, Mr Walsh's underlying actuarial assumptions can no longer be relied upon and the cost savings will not eventuate. So, this would defeat the key purposes of the bill and, for those reasons, I oppose the amendment.

Dr McFETRIDGE: The changes in work capacity are certainly real. At the recent public forum at Enfield that the member for Mitchell and I attended, there was an example of a chap who was obviously quite severely incapacitated—in fact, he stood up and said that, according to WorkCover, he was 100 per cent incapacitated. I cannot remember who had the microphone at the time, but I hope they were being facetious when they responded, 'Well, you've got a wonderful voice. Perhaps you could become a radio announcer.' It must have been a facetious comment; I hope so.

The clause states 'work is available'. Now, it should be work that is reasonably available, and I think that is what the minister said. While the amendment will not be supported by the government, certainly the opposition has some sympathy for where the honourable member is going with this but, at this stage, we will not support it.

The Hon. S.W. KEY: I understand that the difference between the amendment that the member for Mitchell is proposing and the details that are in the Workers Rehabilitation and Compensation (Scheme Review) Amendment Bill is that the amendment actually mentions the

words 'comparable remuneration'. The amendment makes particular emphasis in that area with regard to the money that people get.

I know from my own experience as an advocate in this area that there have been a number of what would seem on the outset humorous stories of people being matched up with comparable employment. I wonder whether the member wants to comment on that. I remember one—which is probably along the lines of what the member for Morphett has just been saying—in which a nurse was told that, although she could not do nursing any more because of her back incapacity, perhaps she could become a DJ.

I do not know where that came from, but that was actually put forward as a serious proposition. Having had the opportunity to work in the transport industry with the TWU, there were a number of what I thought were absurd comments made about what would be appropriate work or comparable work for people, without even taking into consideration their interests or abilities or training.

There are two points to my question: one of them is the 'comparable remuneration'—I understand that is one of the points being made; and, secondly, suitable work being work that is not only suitable to the worker themselves but actually within their scope to be able to perform and that the job really does exist.

Mr HANNA: I thank members for those points. The critical thing here is to have work that is put forward to the worker which is of comparable status and pay to the work they were doing before the injury. Perhaps I can illustrate it best with an example. What the claims managers will come up with in a case like this for virtually any worker is, 'You could open the mail at an office.'

They can go through all the factors that the minister has outlined, which are in the government bill, taking into account the education, the medical ability or the medical capacity of the person to work and so on. If there is a badly injured person or someone with a bad back or maybe an amputated hand, almost anybody—one would think—could do the job of opening mail, reading it and sorting it.

Probably a few people could not, but just about every worker could do something as simple and menial as that. The worker gets a letter stating, 'We have looked at your medical reports. This is work you could be doing and you are not doing it. You have the capacity for work.' That is the critical thing in this nasty bit of government legislation. That is established by saying, 'You could be opening the mail in Joe Bloggs' office' or any office, whether it exists or not. The point is that it is not like the old two-year review, where if you were not doing two hours of work a day opening mail you got two hours docked off your income maintenance. Here it is sudden death, it is absolute. The entitlement to income maintenance cuts out altogether.

So, to pick up what the member for Ashford was saying, we can have a whole series of fantastical jobs, people being told they could do jobs as car park attendants, elevator operators, hairdressers, street sweepers, ushers in cinemas, you name it—I remember a few of these from the old two-year reviews, as they have been done over the years—jobs which had absolutely nothing to do with the pre-injury employment.

The point here is that you can pick the lightest, easiest job in the world and say to the worker, 'You have some work capacity.' Almost no-one will qualify for staying on the system until retirement age, because almost every single worker—I think everyone I have ever met—will have some work capacity. So they can be chucked off the system through this device.

Later on I have an amendment to say that the work should not only be suitable in the sense we would normally understand it but it actually has to be available, that the corporation would actually have to show that there is this type of work available. That will completely change the nature of the test. That is another amendment I have in mind. This one is just a very humble one, which says that if you are going to go through this charade with a worker you at least have to pick out a job of comparable status and pay.

The committee divided on the amendment:

While the division was being held, there being a disturbance in the Speaker's gallery:

The CHAIR: Order!

AYES (2)

Hanna, K. (teller)	Such, R.B.

NOES (40)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Goldsworthy, M.R.	Griffiths, S.P.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McFetridge, D.	O'Brien, M.F.	Pederick, A.S.
Penfold, E.M.	Pengilly, M.	Pisoni, D.G.
Portolesi, G.	Rankine, J.M.	Rann, M.D.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
Weatherill, J.W.	White, P.L.	Williams, M.R.
Wright, M.J. (teller)		

Majority of 38 for the noes.

Amendment thus negatived.

There being a further disturbance in the Speaker's gallery:

The CHAIR: Order! Visitors in the Speaker's gallery are reminded that it is a privilege to be in the Speaker's gallery and the condition is that silence is maintained and there be no disruption to or comment on the proceedings of the committee. I understand the feelings but I do need to maintain the standing orders of the parliament.

Mr HANNA: I move:

Page 4, line 11—Delete 'whether or not the work is available'.

This is an even more critical amendment than the last. This is about whether or not work is actually available. This was one of the evils of the two-year review: that completely fantastical jobs could be invented and, when the worker got a letter saying, 'You could be a car park attendant', 'You could be an usher in a cinema', if they were not doing that work they were at risk of losing the pay that such a job would provide to them.

The government is saying that there does not need to be any such job and it has specifically said in the legislation that the suitable employment that the worker can be effectively offered up by the corporation, or the claims manager, is so offered up 'whether or not the work is available'. So the suitable employment becomes virtually anything the claims manager can think of—any menial job, any simple clerical job, anything they can think of. Therefore, it is actually critical that it be a real job and, in my view, the obligation should be on the corporation to show that there is such work available, otherwise it really is just a ruse to get people kicked off the scheme.

The Hon. M.J. WRIGHT: I oppose this amendment. As I said before when we debated the previous amendment of the member for Mitchell, this goes beyond the current Workers Rehabilitation and Compensation Act and reintroduces a state of the labour market test that has long been excluded from the act. It would effectively make it much harder for WorkCover to deem a level of earnings for a partially incapacitated worker, meaning that many workers with capacity may still be considered totally incapacitated.

We were talking a little bit about this in the previous clause, but I am advised that the suitable employment case law will continue to apply. There has to be a job in the labour market that the worker has available to them. For example, you cannot be a worker in Coober Pedy and be told you can be a cinema attendant if there are no such jobs, or you do not have suitable experience. So for those reasons we oppose this amendment.

The Hon. S.W. KEY: With regard to the member for Mitchell's amendment, my understanding is that one of the reasons for the amendment is because the onus under the bill that is before us shifts to the worker to prove that the employment is not available, regardless of what is happening in the labour market, and that the decision really lies with the case manager. I just wonder whether the amendment takes into consideration any dispute with that particular designation on the part of the case manager?

Mr HANNA: Yes, I think the best way to answer that question is just to run through the realities of what is going to happen if this clause goes through as the government would wish it. It

means that the worker is going to receive a letter from the claims manager saying, 'There is suitable employment available to you. We don't have to suggest that it's available. There may be, in fact, no such job in the labour market at all, but we've looked at your medical reports, we've looked at your experience and you could do such work.'

I used the example before of someone who can open the mail in an office. The worker could be told, 'You have some capacity for that work, therefore, that is all we need to do in order to discontinue your payments. You have capacity for work; you are not using it. We've proven that there is at least a job, even if it doesn't actually exist, that you could do, so you lose your entitlement to income maintenance.' Then it is up to the worker to challenge that. So the worker challenges it and is at risk, of course, of losing income maintenance while the debate is being had in the tribunal.

The worker has to face starvation perhaps in order to challenge such a decision and then the debate can be had in the tribunal about whether, in fact, it is suitable employment and so on. But the trump card that the corporation is always going to hold in any dispute resolution about this is that they are going to say, 'We don't have to show it's available; we don't have to show that at all.' It is actually for the worker to show that they have no capacity for work whatsoever. That seems to be the only way out, according to the scheme that the government is putting forward.

If they can turn up to the tribunal hearing they are probably defeating their own case because they are showing they could turn up for work. They have got to be without any capacity for work to be able to continue to get their income maintenance until retirement age. So, I think that illustrates how the onus of proof, so to speak, would be applied, although the tribunal is a fairly informal forum.

The committee divided on the amendment:

AYES (2)

Hanna, K. (teller)	Such, R.B.

NOES (40)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Goldsworthy, M.R.	Griffiths, S.P.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McFetridge, D.	O'Brien, M.F.	Pederick, A.S.
Penfold, E.M.	Pengilly, M.	Pisoni, D.G.
Portolesi, G.	Rankine, J.M.	Rann, M.D.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
Weatherill, J.W.	White, P.L.	Williams, M.R.
Wright, M.J. (teller)		

Majority of 38 for the noes.

Mr HANNA: I move:

Page 7, line 20—Delete paragraph (f) and substitute:

(f) the effectiveness of any rehabilitation and return to work plan;

This amendment is relatively minor compared to the last couple that I have put forward. It is an amendment to the same part of the government clause under consideration. It is part of the definition of 'suitable employment'. The government would have it that the work put to the worker must be, among other things, suitable, having regard to 'the worker's rehabilitation and return-to-work plan, if any'. I have simply put forward that it should be the effectiveness of any rehabilitation and return-to-work plan, because I think that, far too often what has happened in the past is that somewhat scant regard is paid to rehabilitation and return-to-work plans.

An industry has grown up around rehabilitation and certain standard steps are involved in getting workers back to full employment. For example, work hardening programs, getting people back to work for part of the time, building up the hours, possibly retraining, possibly counselling,

possibly the arrangement of physical supports (if necessary) for the forearm, transport, whatever. It seems to me that, if one is considering work to give to a worker and one says, 'You can do this work,' the important thing is whether any such return-to-work plan has been effective.

I mean, if you have tried plans to get a worker back to a certain kind of employment and they have shown to be fruitless, either because no employer will accept a worker in the line of work which is described in the return-to-work plan, or if there have been medical problems with the rehabilitation of the worker in respect of the work to which the worker aspires, then it seems to me the important thing is the effectiveness of the plan. This is not an earth-shattering amendment, I understand that, but it seems to me there should be an emphasis on the effectiveness of return-to-work plans.

When the claims manager claims to come up with one of these job descriptions for workers to say that they should be getting back to work, they should be looking at how effective or ineffective any past return-to-work plans have been. I think that is a pretty basic commonsense point. I would be surprised if the government did not take this on board.

The Hon. M.J. WRIGHT: We think that that is already covered by the wording in the current bill. The wording of the current bill is sufficient and this amendment would add nothing to it. The phrase of the bill is simple but broad: the claims decision maker can by implication have regard to anything to do with the rehabilitation and return-to-work plan, including effectiveness. As the member for Mitchell says, it is not a big deal, but we think that the wording in the government's bill already provides the opportunity the member for Mitchell is seeking with his amendment.

Dr McFETRIDGE: While the government's amendment has regard to a worker's rehabilitation and return-to-work plan, and the effectiveness of that plan is mentioned in the member for Mitchell's amendment, blind Freddy can see that the effectiveness of rehabilitation in South Australia is in a terrible state. The case managers seem to be incapable of implementing rehabilitation processes in the case of many injured workers. The injured worker sees the case manager as part of the rehabilitation process, and that seems to be holding up a lot of the good work that could be done if rehabilitation was being implemented and managed properly, as we see in the case of the self-insured and the Public Service Association (PSA). I know that the PSA is very good at getting its workers back to work—it is a caring association. The self-insurers are also very good at doing that.

However, when it comes to the government's scheme, the case managers seem to be incapable of implementing or overseeing effective rehabilitation. I hope that in his explanation the minister does have regard to the effectiveness of rehabilitation because, certainly, the opposition has real concerns about it, and I know that many of the industry bodies with which we have spoken also have real concerns. Is the member for Mitchell concerned about the difference between the performance of organisations, such as government departments and the Local Government Association (and I understand that EML is a self-insurer), and what is happening in the WorkCover scheme?

Mr HANNA: The member for Morphett makes a very good point, and it is not just a point in relation to return-to-work plans. The reality is that, generally speaking, self-insured employers have been able to run their schemes fully funded whereas WorkCover has not. My point all along has been that, over the years, bad management of claims and bad management of the corporation itself has led to the mess we are in now with the unfunded liability blowing out. This question relates to use of redemptions, it relates to use of return-to work plans and it relates to the emphasis on getting cooperation from the worker early in the piece to make sure that there is a mutually agreeable and beneficial outcome.

When it comes to return-to-work plans, I am afraid that what has happened with WorkCover claims in the past (and, at this point, I will not distinguish between EML and previous claims managers) is that there has been a bureaucratic process, indeed a bureaucratic approach, to claims, and it has taken so long to get decisions about really basic aspects of the claim; and I gave the example earlier where it took nine months to get a decision about whether a worker with a shattered wrist could have a device fitted to the wheel of his car so that he could get around to medical appointments, job interviews, or whatever. It seems to me that, under those circumstances, any return-to-work plan is absolutely doomed to failure; and, over the years, that is what the experience has shown.

It comes back to the strategy employed by the government. The government knew when it appointed the WorkCover Board after coming into office that there would be a certain flavour to the WorkCover Board, and it knew that when the WorkCover Board came out with reforms that

concentrated on the bottom line ahead of the welfare of workers. The government had this review done by a couple of actuaries (no doubt reputable men in their own field), but those men were clearly concentrating on the bottom line, the black letter. What has been left out of this is the worker's welfare. I have said all along that there are already signs of the WorkCover unfunded liability turning around and, with appropriate management and use of redemptions and return-to-work plans, we could have the system fixed over a period of time—admittedly a longer period than if we go for the amputation approach, but that is essentially what this bill does.

The bill says that we can get a quick fix through getting this scheme in place whereby workers are kicked off income maintenance after 2½ years through the ruse of being offered suitable employment, which maybe does not even exist in the real world. Under these circumstances, the claim of Premier Rann and the minister that this is about getting workers back to work more quickly sounds a little hollow, because the essential point of this legislation is to kick workers off the scheme. If we are really going to get back to a return-to-work culture, one of the things which we have already discussed in this debate is that it must be done rapidly; and secondly, we need to look at the effectiveness of what has been done so far.

It is a trite observation, I know that. It is a very simple and straightforward amendment. Let us look at the effectiveness of what has or has not worked in the case of a particular worker rather than just rubber stamping some artificial, fantastical job.

The Hon. S.W. KEY: In the amendment put forward by the member for Mitchell I notice that the main words are 'effectiveness of any rehabilitation and return-to-work plan'. I observe that the position paper put out by the CEPU, the AMWU, the SDA and the FSU argues that, if it is really serious about improving the scheme's return-to-work rate, the government will direct WorkCover to invest more in injury management rehabilitation and the retraining of injured workers. The position paper also says that WorkCover must be required to fund a return-to-work strategy that at least matches the cost per worker of the Mitsubishi Labour Adjustment Program—around $30 million a year rather than $10 million a year as proposed by Clayton in the Clayton Walsh report.

When the honourable member was talking about effectiveness of any rehabilitation scheme, I presume he is speaking about a specific workers rehabilitation scheme. I would understand this to include retraining and, if they are not able to go back to the job they had before they were injured or had an accident or a disease associated with the work, there would be an opportunity for appropriate retraining as part of the rehabilitation. I wonder whether that is what the honourable member is referring to in relation to effectiveness.

Mr HANNA: Yes; it would cover attempts at retraining. That is the short answer. The member for Ashford raises a couple of other interesting points. It should be said that it is not just about the money. I agree with the submission of several of the unions. I was pleased to see that in the government's press release on Tuesday last week it was announced that a fund would be used for retraining, amounting to some $15 million. In the scheme of things, maybe it is not a lot of money but it is a step in the right direction. It remains to be seen exactly what it will be used for.

The mention of Mitsubishi is interesting. I must admit that when I heard Premier Mike Rann come out with the following comments I thought of injured workers. On 4 March the Premier said:

> Early last night I wrote to banks and lending institutions asking that they extend patience and consideration to their customers affected by the Mitsubishi closure. I asked that they consider sympathetically the position of any of their customers who might experience difficulty as a result of losing their position with the company.

I thought, 'How ironic!' The government is looking after the Mitsubishi workers so well, largely as a result of negotiations by the metals union and with the goodwill of the Mitsubishi company itself. The government is supporting those Mitsubishi workers so well with a comprehensive package—counselling and the creation of job opportunities, and all sorts of other things—yet at the same time several thousand injured workers—probably a greater number of actual workers than are being laid off at Mitsubishi—are on the WorkCover system right now and have been injured for more than 2½ years. Because this legislation is retrospective, as soon as this legislation is passed they can get a notice saying that they are not doing suitable employment, they have a partial capacity for work and they can be kicked off the system.

How ironic that millions of dollars is being spent for Mitsubishi workers—and I am glad that it is—but how ironic that it happens for workers who will be able to get another job, while workers in a worse position because of an injury (which has led them to be out of work for a long time) are getting the boot with no compensation. I did wonder when I heard the Premier's remarks whether he would extend the same sympathy to injured workers who are kicked off the WorkCover scheme as a result of his cruel legislation; but that is just my sense of irony.

I return to the remarks of the member for Ashford. 'Effectiveness' is a broad term but it does cover possible retraining. One of the key points about the history of the last 10 or 15 years is the abolition of the RISE scheme and the attempt to give money to workers for retraining so they could get into a business or some sort of employment of their choosing which was maybe different from their pre-injury employment. No doubt, there were some cases where money was squandered, but there were many cases where workers successfully re-educated and retrained themselves so they could get into productive employment.

Effectiveness should cover all those things. However, I must stress it is not just about the money but, rather, the culture—and certainly that is what needs to change. If we pass all this legislation—whether as the government wants it or as I would prefer to see it—we will still have problems if we do not change the claims management culture.

Amendment negatived.

Mr HANNA: I move:

Page 8, lines 21 to 26—Delete subsections (13) and (14).

This amendment is interesting. This is one of those amendments which is slipped in and which has far-reaching implications, far more than one can see with the naked eye. It enables a number of forms, notices, and so on, to be brought into effect through a decision of the minister by publishing a notice in the *Gazette*. In the same way, the corporation itself is given power to stipulate that certain things are to be done in a certain way by putting a notice in the *Gazette*. Generally, these are things that in the past have been done by regulation.

What is the difference? One might think it is easy enough for the minister to publish a regulation and it is easy enough for the minister to publish a notice in the *Gazette*. The fact is that if something is done by regulation we have the democratic safeguard that regulations are capable of disallowance by a motion in parliament. We know that that power of each house of the parliament is responsibly used. One could hardly think of any regulations which have been disallowed by a vote over the past 10 years. It hardly ever happens but it can happen. There are some cases when it should happen.

All I am saying with this amendment is that any notices or stipulations about how things should be done ought to be done by regulation, as they have been in the past. I do not believe the minister has established a case for being able to do away with the parliament when it comes to promulgating notices and ways of doing things which have to be stipulated. I am not aware of any problem that requires the parliament to be cut out of consideration when it comes to prescribed notices, etc. I would be interested to hear the minister's contribution.

However, the tricky thing about an amendment such as appears in the government bill, which my amendment seeks to delete, is that it opens a can of worms. It opens a whole lot of possibilities for a future minister—or, indeed, for the corporation itself—to run riot with forms that, in one way or another, disadvantage workers.

There might be forms which have no mention of workers' rights. There might be forms which have no mention of how a decision can be appealed against. We have grown used to these things as part of our rights, not just in the workers compensation area. For example, when we get an expiation notice from the police it will spell out what you have to do if you want to challenge it; it will spell out how you can go and have a look at the photograph, if you were caught by a speed camera, and so on.

What I am suggesting is that those little instructions and bits of information on forms are actually important; they do have a bearing on how people pursue their rights. All I am saying is: let parliament have a check on those forms. We know, from experience, that members of the House of Assembly and the Legislative Council are not ratbags in this regard. They do not go around disallowing regulations.

When there is a form that has to be prescribed, fair enough, let the minister come out with the regulation. Using section 10AA of the Subordinate Legislation Act the regulation can come into effect straightaway. However, the point is that there should be that right of review by each house of parliament and for the form to be disallowed if, in fact, it impairs the pursuit of workers' rights in the way that I have suggested.

The Hon. M.J. WRIGHT: I thank the member for his contribution. There is a philosophical difference here because I do not think the parliament needs to be regulating all the forms that are used by WorkCover. The government's main proposal was to remove the need for forms to be

prescribed by regulation and, instead, allow them to be approved by the minister. I would not have thought that that was such a big thing. I am advised that it is becoming more common to approve forms in this way as it allows them to be updated more frequently. They are still going to be gazetted and, if there is political criticism of the forms when they are gazetted, obviously the government will have to take heed of that.

The proposal to include such definitions supports a handful of other provisions in removing the need for forms to be prescribed by regulation and, instead, allows it to be simply approved by the minister. While a number of forms are presently regulated, I am not aware of any circumstances where the parliament has disallowed a regulation that changes a prescribed form. I think the member for Mitchell probably would agree with that.

Mr HANNA: The minister, in a sense, proves my point about the responsibility of parliament. There need be no fear of scrutiny by the houses of parliament. Neither house of parliament is interested in ripping up regulations for the sake of it. However, my point is that there is a safeguard there and the government wants to remove that safeguard.

The minister has not made out one single case where there is a need for the minister to come up with a form and for why it should not be done by regulation. The minister has not come up with one single case about why the corporation should be able to stipulate how things are done by workers, rather than having such stipulations done by regulation. I do make the point that in his contribution the minister has referred to the minister creating notices by placing them in the *Gazette* and so on.

However, let us be clear what we are talking about. There are two subsections of the new clause 4 that I seek to delete with my amendment. One of them allows the minister to dictate a form, without reference to parliament, simply to have that form published in the *Gazette*, and then it becomes the lawful form which must be used. The minister addressed that clause.

The other clause says that the WorkCover Corporation itself can make workers do things in a designated way (and the actual wording in the clause is 'a designated manner') by publishing a notice in the *Gazette*, so, we are not just letting an elected minister publish things in the *Gazette* and force workers to comply with those requirements. I can understand the minister's point to the extent that a minister is at least politically responsible and, ultimately, answerable to the electorate. There is a little bit of haziness around that because we know that, when election time comes, there are whole lot of other reasons that people vote. However, at least there is some political responsibility at the end of the day if it is the minister who publishes the notice in the *Gazette*. That cannot be said for the corporation, so why give it the power to enforce the way things can be done rather than have the oversight of parliament?

The committee divided on the amendment:

AYES (2)

Hanna, K.	Such, R.B.

NOES (39)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Goldsworthy, M.R.	Griffiths, S.P.	Gunn, G.M.
Hill, J.D.	Kenyon, T.R.	Kerin, R.G.
Key, S.W.	Koutsantonis, T.	Lomax-Smith, J.D.
Maywald, K.A.	McFetridge, D.	O'Brien, M.F.
Pederick, A.S.	Pengilly, M.	Pisoni, D.G.
Portolesi, G.	Rankine, J.M.	Rau, J.R.
Redmond, I.M.	Simmons, L.A.	Snelling, J.J.
Stevens, L.	Venning, I.H.	Weatherill, J.W.
White, P.L.	Williams, M.R. (teller)	Wright, M.J. (teller)

Majority of 37 for the noes.

Amendment thus negatived.

Mr HANNA: Before you put the question concerning clause 4, Madam Chair, you will recall that when I put my amendment relating to prescribed allowances the minister had a valuable explanation to give about what he proposed to prescribe. You gave us guidance at that time that it could come into the discussion of clause 4 as a whole. I actually think that it would be very valuable for that contribution to be placed on the record.

The Hon. M.J. WRIGHT: Madam Chair, the member for Mitchell did ask about prescribed allowances before, and you ruled that we consider it at the end of the clause. There is no intention to prescribe allowances at this time. The government, however, sees the need for flexibility. It might be that some allowances in the future should be prescribed but, at this stage, there is no intention to prescribe any particular allowances.

Mr HANNA: If I understand the minister's point fully and fairly, I will not be calling for a division on this clause to save a bit of time but, as far as the minister has gone, I am left wondering. In the current legislation, we have several types of allowances, such as site allowances, which are specified in the legislation, and those types of allowances will not be taken into account (under current law) in calculation of average weekly earnings.

At the end of that short list of specified allowances is the catch-all provision which states that further allowances can be prescribed, and then those allowances would not be taken into account in calculation of average weekly earnings. Under the amendment to which the minister has just referred, that flexible provision—as the minister referred to it—is being retained, but the specific items are being deleted. So, that is what makes someone like myself suspicious: that there was actually some motivation somewhere to do away with those specific items. I seek further clarification from the minister as to why we are doing away with those specific items.

The Hon. M.J. WRIGHT: The member for Mitchell is correct: the specifics are being deleted. We think that they should be included within the average weekly earnings. It is part of the government's philosophy to include allowances and overtime but, at the same time, retain the flexibility if something specific arises that should be included.

Dr McFETRIDGE: Minister, the change in definition of 'apprentices' brings apprentices under the Training and Skills Development Act 2003, whereas in the original bill that we are now amending the Industrial and Commercial Training Act 1981 was involved. Can you explain to me—a non-lawyer—the implications of that change?

The Hon. M.J. WRIGHT: The advice I have received is that it is just updating the legislative reference.

Dr McFETRIDGE: Definition No. 11, 'medical expert', now includes registered osteopaths. The matter was raised with me as to whether registered pharmacists are considered medical experts and, if not, why not.

The Hon. M.J. WRIGHT: The advice I have received is that registered pharmacists have not been included. They do, of course, provide medication but, unlike the others that have been included, they do not conduct treatment under the legislation.

Mr HANNA: My final contribution on this clause is to indicate that I will oppose it. I will not be calling for a division on it. I must oppose it, because this bill sets up the platform for the later government amendment which enables workers to be cut off after 2½ years. For posterity, I just want to record my understanding of how that happens. In clause 4(18) there are definitions of 'total incapacity' and 'partial incapacity'. The definition of 'partial incapacity' picks up the meaning of 'current work capacity'. Fairly obviously, it suggests that, if there is some current work capacity, no matter how small, there will be partial incapacity—neither zero incapacity nor total incapacity.

The definition of 'current work capacity' is set out in clause 4(4) and that definition, in turn, picks up the definition of 'suitable employment', because it states that 'current work capacity' means that the worker can return to work in suitable employment. Suitable employment is, of course, something that we have been discussing, and I have had amendments to this part of the clause.

'Suitable employment' is defined in clause 4(17), and that is the definition that makes it clear that the work specified does not have to be available. In other words, it can be a fantastical job. It can be the lightest of light work and it can be something that almost any person could do. These are the definitions which will be used by claims managers to kick people off the scheme after 2½ years. I wanted to make that quite clear, as readers of *Hansard* may want to be able to

follow that thread. It will be very relevant when we come to the later government clause which actually implements that cornerstone of this nasty bit of legislation.

Clause as amended passed.

Clause 5.

Mr HANNA: I move:

Page 9, after line 7—Insert:

(2a) For the purposes of subsection (1), any week during the period of 12 months preceding the relevant date when the worker—

(a) was on unpaid leave; or

(b) was not in employment,

Of course, I have to put this in context. I will briefly state what the amendment is about, first. I suggest that in the calculation of average weekly earnings, which is the subject of the government clause, we should disregard any period on which the worker was on unpaid leave or actually not in employment. That might seem to be straightforward but to explain that I need to refer to the government clause. As I have said, clause 5 deals with the calculation of average weekly earnings, and it is important to note that the entirety of the current relevant section in the legislation is deleted and an entirely new section is inserted by means of the government bill.

The government seeks to simplify the calculation of average weekly earnings. That in itself is a commendable goal. However, calculation of average weekly earnings for the purpose of ascertaining an income maintenance entitlement has never been easy, and one of the vexed issues which has come up again and again in the tribunal has been the interaction between overtime and total earnings and the various other means by which workers can be rewarded in addition to simple wages. There are non-cash benefits, bonuses and fringe benefits of different kinds. So, the government, to be fair, has sought to deal with these various aspects in the rather extensive clause 5 of the bill.

The essence of the government scheme is that average weekly earnings will be taken to be an average weekly amount that the worker earned during the period of 12 months preceding the relevant date, and generally that is going to be the date of injury (there are some qualifications to that). But, basically, the worker has an accident at work, and when we go to work out how much they should be paid we look at the 12 months prior to that date. It should be as simple as that but, of course, employment comes in all shapes and forms, so the government has taken account of the fact that there may be more than one employer in that previous 12 months.

New section 4(3) specifically says that any amount paid while the worker was on annual, sick or other leave will be taken to be earnings. So this is good. This means that if the worker has taken holidays or sick pay and been off work accordingly, that amount will be brought into the average weekly earnings.

Going to another part of the government clause, there is a specific means of dealing with overtime. I am not sure that it is the best way of doing it, but for the moment I will come back to new section 4(4), and I think it is important to have a close look at this subsection to see how my amendment fits into the government clause. It is a complicated one but I need to cite it in full to make my point. It says:

> If during the period of 12 months before the relevant date the worker had changed the circumstances of his or her employment from working casually or seasonally to working in permanent employment (whether on a full-time or part-time basis) and the worker was in that permanent employment on the relevant date, the worker's average weekly earnings may be determined by reference to the average weekly amount that the worker earned during the period of that permanent employment rather than during the period of 12 months preceding the relevant date, unless to do so would disadvantage the worker.

We are talking about the situation where the worker has changed their employment circumstances substantially. This captures the situation where someone might have been working in the mines or working on an oil rig and had very high wages but then they have had a somewhat less exciting job in a factory and that is where they become injured. You would not want to unfairly disadvantage the worker by simply taking 12 months of the factory wages when, in fact, they had been earning more on a seasonal basis or on a casual basis.

The same would apply simply to a clerical worker who might have been working on a casual basis and therefore earning a 20 per cent loading, or the equivalent, and that person is

awarded a permanent position prior to injury. You would not want to disadvantage the worker by taking the later and subsequent and lesser amount for their average weekly earnings.

One thing that this clause is silent about is the situation where the worker might have voluntarily taken a couple of weeks off. It could be that the worker's sick leave ran out, for example, so the worker might have used two weeks of sick pay but then they might have been so crook that they needed to take another two weeks off and that is unpaid. If you simply take the previous 12 months and average earnings, then you are going to come back with a lesser figure than the normal weekly earnings of that worker.

Similarly, if a worker requires compassionate leave—for example, if a parent dies overseas and a trip has to be made to be with other family and to make funeral arrangements, etc.—then there might be a substantial period off work. Otherwise the worker's employment is not interrupted, the worker's wages have been consistent through the whole period, but not during the period on unpaid leave, and it seems to me that new section 4(4) just does not cover this sort of situation. Looking at new section 4(5) also, it states that if a worker voluntarily otherwise than by reason of incapacity reduces the normal number of hours worked, then the period before the reduction of hours will be disregarded for the purposes of determining average weekly earnings.

So there might be perhaps a woman who has had a baby and goes part time for a period and then goes back to full-time work. It would be unfair to incorporate those part-time wages in the calculation of full-time employment if, in fact, the woman was back in full-time employment at the time of the injury.

What I am doing is going through the subsections of the government's new section 4 because I cannot actually see where there is anything that would enable periods of leave to be disregarded. I want to put it absolutely beyond doubt that if there is a period of leave, that should be disregarded for the purpose of calculating the previous 12 months' wages. It would simply be unfair to lower a person's wages because there might have been compelling reasons for taking a period of unpaid leave. That is the purpose of the amendment.

The Hon. M.J. WRIGHT: We oppose the amendment that has been moved by the member for Mitchell. Under our proposal for the amendment bill, it is likely that section 4 could be interpreted so that a period of time that the worker was unemployed or on unpaid leave would not be included in the calculation anyway. In addition to this, subsection (6) also allows that if a worker has only been in their current job for a short period of time, or for any other reason, their average weekly earnings can be determined with reference to an equivalent colleague's remuneration. For those reasons we do not support the amendment.

The Hon. S.W. KEY: I am pleased to say that, when looking at the submission by the unions that I mentioned before (CEPU, AMWU, SDA and FSU), with reference to this particular section, it states about the determination of average weekly earnings that both the existing and proposed provisions are legally complex. The existing provisions are contained in nine subsections, while the proposed legislation has 16. That might explain why I am finding some of this a bit difficult to follow. The unions are saying that, pending legal clarification, the government should ensure that there is no disadvantage to injured workers in relation to the determination of average weekly earnings.

As I said earlier, I was quite heartened to think that perhaps some of the disputes that I was involved in as an advocate would not have happened if we were looking at what people had earned in the previous 12 months, but I think the member for Mitchell makes a good point in his amendment in relation to what happens if a worker has been on unpaid leave or, in fact, has not worked for the full year, for whatever reason, or was not in employment at all.

The Law Society also raises some concern about this method of calculation, as does Graham Harbord from Johnston Withers, in a contribution he made to the Australian Lawyers Alliance seminar. He states:

> Under the current act the 'notional weekly earnings' in relation to a worker refers to a worker's average weekly earnings or the average weekly earnings as adjusted to take account of changes in the level of earnings. Average weekly earnings are defined by section 4(1) of the act to mean the average amount that the worker could reasonably be expected to have earned for a week's work if the worker had not been disabled.
>
> The existing provisions have been amended by the bill such that the definition no longer has a prospective element but simply refers back to the average weekly amount that the worker earned during the period of 12 months preceding the relevant date.

He then talks about how this follows the Clayton report:

The only exception is if the worker has no reasonable expectation to work overtime in the foreseeable future then overtime would be disregarded. Overtime will now simply be based on an average of the amounts paid or payable to the worker during the preceding 12 months.

He points to this as a problem with regard to the calculations:

However this average will be based on weeks in which the worker was on annual leave, sick leave or other paid leave (in which he or she obviously would not have worked the actual overtime).

I must say that having been in the situation, albeit 10 years ago, of arguing what average weekly earnings would be and having a number of different arguments, depending on the worker I was representing, I think on balance that this way of looking at average weekly earnings is perhaps fairer, but I do think that the member for Mitchell's point about unpaid leave and not in employment, and certainly the comments that are made by the Law Society and Graham Harbord, should be taken into consideration.

Mr HANNA: I do not make a point of principle in relation to whether average weekly earnings should be calculated on a prospective or retrospective basis. The minister is aware that it has been done on a prospective basis, and that inevitably entails an element of speculation. How much would the worker have earned in the coming 12 months?

If we calculate it the other way and look at the last 12 months, I think it is going to be a case of swings and roundabouts. There will be some workers who would be better off if one took a prospective view, especially in industries that are booming. There will be other workers who will be better off if we take a retrospective view because perhaps overtime is drying up in that industry, maybe the car industry or something like that.

The dispute level has been unnecessarily high, and I have referred to that complexity of calculating average weekly earnings. I see that the WorkCover annual report a couple of years ago said that these disputes about average weekly earnings took up about 19 per cent of cases in the tribunal. That is a lot of time in the tribunal to be arguing about these sort of dollars and cents, rather than getting on with the substantive issues of whether or not a worker has a claim and the degree of injury. I am not terribly upset that the government is seeking to simplify the calculation of average weekly earnings. If my amendments were accepted, I would not have a problem in accepting the government's clause 5, but a couple of provisions cut back workers' entitlements and that is what I am seeking to address.

I must address the minister's remarks. New section 4(6) does seem to be a catch-all provision which might be relevant. Curiously, it leaves a kind of out, that is, a kind of vent, through which a lot of litigation could emerge, because it states:

...if by reason of the shortness of time during which the worker has been in employment, the terms of the worker's employment or for any other reason, it is not possible to arrive at a fair average, the worker's average weekly earnings may be determined by reference to the average weekly amount being earned by other persons in the same employment with the same employer who performs similar work at the same grade as the worker or, if there is no person so employed, by other persons in the same class of employment who perform similar work at the same grade as the worker.

That is quite a mouthful. Let me take it apart for a moment. Everyone understands, I think, that, if the worker has only been employed for a month, it is a bit hard to look back at the last 12 months and work out what is a fair thing.

The government has quite rightly, I would say, put in a fairness provision which would allow a reference point to be made of a fellow worker's average weekly earnings; that is, someone who has been in the job doing the same thing for 12 months prior to the date of injury. Of course, there will be some cases where there will not be any such colleague and people in other work sites can be looked at to come up with a fair figure. The interesting thing here is the catch-all provision 'or for any other reason'. In so many cases, the worker will be able to say, 'If you just look at my last 12 months, it is not possible to arrive at a fair average.' I am glad that that wording is in there and I am not seeking to take that away, but I seek to remove doubt by establishing that, if the worker has been on unpaid leave, most definitely that should not be taken into account.

I do not want an argument about fairness (which could go either way) to go all the way to the tribunal to a judicial determination and all the rest of it, when, in fact, this is a point which could be simply resolved by the parliament now. I think the minister would see the fairness of the amendment. If you have been working for 12 months at $500 a week consistently, but you have taken two months off to attend a family funeral overseas and deal with the aftermath, then you would not want your 12 month salary divided by 12: you would want it divided by 10 because that is

the number of months for which the worker has worked and been paid, and therefore you will come up with the fair figure for average weekly earnings.

That is all I am saying: if there is unpaid leave, do not bring it into the calculation. I looked at a couple of other subclauses earlier and referred to them to see whether there was any other subclause which might have picked up this anomaly. The only possible one it seems is the one to which the minister has referred, that is, new section 4(6), which, indeed, does have quite a bit of flexibility—probably more flexibility than employers would wish. Rather than having the worker make out a case that there is unfairness because the determination initially has taken into account some period of unpaid leave and leave the worker to go to a dispute and establish that the calculation is unfair, if we can see it is unfair now, then let us fix it now and take such a period of unpaid leave out of the equation altogether, because, in practice, I suspect this is how it will happen.

The claims manager will write to the employer and say, 'This is addressed to the pay office. How much did John or Jane earn in the last 12 months? Just tell us that, because we are looking at new section 4(1) of the of the act (as amended by the Rann Labor government) and we want to look at the last 12 months of earnings. Just tell us that.' The pay office will duly write back, 'Twelve times $2,000 a month: the worker has earned $24,000 in that year, and they earn the same amount every week.' The only problem is that the worker was not at work for two months because, by permission of the employer, they were off for two months. It would be so unfair to reduce the average because the worker was away for two months. The calculation would come up with a figure which in no way reflects what the worker earns every week that they are at work.

If we have a situation where we know it would be unfair, let us fix it now, rather than come up with a situation where the worker receives a notice and they say, 'We will have to challenge this; this is not fair. We will go back to the tribunal.' We will be in the same situation as we were before this legislation was even introduced in terms of there being unnecessary disputes in the tribunal. Let us fix it.

The committee divided on the amendment:

AYES (2)

Hanna, K. (teller)	Such, R.B.

NOES (40)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Goldsworthy, M.R.	Griffiths, S.P.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McFetridge, D.	O'Brien, M.F.	Pederick, A.S.
Pengilly, M.	Piccolo, T.	Pisoni, D.G.
Portolesi, G.	Rankine, J.M.	Rann, M.D.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
Weatherill, J.W.	White, P.L.	Williams, M.R.
Wright, M.J. (teller)		

Majority of 38 for the noes.

Amendment thus negatived.

Mr HANNA: I move:

Page 11, line 30—Delete 'of a prescribed class'

To explain my amendment, again, I turn to the government's approach so that members can appreciate what I am doing here. Clause 5(13) provides that, for the purpose of determining average weekly earnings of a worker, any non-cash benefit of a prescribed class provided to the worker by an employer will be taken into account if the thing has not been retained by the worker and it will not be taken into account if the thing has been retained by the worker.

What might a non-cash benefit be? The obvious examples we could think of are things like a work car, a phone or a computer. In some cases, people have opted to have a salary sacrifice arrangement and thereby have school fees or union membership fees paid for—even medical insurance. These are non-cash benefits because they are not being paid as wages to the worker, and it is quite appropriate that they be taken into account if, in fact, the worker has had to give them up because of the work injury. The whole point of the scheme is its compensation for what has been lost as a result of the injury.

Let's say a sales rep has been injured and cannot go out any more to drive to the different sites and sell the product. The employer says, 'Jack/Jill, you are off work, but we are going to give the car to someone else to drive. So, what you had to take home and drive for your own personal benefit, you no longer have. There is a non-cash benefit which was part of your job which you no longer have because you are now injured and you cannot carry out your duties.'

As has happened with some cases, if the firm says to Jack/Jill, the sales rep, 'You will only be off for a couple of weeks, you can keep the vehicle and, when you get back on track, you can resume your duties, drive around in the company car as you have been.' In that case, obviously, you do not want to compensate the worker for something they have not lost but, if they were off for a period of time and the work car is taken away from them, they have actually lost something in addition to their wages if that is a car that they could drive around for their personal use. That is just to illustrate with one example.

The question I have for the government, rhetorically, is: why would you want to limit the range of non-cash benefits which could be taken into account? I am not saying there should be double counting or double dipping. I am not suggesting that someone gets compensated for their non-cash benefit in terms of average weekly earnings, yet also gets to retain that non-cash benefit. I am questioning why the government has a rider in there which says 'of a prescribed class'. Why would the minister want to go out and say, 'Although this non-cash benefit has been taken away from this worker because they have been injured and they cannot do their duties, why would we not want to compensate the worker for that non-cash benefit?'

At common law, you could. If you were suing someone because you had lost something of value—and say it is as a result of a motor vehicle accident where we can still sue other people for negligence—in addition to wages (some non-cash benefit, in that sense), then we would be able to recover it at common law because the purpose of damages at common law is to put people back in the situation they would have been in had the wrongdoing not occurred. In my submission, it ought to be the same with work injuries: put the worker back in the situation that they would have been in financially, including non-cash benefits, had they not been injured. To me, that is fair and it is absolutely what the scheme is about. It is an insurance scheme to ensure that workers are not worse off because they have had a work injury, subject to the step down of income arrangements and so on.

My amendment is very simple. It proposes to delete 'of a prescribed class'. The effect of this would be that, where there is a non-cash benefit that the worker enjoys before the injury, if they have been injured and they are allowed to retain the benefit (for example, a car, a mobile phone, a computer at home), then they do not get that taken into account when their average weekly earnings are worked out. Fair enough. But the effect of my amendment would equally apply, so that after the injury, where the worker does not retain the car, mobile phone or computer, then that benefit should be taken into account in the average weekly earnings.

You are trying to put the worker into the situation in which they would have been had the injury not occurred. It is as simple as that. I do not think the minister should have the power to take away these benefits and, therefore, take them out of the calculation of average weekly earnings.

The Hon. M.J. WRIGHT: Items such as coffee and morning tea which are supplied by the employer and Christmas lunch which is paid for by the employer are not part of the worker's package of employment, but are provided by the employer. If things such as cars, mobile phones and laptops are in the contract, obviously they would be part of the average weekly earnings. If it is non-contract then it is out. We are talking about things such as entertainment, which would be out.

The Hon. S.W. KEY: I have listened to the argument that has been put by the member for Mitchell. It has opened up an area of entitlements that workers have when they perform their job. I have always operated on the philosophy that a worker should go to work and come home a little more tired than when they left; that should be the aim of their employment. If they do happen to have the misfortune of being injured at work or have an accident or an illness associated with their work, my philosophy is that they should expect as much as possible to have the same conditions,

not only in remuneration but also in other conditions, had they not be injured or disabled in some way.

It seems to me there is an argument that, in order to ensure people return to work as quickly as possible, they do need all the supports they would have enjoyed if they had been working. There is an argument to say that it is important that people do not lose their car, mobile phone or computer. I imagine that a lot of people would find it difficult to lose their work computer. I am not entirely sure that is in the spirit of what is meant by this clause, but I think there is a reasonable argument to say that we should not exclude particular groups of workers from their entitlements, whether it be remuneration or other kinds of things.

Mr HANNA: Perhaps one solution is to specify that the non-cash benefits (which are the subject of the government clause) should be those which are described in the work contract. It seems to me that, in terms of the big ticket items such as a car or mobile phone about which I am most concerned, often they will be referred to in the employment contract. Things such as cups of tea or the Christmas lunch, if they can be truly characterised as non-cash benefits, are not likely to be in the work contract itself; rather, they are provided gratis by the employer in a spirit of goodwill in the workplace.

I have presented one solution to the problem, that is, simply allowing in all non-cash benefits. Certainly, it is the easiest thing to do because it avoids dispute and captures the spirit described by the member for Ashford. If this is not fixed up here, then there is an open invitation to members in another place to come up with a solution which does take account of those big ticket items to which I have referred. I would be quite happy to go along with the minister, if I knew it was just about tea bags and sachets of sugar for morning tea. The problem is that there will be pressures on this minister or subsequent ministers to prescribe bigger items out of the average weekly earning calculation—and that is the problem.

So, I will certainly stick with the amendment. It is fairer than having the potential to cut all of those things out. One way forward for us at the moment is if the minister would be prepared to have a good look at this and perhaps put something in the legislation that makes it clearer, rather than leaving it to regulations. That would leave me a little more relaxed about what is in the clause.

The Hon. S.W. KEY: If we look a bit further at the amendments that have been proposed by the minister, new subsection (15)(a) provides:

> Where a disabled worker's remuneration was, at the relevant date, covered by an award or industrial agreement, the worker's average weekly earnings will not be less than the weekly wage to which the worker was then entitled under the award or industrial agreement.

So, I think that, following on from the contribution that the minister has made on this particular amendment proposed by the member for Mitchell, there is an opportunity to actually be consistent. If I remember what the minister has said, if it is in the contract of employment for the particular injured employee, then it would be consistent that those non-cash entitlements or provisions should be supplied.

I also think it would be consistent with what is being argued in the bill a bit later on, as I said, with regard to people who are covered by awards or industrial agreements or other things. Presumably that would include other industrial contracts that may be provided. I am saying to the member for Mitchell that it may be that if we can get clarification on that then that would be a suitable way of dealing with that particular amendment that he has proposed.

The Hon. M.J. WRIGHT: In regard to the proposition put by the member for Mitchell, yes, I am prepared to have a look at this, because I think the intent that he speaks of and the intent that I speak of are pretty close. Having said that, that does not mean that I am committing to an amendment here and now, but I am prepared to commit to have a look at this between the houses. If it is required that it does need to be tidied up then we will certainly look at that.

Mr HANNA: I will not be calling for a division on my amendment, although I think it is pretty important that this be cleared up one way or another. The member for Ashford referred to new subsection (15)(a), which makes it clear that, despite earlier provisions, there is a minimum set down if the worker's pay is covered by an award or industrial agreement. I am not sure if that is the point she was making.

I think what you will find in the labour market today, and for some time into the future, is that very few workers are actually earning the absolute award minimum. So, the safety net there is not terribly comforting. In any case, I am grateful that the minister has said that he will at least have a look at how to better define non-cash benefits so that we include those things which are taken

away from the worker of some substantial value (a bit more than teabags) and leave it out of the hands of future ministers to prescribe such things as cars, phones and home computers.

Amendment negatived.

Dr McFETRIDGE: In considering average weekly earnings, there has been a bit of an issue about new subsection (12), relating to overtime. Because I am not a lawyer it might be easier to read from a submission that has been put to me. It states:

> While this is obviously intended to reduce the number of disputes, more than one major employer in this state is concerned about the impact of the overtime provisions in particular, and one has advised that unless the proposed new section 4(12)(a) is very narrowly construed by the tribunal (which is highly unlikely) [in their opinion] many more claimants will have overtime included in their weekly payments when it is not, in fact, a regular part of their wages. This is because any overtime, regardless of how irregular it was, will be part of the averaging calculation required by this amendment. One employer reports that, unless the terms of the amendment are successful in precluding overtime in the same way as existing provisions, this could inflate income maintenance payments by an average of 55 per cent.

The comment was that the bill was supposed to be reducing liabilities, not increasing them as envisaged there. Will the minister assure us that the revised overtime provisions will not, in fact, lead to higher income maintenance liabilities for the scheme?

The Hon. M.J. WRIGHT: The intention is to average overtime over the last 12 months. I am also advised that it can take away overtime if the worker has no reasonable expectation of working the overtime.

Clause passed.

Clause 6.

Mr HANNA: I move:

Page 12, after line 24—Insert:

(2) Section 7—after subsection (3) insert:

(4) The following persons are not eligible for appointment as the presiding member of the committee:

(a) a member, or former member, of the board of management of the Corporation;

(b) an employee, or former employee, of the Corporation.

We are now dealing with the issue of the WorkCover Advisory Committee. In principle, I think it is good to continue with a WorkCover Advisory Committee. Of course, we have had one in operation but I am deeply concerned that it has not been able to operate in the manner in which it was intended. The WorkCover Board, I believe, has unduly restricted the access to information of the advisory committee. I believe the WorkCover Board has been very sensitive to criticism from the advisory committee, and I believe the advisory committee has been hampered in doing its work as robustly as it could.

That is where I am coming from in relation to the advisory committee and, hence, one of my amendments in relation to the advisory committee deals with the position of presiding member of the committee. I make no bones about the fact that one of the WorkCover Board members is currently, I believe, the presiding member of the committee, and I do not believe that is appropriate.

What we have is an advisory committee, which is meant to be independent from the whole process, making critical comments about failures within the system, and representing the interests of workers, employers and other stakeholders, and these views may not be in accord with the views of the WorkCover Board.

It may be, as we have seen in the last few years, the WorkCover Board focusing very much on the bottom line, perhaps not very successfully. Not only can the WorkCover Advisory Committee make suggestions about how to reduce unfunded liability, it can come up with very detailed submissions about how the system can work better, based on the experiences on the ground: the detailed day-to-day experiences of injured workers, rehab providers, medical providers, lawyers and employers, large and small. As I see it, that is the purpose of the advisory committee.

The committee can do its job only as well as the information it receives. It is obviously able to receive submissions from various stakeholders but, sometimes to verify those experiences or to explore a certain point, it needs information from the WorkCover Corporation. I am deeply

concerned that the advisory committee has not been receiving full and frank information from the corporation itself.

One of the means by which this parliament can restore the balance is to ensure that we do not have either a board member or an employee of the corporation as presiding member of the committee. I hope that the minister will not take us down the track of the current presiding member's qualifications, because I will make a few remarks about him if that is called into question. Let us just leave it as a matter of separation of powers, if you like.

The WorkCover Board, either through its membership or through employees of the corporation, should not have an undue influence on the advisory committee. It is a bit like putting the Police Commissioner as head of the Police Complaints Authority. You expect a different set of interests to be represented on the advisory committee. I would say that it is utterly inappropriate to have a board member on the advisory committee at all: it should be at arm's length from the corporation so that it can give frank and fearless advice on behalf of employers, workers and other stakeholders, but we will not have that if we get a snow job from a board member or an employee of the corporation.

The Hon. M.J. WRIGHT: I oppose this amendment. I think that the Workers Rehabilitation and Compensation Advisory Committee—often known as WRACAC—fulfils an important role. The member for Mitchell makes a number of points regarding whether someone from WorkCover should or should not be on that particular committee and whether, in fact, WorkCover is withholding information. To the best of my knowledge, I cannot recall issues being raised with me as regards withholding information or the committee not being serviced, but I stand to be corrected.

Mr Philip Bentley is on the WorkCover Board and is currently Chair of the Workers Rehabilitation and Compensation Advisory Committee. I think he is able to fulfil both of those roles and ensure that the work undertaken by that committee is done in a proper and professional way. Therefore, the government opposes this proposed amendment on the basis that we do not think that the conflict referred to exists.

The other point is that relatively few people have expertise in this area. That is not meant to be a criticism: I think people who work in this area have very specialised skills and are to be commended for it. The government seeks to retain access to relevant subject matter from experts and professionals currently working in this specialised field.

As I say, I do not think that Phil Bentley is the first board member to serve on the Workers Rehabilitation and Compensation Advisory Committee. It is important that that committee does raise issues with the minister, whoever the minister may be—and at the moment, I am. It does have an important role to play. It is important that it is serviced where appropriate with the correct information by WorkCover. I think that it has an important statutory role and that the committee has served us well.

The Hon. S.W. KEY: I do have some sympathy for the proposal that has been put forward by the member for Mitchell, but in looking at the act itself, I think that there are some inconsistencies in the argument that he puts forward. The act provides:

> The Advisory Committee consists of nine members appointed by the Governor of whom—
>
> (a) three (who must include an expert in rehabilitation) will be appointed on the Minister's nomination—

and so it goes on. I would have thought that one of the conflicts of the advisory committee is not so much that people have been former members or have been on the board of management of WorkCover or have, in fact, been former employees; rather, the fact that advisory committee members could, in fact, benefit financially from information they have as members on either the board or the advisory committee would be more of a concern to me than people having been former employees or board members themselves.

I feel that, to a certain extent, this whole debate is a little bit back to the future, in that—well, I was not in parliament, but certainly from the trade union movement point of view—we were debating the best people to be in that advisory capacity as well as the skills that were needed for someone who was a board member. I just find it surprising that the member for Mitchell would particularly pick on former employees and board members, because I would argue that in many cases they would have expertise that perhaps some of the newer people to either the employers or employees association would not have. I am not entirely sure why we are picking on those particular people.

Mr HANNA: The issue, as one can see from the wording of my amendment, concerns the presiding member. I think that there is an argument that we should not have any board members on the advisory committee, because I really think that it should be very much at arm's length from the corporation itself. I appreciate, however, the argument that was put forward about experience being brought on to the advisory committee.

The amendment I propose simply provides that a board member or employee of the corporation should not be the presiding member, because that is an influential role. Even though one expects the members of the committee to be fairly robust—and, of course, decisions can be taken by majority vote—nonetheless the presidential member can often guide debate. The presidential member will be a link to the minister and the corporation, and all the more reason to have someone who wears the hat only of the advisory committee, rather than having a hat as a board member of the corporation as well.

May I take the opportunity to ask, since the minister has suggested, I think, that the advisory committee is working very well: has the committee actually met the required number of times in the past year, and are all the positions currently filled on the committee?

The CHAIR: The question before the chair is the amendment moved by the member for Mitchell, so questions can be asked of the member for Mitchell at the moment, but not of the minister.

Mr HANNA: All right. I think that drags out proceedings—but, fine.

[Sitting suspended from 18:00 to 19:30]

Mr HANNA: Madam Chair, in many of these cases, there is quite a fluid connection between the amendment and the clause in the bill. In the current matter, I did put a question to the minister before the dinner break and, if the minister wishes, he might answer that question now; otherwise, we can go on to consideration of the clause. But I think it helps consideration of both the amendment and the clause.

The CHAIR: Member for Mitchell, the difficulty presented to the chair is that there is only one question before the chair at any one time, that question being your question. Therefore, you are the person to receive questions; the minister is not the person to receive questions.

Mr HANNA: Let me put this another way. Some of the questions I might raise in the course of explanation certainly invite a response, and that response may help all members in the consideration of the amendment.

The CHAIR: I certainly understand your point, member for Mitchell. However, it is your responsibility to convince members on your amendment. If I can give you guidance for how to deal with future issues, there is only one question before the chair. We cannot have two questions before the chair; it is up to you to convince members of the rationale of your amendment.

Mr HANNA: Very well. Perhaps just for the moment, rather than going on, I will see whether any other members have a contribution to make.

The Hon. M.J. WRIGHT: If I may just briefly respond.

The CHAIR: The minister can comment on the member for Mitchell's contribution.

The Hon. M.J. WRIGHT: I think WRACAC does perform an important service. Perhaps it would be fair to say that its role has been under review, because it was recommended by the board that WRACAC should not continue. The government did not and does not support that, and I would see that, if a piece of dynamic legislation is ultimately successful, there would be a role for WRACAC to play in regard to that legislation.

Mr HANNA: One of the areas where I do not think I have exactly clarified things with the chair is the situation where the minister makes an assertion in the context of debate on my amendment and then I feel I must respond to that assertion. For example, the minister has suggested that, in the past at least, WRACAC has been working well. I am suggesting very strongly that it has not, and one of the reasons it has not is that it needs an amendment such as mine.

I have referred to the current presiding member of the board and have suggested that having a WorkCover Corporation board member sitting as presiding member of the advisory committee clouds the issues and prevents full and frank communication from the advisory

committee to WorkCover and the minister. The practice is not new. I believe the Liberals, when in government, also wanted to dampen down the advisory board's enthusiasm for criticism by appointing, I think, Keith Brown, the chief executive officer of WorkCover, as presiding member of the advisory committee. Now it is quite clear that where there is a committee that has a scrutinising role, having the chief of the organisation that is the subject of that scrutiny as presiding member of the scrutinising body risks introducing a conflict of interest, at the very least.

To suggest that the committee has been working well is, I think, belied by the fact that we have not actually heard a lot from it over the last few years, during which time there has been this downward slide in unfunded liability. In fact, I have suggested that the committee has not met as often as it is required to meet and that the committee is not even fully appointed at the moment—in other words, there are some indications that the advisory committee is dysfunctional and is not fulfilling its proper role.

We can see from section 8 of the current act that the advisory committee is there to do a number of things: to advise the minister on the formulation and implementation of policies; to advise the minister on proposals to make amendments to this act and other legislative proposals that may affect the operation of this act. Well, if ever there was a need for scrutiny it was when the proposals of the board came out, when the Clayton report came out, and then when the government came out with its own legislation, the legislation we are dealing with here. However, I have not heard from the advisory committee; perhaps other members have, and they can enlighten me and tell me I am wrong about this, that the advisory committee has been enthusiastically pushing out submissions in relation to these proposals. There is a function of the committee; it is there in black and white, it is what it is there to do, but I do not believe it has been doing it.

The advisory committee is also to report to the minister on any other matter relating to workers rehabilitation and compensation. It does not have to wait for a request from the minister: it can do this on its own initiative. For example, would unfunded liability have been an issue that might be of concern to an advisory committee or any committee concerned with WorkCover? I would have thought so, yet we have not heard from the advisory committee on that. I find, then, the suggestion that the advisory committee has been working well a bit of a thin argument.

I suppose it suits governments, of both Liberal and Labor persuasion, to have an advisory committee that has a scrutinising role to not be terribly scrutinising—the reason being, as the member for Davenport has pointed out on a number of occasions, that the government is responsible for WorkCover as a statutory corporation. If it is gradually developing a downward financial slide, then the minister of the day, and ultimately the government of the day, bears responsibility. I know that is not true in the technical sense at present, but certainly it is the case politically that the minister of the day bears the responsibility for that downward slide.

To my way of thinking it would actually be of benefit to all stakeholders if the advisory committee was thriving and carrying out those functions to which I have referred, because things such as the unfunded liability, and the various causes underpinning that unfunded liability, might have been brought out into the open sooner. They might have been scrutinised sooner. Suggestions might have come forward from the advisory committee on how to fix the problem before we took this strict, black-letter financial approach to how to improve the bottom line of the fund.

Finally, I express my disappointment at the lack of information provided by the minister just now in relation to the advisory committee. I think we are going to get through this debate efficiently only if we have a full and frank discussion.

Dr McFETRIDGE: The member for Mitchell's amendment seeks to exclude people from the committee, and perhaps the minister can take this on board as well. There is nothing in the current legislation or the amendments to include someone who is an expert in the area of insurance, particularly workers compensation insurance, and I do not think that happens on the board at the moment, either. I would have thought the advisory committee might have not only someone who is an expert in rehabilitation but also an expert in matters of insurance.

Mr HANNA: I want to clarify that my amendment does not prevent employees or board members of the corporation being on the advisory committee; it just bars their chairing it, because of the influential role represented by the presiding member's position.

Amendment negatived.

Mr HANNA: I would like to speak to clause 6. I have one general question in relation to the self-insured employers hitherto known as exempt employers. I question the degree to which the

self-insured employers association (I forget the precise name) has been consulted in relation to not only the legislation but also the run of government amendments which is before us as well.

The Hon. M.J. WRIGHT: I have met with SISA. I did that while we were going through the consultation phase after the bill was introduced into the house. It would be fair to say that I have not met with them subsequently but, obviously, some of their thoughts were taken into account in regard to amendments the government came forward with.

Clause passed.

New clauses 6A and 6B.

Mr HANNA: I move:

Page 12, after line 24—Insert:

6A—Insertion of sections 14 and 15

After section 13 insert:

14—Staff

(1) The Minister must, after consultation with the Advisory Committee, provide for staff to assist the Committee in the performance of its functions.

(2) The staff of the Advisory Committee will consist of—

(a) any Public Service employee assigned to work as a member of the staff; and

(b) any person appointed under subsection (4).

(3) The Minister may, by notice in the *Gazette*—

(a) exclude Public Service employees who are members of the staff of the Advisory Committee from specified provisions of the Public Sector Management Act 1995; and

(b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply,

and such a notice will have effect according to its terms.

(4) The Minister may appoint a person as a member of the staff of the Advisory Committee on terms and conditions of employment determined by the Minister and such a person will not be a Public Service employee.

(5) The Advisory Committee may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

15—Annual report

(1) The Advisory Committee must, on or before 30 September in each year, forward a report to the Minister on the work of the Committee during the financial year ending on the preceding 30 June.

(2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

6B—Amendment of section 26—Rehabilitation programs

Section 26—after subsection (4) insert:

(5) A worker may, to such extent as may be reasonable, select his or her rehabilitation provider.

We are still dealing with the issue of this committee, which is meant to be advising the minister and investigating a whole range of WorkCover issues.

One of the issues that have been raised with me during consultation is the question of resourcing the committee. Just to take a comparison; the medical panel which the government seeks to introduce to make findings on medical questions is the subject of resourcing, or is supplied with resources, and they are mandated by the legislation itself. I am saying that the same thing should happen in relation to the advisory committee. It needs to be well resourced in order for the committee members to be able to do their job properly. I have already referred to the functions; they are extremely broad-ranging, but they include at the very least advising the minister in relation to any proposals for legislative reform. In order to do that it is quite clear that they need to be well resourced.

I have this simple amendment introducing two new sections to the legislation. In fact, this amendment should probably be dealt with as three separate questions, because it brings in three separate initiatives. The first is to ensure that the minister will provide for staff to assist the committee. The staff may include public service employees assigned to work as a member of the staff, and the rest of the provisions as to staffing are fairly standard.

The second part has a completely different subject matter, and the concept here is quite simple: it is that the advisory committee must forward a report to the minister on or before 30 September each year and the minister must, within six sitting days after receiving a report, have copies of the report laid before both houses of parliament. That is simply an accountability measure which is not there at present, and it forces the committee to do some work and to be outspoken, at least to the extent of providing the parliament with a report. It is customary and found in many other pieces of legislation that such a report would go to the responsible minister before being laid before the houses of parliament.

There is a third and completely separate part to this amendment, and that is concerning rehabilitation programs. Again, the amendment is very simple in concept. It is just that the worker may, to such an extent as may be reasonable, select his or her rehabilitation provider. I think several of the participants in the debate have acknowledged that, on the whole, our rehabilitation work under the WorkCover scheme has not been very successful. We need to do better at providing rehabilitation for workers who want to get back to work.

One of the issues that have been presented to me is that, where a worker is allocated a rehab provider that they do not get on with, the process of return-to-work is just never going to work, because it is a process which necessitates trust and cooperation on both sides, in fact, not just between the rehab provider and the worker, but with the employer or a potential employer as well.

The larger corporations, whether they be self-insured or otherwise, will sometimes have their own rehab provider, or at least a rehabilitation coordinator within their own private corporation. It will sometimes be appropriate for such a person to guide a worker to return to work, but where there has been animosity in the workplace, perhaps involving some bullying of the worker, or targeting of the worker in some respect, then it may not be appropriate. My suggestion is that the worker needs to be able to choose their own rehab provider. The worker can choose their own treating specialist or GP. Why not choose their own rehab provider? It is more likely to get a result, because it will be based on cooperation. The worker will choose someone who they have heard is a good rehab provider. So, it makes a lot of sense.

Madam Chair, the amendment really is in three parts, and my submission to you, as a point of order, would be that they should be dealt with as three separate questions because, you never know, but it is possible that some members may prefer one of those three completely different initiatives and not others. So, I will wait to hear from you, Madam Chair, as well as the other speakers.

The CHAIR: Only one amendment has been moved. It is rather hard to disaggregate one amendment. Does anyone wish to consider the two questions separately? Member for Mitchell, it is very difficult: there is no provision to disaggregate an amendment. We can consider a series of amendments, or clauses, separately.

Dr McFETRIDGE: With respect to the reporting requirements in the member's amendment, section 8(2) of the act provides:

> The advisory committee may conduct public meetings and discussions and may, with the approval of the minister, conduct inquiries, on questions arising before the advisory committee.

Am I to understand that the reports on those public meetings and any inquiries are not made public at the moment? If not, is the member aware of why there is no reporting either to the parliament or the public on the findings of the inquiries? With respect to the member's rehabilitation amendments, certainly, it is well-known to members of the Opposition that currently the rehabilitation problems are not being addressed. The process of rehabilitation has a lot of issues around it. I think one of those issues, as the member quite rightly pointed out, is that some of the injured workers do not get on with their rehabilitation providers. They see them as being akin to the case managers; almost as a part of those who are coercing them back to work—perhaps not the enemy but, certainly, not far from it. I would be interested to hear the member's comments in that respect.

Mr HANNA: The answer partly lies in the provisions of section 8 of the current legislation. As the member for Morphett alluded to, the advisory committee may conduct public meetings, and I have already referred to the fact that the advisory committee may advise the minister on a very wide range of matters. Of course, one would not expect a minister to publish controversial material or information or recommendations from the advisory committee that would be politically unpalatable. I suppose these things have happened, but one would not expect that to happen. That perhaps answers part of the member for Morphett's question about why we have not heard from the advisory committee.

It is up to the minister to tell us whether he has had advice from the advisory committee. I suspect that there has been very little. We might have to make a freedom of information request at some stage about just what information or recommendations the advisory committee has provided to this minister. However, I suspect that it has been very little. Certainly, I have not heard a peep out of them since the issue of this current legislation has come up, and yet one of the functions of the committee is precisely to advise the minister on proposals to make amendments to this act and other legislative proposals that may affect the operation of this act. Clearly, that is squarely before us.

Section 8 (to which I have referred) also talks about the advisory committee cooperating with other government authorities, representatives of industrial associations and other persons or bodies. There is a suggestion that the advisory committee should be talking to a whole range of people. I suppose that happens with the individual members, but there is very little evidence of communication between the advisory committee as a body and those other agencies. Section 8 says very little more than that. One of the things which one would expect—and I suppose does dampen down some of the potential stories which might come out of the advisory committee—is the confidentiality clause in section 12 of the current act. Basically, what is discussed at the committee stays in the committee, unless there is a committee resolution to publish a particular report or communicate with someone formally.

In relation to the proceedings of the advisory committee, I draw the attention of the member for Morphett to section 11 of the current act, because that does say that the advisory committee may open its proceedings to the public, unless the proceedings relate to commercially sensitive matters or matters of a private, confidential nature. I must admit, I have not seen many notices for public meetings of the advisory committee. Again, the minister may be able to enlighten us on that, but I suspect there have not been any, at least for some time.

It comes down to the fact that there is no obligation for the advisory committee to say anything to anyone else, other than, I suppose as a minimum, comply with those functions which are spelled out in section 8. That means that you would expect the advisory committee to at least communicate to the minister. You would expect, as a very minimum, the advisory committee to be communicating to the minister substantially on the issue of amendments to the legislation, if nothing else; hence the need for some sort of pressure on the advisory committee to be public about their considerations.

They may be right; they may be wrong. Their recommendations may please the government or they may please the opposition, but the point is that, if you are to have this committee at all, then let us have it transparent. It is almost like a secret club at the moment. These people get paid under section 10. They do receive a fee, and again the minister can correct me if I am wrong, but I was under the impression that these people receive a substantial fee, yet what have we as tax paying members of the public seen of their deliberations? I am surprised if they have communicated much at all to the minister. They do not send a report to parliament because they do not have to. They do not have public meetings of which I am aware. They do not seem to communicate with anyone, yet, if I am right about that, the members of the committee will still collect their fee.

There is a very great need for greater transparency, and a mandatory report to the parliament is a very appropriate means. It has been used in countless other pieces of our legislation where statutory authorities, corporations and so on, have to report to parliament through the minister, and the second part of my amendment requires them to do just that.

The Hon. M.J. WRIGHT: To the best of my knowledge, I do not think I have had any requests from members of the committee about a lack of support. I stand to be corrected and I will check that overnight, but I certainly do not recall that being the case. The member for Mitchell talks about the difficulty in having someone from the WorkCover Board being the chair of WRACAC. I think there are some synergies between the WorkCover Board and WRACAC. I do not think a

compelling case has been made as to why you could not, would not or should not have someone from the WorkCover Board on the WRACAC committee.

Currently, WorkCover does provide secretarial support to the advisory committee. This function was transferred to WorkCover from the then Workplace Services (which, as members would be aware, is now called SafeWork SA), as WorkCover is able to provide a more specialised support function. Many of the queries and action items that arise from the meetings of the committee need to be addressed by WorkCover, and it seems sensible that they should therefore provide that secretarial support. While there is no existing explicit provision for the advisory committee to submit an annual report to the minister, the committee is already required to report to the minister on its own initiative or at the request of the minister on any other matter relating to workers rehabilitation or compensation under section 8(1)(d) of the Workers Rehabilitation and Compensation Act.

Mr Hanna: But do they?

The Hon. M.J. WRIGHT: As I said, it is fair to say that, I suppose, as a result of the recommendations of the WorkCover Board, the committee has been under review. It has not met as frequently as it would normally meet, and that is a reasonable proposition put by the member for Mitchell. However, as I said, the government has determined that there is a place for WRACAC and it wants it to continue with that role, unlike the recommendation that was put forward by the WorkCover Board. In regard to rehabilitation programs, workers do have a choice of provider, it is just that it is not unfettered. In the case of Williamson v the State of South Australia (in re South Australia Police 2000, South Australian Workers Compensation 195), the tribunal found that section 28A provides for a positive requirement on the part of a compensating authority to establish a rehabilitation and return-to-work plan for an incapacitated worker, and that it is the compensating authority which has the obligation to prepare a plan and is the driver of it.

It was concluded that, in respect of rehabilitation and return-to-work plans, the Workers Rehabilitation and Compensation Act does not give the worker an unfettered right of choice of rehabilitation provider. I think that a fair bit of what has been spoken about in regard to rehabilitation programs does already occur.

The Hon. S.W. KEY: While interested in the advisory committee, I understand that we are also dealing with the issue of the rehabilitation programs.

The CHAIR: That is correct.

The Hon. S.W. KEY: I would like to clarify the reason for the member for Mitchell adding this clause which provides that a worker may, to such an extent that may be reasonable, select his or her rehabilitation provider. I notice that the parent act includes an explicit provision for a worker to nominate his or her rehabilitation provider. It is a little difficult to ask the minister the question because it is not his amendment, but perhaps the member for Mitchell could elaborate on that particular part of his proposed clause 6 which relates to rehabilitation and the choice of a provider.

Mr HANNA: Notwithstanding the decision to which the minister referred, it has certainly been put to me by a worker and workers' advocates that it is an issue. Workers are undoubtedly pushed toward the acceptance of a particular rehab provider. Many workers, especially early on after an injury, do not understand their rights. Because it is not spelt out in the legislation, it enables claims managers to push and intimidate workers into accepting a rehab provider in cases where the worker may be quite uncomfortable with that particular person who is providing the rehab. That is the issue. We have learnt from EML and other claims managers in the past how intimidating they can be with workers. We had that case recently where the claims manager at EML took the preposterous step of warning a worker in writing not to contact other injured workers.

That is an extreme case, but I have certainly heard of this same sort of attitude being directed at workers in respect of the choice of rehab providers. In most cases, it is simply presented as a fait accompli to the worker: 'This is your rehab provider. You do as they say.' Of course, there are serious problems for workers who do not comply with the directions of the rehab provider. If it goes far enough it could be seen as a breach of mutuality and they could have their payments discontinued. It is an extremely important relationship. I believe it must be based on mutual cooperation. While I will not dispute that the minister is technically correct—a worker could say, 'I insist on this rehab provider and I certainly will not go with that one'—in the real world rehab providers are pushed upon the worker, and it should be made clear in the legislation that that cannot be done.

The Hon. S.W. KEY: I want to take further the choice of a rehab provider. Assuming this clause was supported, what are the provisions, either in the current act or in the bill, if there is such a dispute? How would it be resolved? My understanding is that it may be okay to have the right to choose one's own rehab provider (which is something I can understand), but what would happen if things went awry and there was a dispute? Is there any provision to take action should that happen?

Mr HANNA: I do not believe I have the answer to that question. I do not believe it has been finally resolved. In order to resolve a dispute, when ultimately no-one can agree as between the two or three parties involved, the only recourse is to the tribunal and the dispute resolution system we have. In order for that to happen there must be a determination. If a worker received a letter saying, 'Hello, we are from the back-to-work company and we are your rehab providers and you need to comply with what we say and we are now consulting you in relation to your rehab plan,' is that a determination that the back-to-work company is appointed as a rehab provider? I do not think that is clear as a matter of law. It is a bit of a grey area, and that is another reason for putting into legislation some sort of requirement to enshrine in statute what the minister has said is technically a right of the worker.

New clauses negatived.

Clause 7.

Mr HANNA: I presume that three months is being replaced with the term '13 weeks' simply to be in accordance with the other new provisions brought in by the bill as to the step-down of income maintenance and so forth?

The Hon. M.J. WRIGHT: It is more because 13 weeks is a simpler method of counting than three months.

Clause passed.

Clause 8.

Mr HANNA: I move:

Page 13, after line 34—Insert:

28E—Action on request for rehabilitation assistance.

(1) A disabled worker may make any reasonable request for assistance with rehabilitation.

(2) The corporation must determine a request for assistance with rehabilitation made by a worker as expeditiously as possible and, wherever practicable, endeavour to take action on the request (including by initiating an assessment or response in relation to the request) within five business days after the receipt of the request.

This amendment is important. Many workers put in requests for material aids or some sort of assistance to enable them to get back to work. When the claim managers delay a decision, it is hard for the worker to know how to proceed. I have used this example earlier tonight. A worker with a shattered wrist asked for a modification to a steering wheel (it is known as a spinner) which would have enabled the turning of the steering wheel with less pressure than a normal able-bodied driver would apply.

EML took nine months to make a decision on whether or not that was appropriate. It is not only frustrating for the worker but it is also expensive, because in most cases a solicitor is involved. That means phoning the solicitor and asking whether they have made a decision yet. Perhaps the solicitor phones the claims manager again and asks, 'Has there been a decision?' 'No; not yet.' Maybe the solicitor writes a letter and hears, ' No; no decision is made yet,' and so on.

So, there is actually considerable expense, as well as the fact that the whole process is drawn out. It is this sort of frustrating situation which promotes this culture of conflict, which stops workers getting back to work early. One of the things that I think we need to do is ensure rapid action where there is assistance for this sort of aid to rehabilitation. The amendment I am putting forward provides:

> The Corporation must determine a request for assistance with rehabilitation as expeditiously as possible and, wherever practicable, endeavour to take action on the request...within 5 business days after the receipt of the request.

What I am doing here is making fairly concrete the response required by the corporation. When we say 'the corporation', of course in practice we mean the claims agent. The point of this is that, if

there is then a failure to make a determination on the request, this amendment puts it beyond doubt that the worker can seek an expedited decision and, in any case, can seek a decision on the rehab request. The benefit will be to all concerned, with the worker knowing where he or she stands and the determination, if in the affirmative, providing the worker with some aid to getting back to work as soon as possible—which is what we all want.

This is another amendment where I cannot see why the government would not want to support it. Why would you not want the corporation to make expeditious decisions about requests from the worker about rehabilitation? Why would you allow your claims agent to take months and months of causing frustration and delay, which is what they are doing at the moment? Why would you allow it? Why not put a stop to it by supporting an amendment like this?

The Hon. M.J. WRIGHT: I oppose the amendment moved by the member for Mitchell. Rehabilitation is already aimed at assisting the worker to achieve the best practicable level of recovery, returning workers as quickly as possible to safe, suitable employment and reducing the impact of serious injury or disease through the achievement of independent living for workers who, because of the severity of their disability, can never return to any form of work. The existing service delivery model for rehabilitation requires service providers to ensure that all injured workers can access rehabilitation and return-to-work services, regardless of their disability, gender, culture, language and literacy skills.

Further, rehabilitation programs and return-to-work plans must, unless otherwise agreed with WorkCover, be based on a particular worker, an integrated service approach and early intervention and the prompt provision of services, effective communication, rehabilitation activity focused on the workplace, and sustainable return to work. It can take into account requests made by workers. Under section 97, the worker can seek an expedited decision on a rehabilitation and return-to-work plan.

Mr HANNA: The point is that I want to make clear we are talking about a decision on a rehab request being made as expeditiously as possible. I am not suggesting that the actual decision needs to be made in five business days, but it needs to be made as expeditiously as possible and, as I have said, there needs to be some action on the request within five business days after the receipt of the request. I am just trying to get the claims manager off his or her proverbial to take some action.

In some cases it may be a matter of getting a medical report. For example, it might be a matter of getting a report from an occupational physician or a specialist because the worker has said, 'I need this in order to do these tasks at work.' So, obviously if the claims manager should reasonably request a medical report that could take months, and I appreciate that.

The point is that the amendment says to the claims manager, 'You have to do something about it. You cannot just leave it in the in tray for weeks while the worker is getting more and more frustrated and not getting back to work.'

The committee divided on the amendment:

AYES (2)

Gunn, G.M.	Hanna, K. (teller)

NOES (35)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Evans, I.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Goldsworthy, M.R.	Griffiths, S.P.
Hill, J.D.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McFetridge, D.	O'Brien, M.F.	Pederick, A.S.
Penfold, E.M.	Pengilly, M.	Piccolo, T.
Portolesi, G.	Rankine, J.M.	Rau, J.R.
Redmond, I.M.	Simmons, L.A.	Snelling, J.J.
Stevens, L.	Weatherill, J.W.	White, P.L.
Williams, M.R.	Wright, M.J. (teller)	

Majority of 33 for the noes.

Amendment thus negatived.

Mr HANNA: Now we are dealing with clause 8 of the government bill. The principle underpinning the government proposal is quite sound. The idea is to have a return to work coordinator in every work site in South Australia or at least everywhere there is an employer. The obligation is to appoint a return to work coordinator. A penalty of $10,000 applies if the employer does not do that. The coordinator is to assist workers, liaise with the corporation, monitor the progress of a worker's capacity to return to work, and generally help them out—I am just paraphrasing the obligations.

The employer also has an obligation to provide facilities and assistance, as reasonably necessary, to enable a coordinator to perform his or her functions. The employer also has to make sure that the return to work coordinator is provided with training. The employer must also appoint someone new to the position if it falls vacant. Another penalty of $10,000 applies if that is not complied with.

I want to digress to one of the mysteries of this whole WorkCover debate, and that is the view put forward by Business SA. How absolutely astonishing that, when the legislation was published, Business SA came out and said, 'Yes, absolutely, this is what we want. Push it through parliament as soon as possible. We like the legislation.'

I think what happened is that after they published the ad in *The Advertiser* somebody at Business SA actually read the legislation and found that there were quite a few prickles in there for employers. It is not necessarily my job to stand up for employers but I am a reasonable person and I can see how a lot of employers are going to be cross, if not up in arms, about the obligation that is placed upon them by this section—at least on the face of it.

I notice that the regulations may exempt an employer or employers of a prescribed class from a requirement under this section. I note especially that here we have the government using regulations to specify the class of people who are exempt, not just a notice by the minister. A real question arises here as to who is going to be exempt. I can imagine that a lot of small employers (for example, people who run a delicatessen or a service station) are not going to be too happy appointing a return-to-work coordinator from among their three or four staff. Who is the minister going to exempt? What level of small business is going to be exempt from this provision?

The Hon. M.J. WRIGHT: Those who would be exempt (as recommended by Clayton) are those with fewer than 30 employees. He says that, in the future, it should come down to 20 employees. We would be going in the direction of his first recommendation of fewer than 30 employees.

Mr HANNA: Has the government done any work at all on assessing the cost to employers of appointing these return-to-work coordinators, the time (in terms of hours) that coordinators are going to be required to spend, and any training that they might need to be provided with? Has Business SA (or anyone) inquired of the government about the cost to business of this proposal? I am not saying it is a bad one, but what has the government done in terms of calculating the cost to business and informing them?

The Hon. M.J. WRIGHT: Initially, this provision will only be compulsory for workplaces with more than 30 employees. The on-site availability of a return-to-work coordinator will assist the worker to return to work faster and thus enable business to cut down on claims expenses. For workplaces which are not a part of high-risk industries (and thus have few workplace injuries), the return-to-work coordinator role will likely be taken on in addition to another role within the company, thus substantially reducing the business cost. It is based on training models interstate. This is an important part of the package and, yes; there may well be a cost to business, but there will be many benefits as a result of it.

Mr Hanna: Do you know how much?

The Hon. M.J. WRIGHT: I do not have a figure I can give the member.

Dr McFETRIDGE: Is there any reason why this particular amendment should apply to self-insurers, as well as those in the scheme? It is quite evident that self-insurers are managing their obligations under the current legislation extremely well in the vast majority of cases. As you have just intimated, there could be an extra cost to employers, so why should self-insurers be captured in this amendment?

The Hon. M.J. WRIGHT: There are some self-insurers that are doing well, but they can build that role into the existing roles in regard to claims managers.

Clause passed.

Clause 9 passed.

Clause 10.

Mr HANNA: I move:

Page 13, after line 40—Insert:

(1a) Section 32—after subsection (3) insert:

(3a) The corporation should take reasonable steps to arrange to pay compensation under subsection (3)(b) where the service involves the provision of medicines on a regular basis.

The payment of medical bills has been a vexed issue throughout the history of the scheme. It has been a vexed issue for medical service providers and that, in turn, flows on to problems for workers, because a culture has developed whereby medical service providers are actually quite reluctant to provide services to injured workers, that is, those who have injured themselves or have been injured at work and who seek treatment for that injury.

I am aware that the corporation has made arrangements with some medical service providers to make life easier for all concerned. Again, I might be corrected by the minister on this, but I think for some of the larger institutions—for example, public hospitals—there is an arrangement for the corporation to pay for provision of services on a regular basis so that it is not treated in the same way as the GP from back of Bourke whose bill might find its way to the corporation. There is a standing arrangement for regular, convenient payments.

What I suggest here is that, where workers have a regular intake of prescribed medicines, whether they be painkillers or something else, it seems to me just a commonsense thing to do to make an arrangement with pharmacies, or conceivably hospitals that dispense medicines, to pay on a regular basis rather than a whole series of petty one-off expenses involving $10 here and $20 there. It just seems to me that it might be better for the accounting of the corporation and also of the medical service providers.

The Hon. M.J. WRIGHT: The government opposes this amendment. A worker is already entitled to be compensated for the cost of medicines or other materials, such as support bandages, heat packs, or the like, where these have been purchased on the prescription or recommendation of a medical expert. Where there is an ongoing need for provider services—for example, a chemist—the agent, where appropriate, should suggest to the worker that he/she negotiate with the provider to set up an account. The agent should help the worker arrange this if necessary. This practice is in the interests of both the worker and the agent.

In the case of chemist expenses, it means that the agent has to deal with one consolidated account for the worker's expenses rather than individual accounts for numerous purchases and, in other cases, ensures that the worker is not out of pocket whilst awaiting reimbursement. While this is the preferred method for WorkCover, the service provider has the option to allow credit and issue an account. Where an account is set up for the provider, the worker will be supplied goods and services on a credit-account basis.

Claims managers should ensure they ascertain from the worker what items will be charged to the account. Claims managers should check that all items relating to medication, and other such items, are prescribed or recommended by the treating medical expert and would have been paid had the items been individually presented for payment; that is, they must be reasonable costs reasonably incurred.

In addition, claims managers must ensure that when accounts are received they only relate to services and goods connected with the worker's compensable disability. The agent should then advise the chemist, other providers and the worker that an account for relevant items or services supplied on credit will be paid. Preferably, accounts should be lodged fortnightly but in no case less than monthly.

Mr HANNA: It seems, in a way, that the minister and I are in agreement on this, in that we would both like to see facilitation of payment of regular pharmacy accounts. It is just that I believe that it does need to be in the legislation, because I do not believe that it is happening in practice. The minister presents a very rosy view of what the claims agent should be facilitating. I do not

believe that it happens in practice, so I can only assume that the minister is not being advised of the problems that people have on a day-to-day basis in relation to getting these accounts set up and paid promptly by the claims agent.

Amendment negatived.

Mr HANNA: I move:

Page 14, after line 22—Insert:

(12) Section 32—after subsection (14) insert:

(15) If—

(a) compensation is payable for a service under this section; and

(b) the compensation is not paid within a time determined in accordance with the regulations,

the amount of compensation will be increased by interest at the prescribed rate.

(16) Interest payable under subsection (15) must be paid to the person who provided the service under a scheme established by the regulations.

This is another amendment directed to the problem that has arisen because of the conflict culture between workers and claims agents from time to time. This conflict culture extends to medical service providers. Once again, I point out that, if medical service providers are being poorly treated as people who need to charge for their services, they will be resistant to treating WorkCover patients.

Although I think that it may be necessary to have a law which prevents medical service providers from discriminating against injured workers because of that fact, there is a better way of going about it and that is to solve the problems of medical service providers within the system. If they were assured of timely payment, they would not need to be reluctant to provide services to injured workers: it is that simple.

The amendment that I propose here is to ensure that if compensation in the form of medical expenses is not paid within a certain time—which will need to be determined by regulations, as I would have it—then interest would apply at a prescribed rate. My proposed amendment actually implies that it is the medical service provider who is waiting for payment. That will often be the case.

Looking again at this amendment, if I were to improve it, I would probably change the provision about interest payable so that it would apply to the worker if, in fact, the worker has first paid the bill of the medical service provider. This routinely happens, of course, in the case of medical reports, sometimes involving $700 or $800, where the medical service provider might say to the worker, 'You pay me first. You get the money back as a medical expense later on from WorkCover.'

The point is that there needs to be timely payment of medical bills. This has not been happening. It has not been happening for 20 years. No wonder that medical service providers are reluctant to take on injured workers. You will know, if you go to a doctor's surgery, that there is often a form to fill in—I have seen this—which states, 'Do you have a work injury?' or 'Might you be claiming this as a result of workers compensation?' and there are some medical service providers who simply will not deal with workers who have ticked that box. This is a systemic approach to fixing that problem. The least the corporation can do is to pay in a timely way. There is a very simple means of parliament ensuring that that will happen, and that is to make interest payable upon medical service accounts.

The Hon. M.J. WRIGHT: The government opposes this amendment. WorkCover already has transparent account payment standards in place, and these are reported upon regularly. The existing service level agreement between WorkCover and Employers Mutual provides for providers to be paid within 30 calendar days (and I have been advised that results for the financial year to date show a 98.9 per cent compliance rate as at 30 March 2008) and worker out-of-pocket expenses to be authorised within 14 calendar days. In regard to that, I have been advised that results for the financial year to date (as at 29 February 2008) show a 90.2 per cent compliance rate with the SLA.

Interest is payable under the act currently only in respect of delayed weekly payments. It is likely that the interest proposed by this amendment would be paid directly to doctors and other providers rather than to workers and would therefore be of no benefit to the worker at all. Another

thing that should be added to this debate is that there has been an improvement in the medical fees, and that will encourage medical providers to participate in the scheme.

Amendment negatived.

Mr HANNA: I want to clarify one thing about this clause 10 the government is putting forward. Is this really all just consequential on the decision to have decisions made by the minister by notice in the *Gazette*, rather than medical charges detailed by regulation?

The Hon. M.J. WRIGHT: The advice I have received is that the current regulatory process associated with fee setting is administratively cumbersome and resource intensive and currently requires not only ministerial approval but also cabinet and/or cabinet subcommittee approval prior to involvement by parliamentary counsel.

This proposed amendment will enable the minister to set fees via a public notice in the *Government Gazette*. This will ensure a more responsive and flexible fee-setting process and increase the flexibility and purchasing services. In turn, enhanced access to timely services is anticipated, together with improved outcomes for injured workers.

Mr HANNA: I thank the minister for that explanation. The other question I have is in relation to subclause (8), where there is a reference to a scale of charges for services provided by a public hospital. It provides that they may be based on government charges for the relevant service. Is that a reflection of the recommended Medicare rates, or what are the government charges to which that proposal refers?

The Hon. M.J. WRIGHT: The advice I have received is that it comes under the compensable and non-Medicare Health Commission regulations, and that is administered by the Department of Health.

Clause passed.

Clause 11.

Mr HANNA: The government is proposing to change the provisions for the payment of medical expenses after the initial notification of disability. I have a couple of questions around this, and perhaps I can bundle them up into the same question for the minister. One of my concerns is that many case managers would not have a great deal of medical knowledge or experience, and I can see problems with this section because it will not be readily apparent to the lay person (without obtaining medical reports) which medical expenses are reasonable and which are not. I believe the intention of the government's proposal is good—it seems to be a facilitation of rapid payment of medical expenses early on—but it seems to me that if there is to be a judgment by claims managers regarding what is reasonable or unreasonable then there may be just as many disputes as there are now in relation to acceptance (or otherwise) of claims.

Perhaps I could add to that the issue of a cap on the payment of initial medical expenses being set at $5,000. Is there any rational basis for that $5,000 or is it simply a provision that will limit expenses to the corporation at an early stage in the claim?

The Hon. M.J. WRIGHT: I thank the honourable member for his question. The injured worker can apply in a designated form, and that gets the information as to what is reasonable. It is limited to $5,000 (that is the expense in the provisional liability, not the total liability) and is based on the successful New South Wales' provisional liability model.

Dr McFETRIDGE: How does this provision, for payment of medical expenses after initial notification, differ from new section 106A 'Payment not to constitute an admission of liability'? I understand that the corporation can already pay the medical expenses as well as any other expenses it needs to, so how does this differ from what we already have?

The Hon. M.J. WRIGHT: It is similar to other parts of the act but it is not the same. This builds on the comprehensive model of provisional liability, as is the case in New South Wales.

Dr McFETRIDGE: New subsection (9) provides 'A right of recovery or set off under subsection (8) only arises if the worker has acted dishonestly...' One person has contacted us who is very concerned that this will be difficult to prove. There is a high burden of proof on the employers there and provisional liability is intended to facilitate early medicinal and rehabilitation action where claim determination is delayed, which is commendable. This is pointless where no claim is found to exist, which is the point that has been made to me. So, how can the scheme benefit from non-recovery where no claim exists?

The Hon. M.J. WRIGHT: In regard to recovery, we are really talking about fraud, which is very unlikely. The majority of claims are ultimately accepted (approximately 97 per cent). So this is really about getting provisional liability, getting that early work done as a result of the claim that has been made.

Dr McFETRIDGE: We are paying medical expenses and we are accepting provisional liability for medical expenses. Why is there no provision for accepting the costs and implementing a rehabilitation program early?

The Hon. M.J. WRIGHT: I am advised that that can already be done before the acceptance of a claim so the rehabilitation can get started.

Mr HANNA: The minister would be aware that under the current legislation it is possible for the corporation to pay benefits at an early stage, but that practice has been engaged in only very sparingly. So, the question is: even if we introduce this provision into the legislation, there is really nothing there on the face of it to encourage the corporation to make early payment of these medical expenses. Clearly, it needs a change in culture as well as legislation. How is the government going to encourage claims managers in the field to make early payment of medical expenses and therefore make something of the government's attempts to reduce conflict in the early stage after a claim?

The Hon. M.J. WRIGHT: The member has made a reasonable point, but under the legislation weekly payments will be required to start within seven days, for the provisional payments, and the payment of the medical expenses as well supports that.

Mr PENGILLY: Will the minister categorically guarantee that that will happen? It is fine to have it in the legislation but, in reality, is it really going to work that way? I have family involvement and friends, etc., in the medical profession and one of the banes of their life is getting paid. I know the minister says it is written into the legislation, but the reality and the legislation are sometimes quite different. I seek a further guarantee, or assurance, from him that this will indeed take place. I think it is a very justifiable question from the member for Mitchell.

The Hon. M.J. WRIGHT: Of course I would expect the corporation to comply with the legislation, and we have another bill which will follow this one whereby there will be performance agreements in place. So, certainly, my high expectation will be for the corporation to comply with its legislation. It will be closely monitored, and it is something I can refer to in the performance agreements, which is part of the governance bill.

Mr PENGILLY: I hear what you say, minister, but there are a multitude of different government departments under a multitude of different state acts, regulations and heaven knows what else. The ordinary person out in the paddock, so to speak, is required to reply to things within seven days, 14 days, 21 days or whatever, but it just seems to me that, when the shoe is on the other foot, government departments are allowed to get away with blue murder. So I am not assured that this will, indeed, take place. I do hear what you say about the further bill and, indeed, we would welcome it tonight; if you want to do it, we have got plenty of time. I am uncomfortable that they will not comply.

The Hon. M.J. WRIGHT: I appreciate that is your view, but I can only say that as minister, and I am sure that any other minister at the time, on either side of the house, would want to ensure that the corporation—whether it be WorkCover or whatever organisation we are talking about—complies with its legislation. Part of the reason why we are bringing in performance agreements in the other bill that I referred to will be to have greater scrutiny.

Clause passed.

Clauses 12 and 13 passed.

Clause 14.

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

Page 17—

After line 12—Insert:

(ab) second entitlement period means an aggregate period not exceeding 13 weeks (whether consecutive or not) commencing after the end of the first entitlement period, in respect of which a worker has an incapacity for work and is entitled to the payment of compensation under this Act on account of that incapacity;

Line 13—Delete 'second' and substitute: third

Line 14—Delete '117' and substitute: 104

Line 15—Delete 'first' and substitute: second.

The amendment adds a third level of weekly payment entitlements. Under this amendment totally incapacitated workers are entitled to weekly payments of 90 per cent of their average weekly earnings between 14 and 26 weeks of their incapacity. This then creates three entitlement periods. The period between 14 and 26 weeks becomes the second entitlement period, and the period between 27 and 104 becomes the third entitlement period. In all other respects—for example, entitlements for the first 13 weeks of incapacity and for longer-term incapacity, work capacity reviews and entitlements after a time and age—the bill remains the same.

In summary, the government amendment is that for the first entitlement period, 0 to 13 weeks, it is 100 per cent of average weekly earnings; the second entitlement period, 13 to 26 weeks, is 90 per cent of average weekly earnings, and the third entitlement period, 26 weeks to 130 weeks, is 80 per cent of average weekly earnings.

Mr HANNA: We have come to what I have called the cornerstone of the bill. I suggested at the outset that the bill have in its title a reference to cuts in weekly payments, and the minister himself has acknowledged during debate that without the cost savings achieved through this section and its related amendments there would not be the financial effect in the immediate sense that is sought by the Rann government. One can look at this whole thing, I suppose, in an economic sense: who bears the cost of workers' injuries?

I know that Dr Kevin Purse has done some valuable consideration and writing in this regard but, apart from the human pain and suffering of torn flesh and discs out of place, there is a financial cost to workers rendered incapable of working through work injury.

We have a scheme that largely places those costs on employers through the payment of their WorkCover levy. Those employers who have a lot of claims will be the subject of higher levies, and that is as it should be. It is a pale reflection of what used to happen under the common law arrangements before the 1986 legislation was enacted.

The government has been quite frank that it wants to cut unfunded liability. In terms of the economic cost of work injury, that means that, if workers have their income cut off after 2½ years post-injury then, effectively, the cost is being transferred from employers, through their levies, to the injured workers themselves, and possibly to the commonwealth social security system. As I have pointed out previously in my second reading contribution, it may be that workers who are thrown off the system are thrown onto the dole or, to be more precise, one would hope that they get the disability pension—although that is hard enough to qualify for these days.

However, if the injured worker who is thrown off the scheme after 2½ years has a working spouse, it may be that they are reduced to zero income. We have this rosy view that, if people are cut off from an income payment system—if they lose their job, or whatever—they will always receive social security. Of course, that is not true at all. If there is a working partner, spouse or otherwise, the income of a person can be cut to zero. We need to think about the impact on the average working family when that happens.

The vast majority of workers are returned to work in a matter of weeks—and, if not weeks, then months. So, thankfully, only a minority of workers at any one time are subject to the step-down to 80 per cent of average weekly earnings after a 12-month period off work. Of course, over time, the number of people in that category of receiving 80 per cent of income maintenance increases. People are added to the tail and they are not getting off. But that is where I have talked about redemptions and better case management being a remedy.

The government proposes to take people down to 90 per cent of their average weekly earnings after 13 weeks and then, after 26 weeks, down to 80 per cent of their pay. Another thing to bear in mind here is that, while the government might crow that this is more generous than similar step-down provisions in other schemes, those other schemes have common law provisions. So, it can hardly be said that this represents a generous gesture by the Rann government.

I think we need to be very clear about the multiple dangers to injured workers in this provision—because I have described it as cruel. So, this amendment is absolutely a key provision for the government and for injured workers. It is what will hit them between the eyes more than anything else. In the current legislation there is a reference to partial incapacity, and it is a meaningful assessment of partial incapacity, because it takes into account the nature and extent of

the worker's disability, the worker's experience in employment, the worker's age, education and training, and so on.

There is a model of partial incapacity, which is quite realistic, and where the worker is not doing work which they could do, subject to all those limitations, then I can see the sense in deducting pay from that worker's income maintenance, because they could be doing something to help themselves and, presumably, they are not doing it.

I can understand that rationale. What I cannot understand is the phoney definition of 'partial incapacity' in this legislation, which means that, if you have any capacity for work, you can have your income maintenance cut to absolutely nothing. This is the cruel provision that actually brings this in. The impact on individuals and their family is really harsh.

I want to take a couple of examples. We need to bear in mind that most workers who are injured tend to be in jobs which provide less payment than average weekly earnings in South Australia. I mean, average weekly earnings in the broader statistical sense. Most of the workers about whom we are talking may only earn $30,000 or $40,000 a year. Many would earn in that range, I suspect. If someone is earning, say, $700 a week, they might be receiving something in the order of $600 a week after tax. If you take off 10 per cent and then, soon after that, 20 per cent, you have workers roughly being out of pocket about $100 a week. It is all very well for us in this place to say, '$100 a week is not too bad'—that would not matter too much to us as MPs who are on $125,000 a year, plus expenses. No wonder the sympathy is a bit distant from the average person in the street or the average injured worker.

In fact, $100 out of the family budget of the average working family is a huge cut and it means that something has to give—very likely the recreational spending of the worker has to go. I have an example which will be dear to the heart of the Premier. Let us take a police officer, in many ways, an average worker on a reasonably average salary. Let us say that a police officer living in Salisbury is involved in a car smash, as a result of a high speed chase to apprehend a villain. With a broken leg, perhaps a shattered leg, 13 weeks after being put off work, the police officer will receive a 10 per cent pay cut. A senior constable's base pay is about $1,257 per week, including super, before tax.

Most people in this situation may well have a partner and children to support, as well. Very often, the spouse (whether it be man or woman) is only working part-time. One can appreciate that a 10 per cent cut, which might represent nearly $100 net, will take a substantial amount out of that family's budget, and then that will double to about $200 a week net out of the budget after the six month period, if there are any complications in getting the police officer back to work.

If you assume that scenario, and this sort of thing has happened, a police officer with a broken leg cannot necessarily get back to work that quickly because, obviously, they need to be fit to do the job. I highlight a case such as that because it is an illustration of the pain that will be caused. I have given the example of a police officer. One could just as easily imagine a nurse. With overtime, nurses might be earning a comparable sort of wage; and firefighters, for example, would be in a similar situation. One can take any number of occupations and look at the pain the average family would feel as a result of what the Rann government is bringing in here.

The weird thing about this is that the biggest cut of all in the legislation is dropping people off the system after 2½ years. The actual step-down in income provisions is relatively minor and insignificant in comparison with that huge drop to possibly zero after 2½ years. The savings to the scheme—and this is what is so irksome about this measure—are not that much. We might be talking about a few million dollars a year being taken out of workers' pockets. It is hardly worth the political pain of introducing this. It is hardly worth the harsh impact that it will cause on so many working families when the primary bread winner is injured.

I have made it pretty clear that this is such an objectionable proposal from the Rann government. I have described this already as the last of Labor's sacred cows because, if you are going to slaughter injured workers' pay at the altar of appeasing business and attracting business donations, there really is not much left of any value or valour in the Labor Party. With those remarks, I indicate my opposition to this set of amendments from the government.

The Hon. M.J. WRIGHT: These are important amendments. Obviously, the step-downs are an important part of the package. The member for Mitchell also talked about work capacity reviews—and we will come to that as we work our way through this series of amendments. We were told by Mr Clayton that step-downs were a critical part of the package. Of course, Mr Clayton recommended that we go to 80 per cent after 13 weeks. The government thought that was too big

a step-down so it has proposed 90 per cent at 13 weeks and 80 per cent at 26 weeks. One could compare that to what was recommended to the government by the WorkCover Board; that is, from zero to 13 weeks 95 per cent and then at 13 weeks 75 per cent, as is the case with the Victorian legislation. This is an important part of the package and I recommend the amendment to the committee.

Dr McFETRIDGE: This is a crucial part of the legislation. I understand that Mr Clayton, while advocating this, did give qualifications about the fact that it was seen as a fairly blunt instrument by a lot of people. There seems to be two parts of the workers compensation scheme, that is, the WorkCover/EML part and the self-insured part. It is interesting that the LGA sent a letter to a number of people. The LGA as a self-insurer is managing this well.

The submission states that the proposed earlier step-down of weekly benefits and the 130-week review will have little or no effect on local government as the proactive strategies developed by the LGA workers compensation scheme and councils have resulted in virtually no tail claims. This is the whole point of the argument about why some of these changes are not necessary. The case management seems to be so much better right across the board with the self-insurers.

There are still a number of questions about the ability of the case manager under the scheme, and the emphasis on rehabilitation being not only an integral part but also a separate part of case management so the case manager and the rehabilitation provider are not seen to be working hand in glove. It is important that we ensure that if these measures come into law (as I expect) there is a real emphasis—as the self-insurers are doing—on getting people back to work within the first 13 weeks so they are not in any way financially disadvantaged.

The Hon. S.W. KEY: First, I acknowledge that the amendments moved by the minister are certainly better than the original proposal, particularly that involving the WorkCover Board and, of course, the Clayton review. I do not wish to echo the points made by the member for Mitchell and the member for Morphett, but I would like to bring to the attention of the committee and the minister the views put forward by the union movement and Graham Harbord who, as I said before, addressed the Australian Lawyers Alliance seminar, a conference looking at an overview of the workers compensation and rehabilitation scheme. On page 2 of his paper, he states:

> There also appears to be an assumption that in reducing payments at this time workers will therefore have a greater incentive to return to work rather than reducing payments after 12 months.

He argues:

> Again little evidence is presented for such an assumption.

On page 9 of their position paper, which I mentioned before, the CEPU, the AMWU, the SDA and the FSU reflect on the initial step-down proposal of 80 per cent. They state:

> This proposal is based on two flawed suppositions:
>
> 1. That injured workers require a 'financial disincentive' in order to return to work, and
> 2. That most injuries are healed after 13 weeks, and that consequently workers should have returned to work by this time.

I refer also to the briefing paper of SA Unions, which states:

> WorkCover's rationale for slashing workers' pay is that they need to suffer so that they are more motivated to return to work. Clayton said, 'Most workers return to work as soon as their injuries have healed irrespective of economic incentive articulated through the benefit system,' but went on to support slashing workers' pay to try and force them back to work. For the vast majority of workers, slashing their pay will do nothing for return to work, but it will strain or break the family budget. Savings that the Rann government claim do not justify the suffering imposed on injured workers and their families.

SA Unions goes on to say:

> Workers are blamed for WorkCover's dismal return to work performance. Usually, the problem is not the worker, it is the rehabilitation consultants and case managers who do not make serious efforts to get the worker back to work and stand in the way of straightforward requests for retraining and basic home modifications to help injured workers cope with their injuries. It is common that when workers ask for retraining, WorkCover will not even make a decision until the worker applies to the Workers Compensation Tribunal for an Expedited Decision.

Obviously, those are very strong words, and SA Unions is very concerned not only about the bill but also about this provision of step-down, and I think it is important that those concerns are recorded.

The Hon. M.J. WRIGHT: I share that view, and I thank the member for Ashford for bringing it to the attention of the committee. It is not a view I am not familiar with because obviously, as part of the consultation, I met with a broad range of unions, including some of those referred to by the member for Ashford.

We appreciate that step-down is a blunt instrument. The shadow minister referred to how Clayton broached the subject—and he is right. He talked about the need to balance two competing considerations. I will not go chapter and verse into what he said, as members have read it for themselves, but it was obviously a principle he also had to grapple with.

We have now before us recommendations from the WorkCover Board and the Clayton Walsh review, and the government has said, 'No; we think that it is too harsh, and we have come with the landing pad we have come with. We do not expect to be thanked for that because we appreciate that it is going to create some difficulty.

Mr HANNA: The minister has not really addressed one of the key points that has just been raised, and that is the evidence that cutting workers' pay will get them back to work more quickly. I cannot imagine that there is any other rationale for having a stepped-down cut in workers' pay, other than to have a stick to chase them back to work.

Even when we had a conservative fellow like Mr Clayton in his report say, 'most fractures have a healing period within six weeks and most other injuries would have a healing period within a 13-week timeframe', he seems to be suggesting that the typical healing rate for injuries is the reason he recommends a step-down after 13 weeks, rather than an incentive to return to work.

Unless there is some evidence the minister can present that this financial incentive to get back to work actually does work in the vast majority of cases, this whole thing is a fraud to rip money off injured workers and lighten the load on the scheme.

The Hon. M.J. WRIGHT: That is certainly not the case. You can look to the Victorian and New South Wales legislation—they have a different model, admittedly—and that principle of step-down also operates, as I understand it, in New South Wales. The Clayton report drew on numerous authoritative sources. It established that the South Australian scheme had the most generous weekly benefits and step-down structures in Australia on most indicators. That report drew some persuasive links between the South Australian weekly payment structure and our lower return to work rates.

There is considerable international research that conclusively demonstrates a link between increasing weekly payments and increasing claims duration. Canadian and United States research is particularly strong in this area. The same research also found correlations between generous entitlement structures and a disincentive to return to work and entitlement levels and claim frequency, and also quoted international research, finding some links between these measures.

We understand and appreciate that this is an important component of the legislation. It is rather a blunt instrument, as I have referred to, but in going about the work Clayton certainly looked to what was happening in other jurisdictions around Australia, particularly in Victoria and New South Wales.

Dr McFETRIDGE: How will section 58B of the act, 'employer's duty to provide work', which in part states, 'the employer from whose employment the disability arose must provide suitable employment for the worker', and it continues on with some qualification, interact with new section 35A(4)(a), where the employer has failed to provide the worker with suitable employment and the worker is making every reasonable effort to return to work in a suitable employment, and new section 35C? How will they interact?

The Hon. M.J. WRIGHT: I thank the member for his question. The advice I have received in regard to section 35A(4a) is that, if section 58B is not met, you are not able to deem the earnings. In regard to section 35C (work capacity review), that is not linked to section 58B.

Mr HANNA: What is the actuarial evidence about improvement to the fund as a result of these step down provisions being introduced?

The Hon. M.J. WRIGHT: I thank the honourable member for his question. The advice I have received is that the Clayton recommendation would have been a $22 million annual saving to the cost of the scheme. Of course, that was Clayton's recommendation of 80 per cent after 13 weeks. The effect of the change by the government, through its amendment, would mean that it would increase by one year what time period it would take to achieve full funding. Originally, we

were advised that it would be between five to six years but, as a result of the government's amendments, it has now been lifted to six to seven years.

Amendments carried.

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

Page 17, after line 38—Insert:

(1a) Subject to this Act, a worker is, in respect of a particular compensable disability, entitled to weekly payments while incapacitated for work during the second entitlement period as follows:

(a) for any period when the worker has no current work capacity—the worker is entitled to weekly payments equal to 90% of the worker's notional weekly earnings;

(b) for any period when the worker has a current work capacity—the worker is entitled to weekly payments equal to 90% of the difference between the worker's notional weekly earnings and the worker's designated weekly earnings.

Page 18, line 3—Delete 'second' and substitute 'third'

Page 19—

Line 16—Delete 'second' and substitute 'third'

Line 25—Delete 'second' and substitute 'third'

Line 32—Delete 'second' and substitute 'third'

Line 42—Delete 'second' and substitute 'third'

Page 20, line 20—Delete 'second' and substitute 'third'

Amendments carried.

Mr HANNA: I move:

Page 20, lines 23 to 29—Delete subsection (2) and substitute:

(2) The Corporation is to determine that the worker's entitlements to weekly payments under this division does not cease, as contemplated by subsection (1), if the Corporation is satisfied—

(a) that the worker is in employment and that because of the compensable disability the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings; or

(b) that the worker is in employment and that the worker is taking reasonable steps to secure further or additional employment or work up to his or her level of work capacity; or

(c) that the employer from whose employment the disability arose is in breach of section 58B on account of not providing suitable employment for the worker under the requirements of that section (unless that section does not apply (or has ceased to apply) in the particular case).

This is actually an important amendment, and I do not think it is really consequential. There are some elements here which are really important. I will try to put this in context. First, we are dealing with the section of the government bill which basically sets up a different income maintenance scheme and has these notorious step-down provisions, and it also sets up the scheme for discontinuation of payments ultimately.

The amendment relates to the entitlement to weekly payments in a couple of particular situations. It might be best if I briefly read this. I am saying that there should not be cessation of weekly payments if the worker is in employment and, because of the compensable disability, the worker is likely to continue to be incapable of undertaking additional employment which would increase the worker's current weekly earnings. I will address that scenario first.

We might have a situation like my friend (Ian) has at Mitsubishi. He is in employment but he only works about 30 hours a week. He is on light duties after sustaining a back injury. It seems to me utterly appalling that, by virtue of the fact that he is out working, he is demonstrating that he has some work capacity and that is enough, under Rann's proposal for the government scheme, to have him cut completely from the income maintenance scheme. If a person is doing their best to get back to work and they are in gainful employment, but they still continue to have indefinite

disabilities due to their work injury, then they should be the subject of some protection by the legislation.

The second scenario that I have set down here in this amendment is the situation where the worker is taking reasonable steps to secure further or additional employment or work up to his or her level of work capacity. This is a case where the worker might be transferring from one type of work to another. It might just be a three-month training course and the worker might be able to get to full-time employment, but the moment the employee goes off the job and starts training, the corporation (if the worker has been off work since the injury for 2½ years) can say, 'Well, that's it; you are off the scheme entirely.' It seems cruel to do this to workers who are doing absolutely everything they can to retrain so that they can get back to full employment—that is, full employment within their work capacity.

The third situation I have set down here is where a worker has been gainfully employed but there is a breach of section 58B; in other words, the employer deliberately does not provide suitable employment for the worker. In other words, if the legislation was adhered to then the worker would be in employment and there would be no need to pay a cent of income maintenance, because they would be back at the old workplace doing something and earning money.

If the employer discharges the worker, kicks them out for whatever reason—and we know there is a lot of prejudice against injured workers—how cruel it is that the claims agent can come along and say, 'Instead of providing you with income maintenance because the employer has done the wrong thing, we will say that you have some partial capacity; and we know that because you've just been employed by the employer before you were sacked. We know you had that partial incapacity; it's proven, so we'll cut your payments completely, even though you've just been sacked wrongfully by the employer.' As a minimum, there should be protection for workers under those circumstances.

[Sitting extended beyond 10:00 on motion of Hon. M.J. Wright]

The CHAIR: The member for Mitchell has moved amendment No 21. It has been pointed out that amendments Nos 22 and 23 are also part of that package with amendment No. 21. I note that amendment No. 22 would lapse if amendment No. 21 were not successful.

Mr HANNA: I move amendments Nos 22 and 23:

Page 20, lines 37 and 38—

Delete 'subsection (2) on the ground that the Corporation is not satisfied under the requirements of that subsection' and substitute:

paragraph (a) of subsection (2) on the ground that the Corporation is not satisfied under the requirements of that paragraph

Page 21, lines 19 and 20—

Delete 'matters specified in' and substitute:

ground on which the entitlement arose under

The Hon. M.J. WRIGHT: I speak in opposition to those amendments, and I will do so in one hit. The amendments would make it much harder for WorkCover to cease or reduce weekly payments after 130 weeks' incapacity where a worker has some level of work capacity. This would strike at the very heart of the culture shift the government is trying to achieve through this bill; namely, fostering a greater focus on rehabilitation and return to work among all stakeholders, and encouraging injured workers to pursue these opportunities rather than stay on long-term compensation to their detriment.

The amendments would basically render useless the entire work capacity review process. It could not work effectively if WorkCover was so constricted in its decision-making powers. The Clayton report clearly identified work capacity reviews as one of the most important elements of the proposed reform package. These provisions are estimated by the actuary, John Walsh, to result in the greatest cost savings to the scheme. If the provisions are significantly tampered with, Mr Walsh's underlying actuarial assumptions will no longer be relevant, and the cost savings will not eventuate.

Mr HANNA: There is something that the minister said which really is niggling. To suggest that these provisions are about a culture shift is a little grandiose when, in fact, the intention is

rather more tawdry than that. It is about a financial shift, not a culture shift. It is about the cost of injury to workers being shifted from employers, as they pay their premiums, to injured workers, as they end up having to pay their own way after income maintenance stops.

To an extent, it may involve cost-shifting to the commonwealth as well. How can one say that there is a frustration of the attempt to shift the culture by means of these amendments when, in fact, I am suggesting there should be protection for the worker who is sacked from their employment because they are injured? They are there earning money; they are leaving the scheme untouched. Income maintenance does not have to be paid because the worker is working for whichever business it is.

The business thinks, 'Well, having an injured worker on the books is a bit too risky. We'll sack the worker', and some pretext is made up to do that. It may be clearly in breach of the employer obligations under the legislation, and what does the claims agent then do? That person says, 'You've been injured more than 2½ years. You've got some capacity and you've proved it because you have been battling away in your old employment before you were sacked; therefore we can cut your income maintenance to zero.'

How does that sort of scenario, which the minister is supporting, encourage a culture shift of getting people back to work? This is a case where if somebody is sacked they can end up with nothing. It is hardly encouraging employers to do the right thing. In fact, that sort of scenario represents a shift of costs from the individual employer, who is doing the wrong thing, to the scheme, which is paid for by everybody.

The minister really was misleading, I am afraid, when he suggested that the culture shift would not be possible if these amendments were carried. What may be limited is the financial shift from employers collectively through the levies to injured workers.

The Hon. S.W. KEY: I would just like to put on record some of the comments that have been made by SA Unions in this area. One of the proposals they have put forward with regard to the work capacity review is that it should be amended so that—and I quote as follows:

(a) it is only based on the worker's capacity at the time of the review, not based on guesses about what the worker's capacity will be in the future;

(b) partially incapacitated workers get top-up payments based on the difference between what they should earn with the capacity they have and their pre-injury earning capacity; and

(c) work capacity reviews can only be used to cut workers' pay when WorkCover has done everything it can reasonably do to rehabilitate the injured worker and return them to work.

They also go on to say that they believe that there are major immediate negative impacts, and they state:

Partially incapacitated workers who have been on the system for 130 weeks have their payments stopped, and they have to apply to get back on. WorkCover can take three months or more to make a decision about whether their payments restart. Many workers who have entitlements now will have no entitlements because employers often will not hire injured workers. Workers who suffer a permanent loss of function, like losing the end of your finger but fall below the new thresholds will get nothing to compensate them for the part of their finger being cut off if it happened to be before the legislation started, but WorkCover had not made a decision about it yet.

So, while some proposals have been put forward by both the minister and the member for Mitchell, I would like these points of view recorded.

The committee divided on the amendments:

AYES (2)

Gunn, G.M. Hanna, K. (teller)

NOES (37)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Evans, I.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Goldsworthy, M.R.	Griffiths, S.P.
Hamilton-Smith, M.L.J.	Hill, J.D.	Kenyon, T.R.
Kerin, R.G.	Key, S.W.	Koutsantonis, T.
Lomax-Smith, J.D.	Maywald, K.A.	McFetridge, D.
O'Brien, M.F.	Pederick, A.S.	Penfold, E.M.
Pengilly, M.	Piccolo, T.	Portolesi, G.

Rankine, J.M. Rau, J.R. Redmond, I.M.
Simmons, L.A. Snelling, J.J. Stevens, L.
Weatherill, J.W. White, P.L. Williams, M.R.
Wright, M.J. (teller)

Majority of 35 for the noes.

Amendments thus negatived.

Dr McFETRIDGE: I have a question on clause 14. I think the minister actually answered the question about 35A(4)(a) and 58B and how they were to interact. A further question—

Members interjecting:

The CHAIR: Order! Can members please be quiet.

Dr McFETRIDGE: The question that has been put to me to have on the record is: can the minister assure us that an employer will not be prosecuted under section 58B, or be subject to action by the proposed WorkCover ombudsman, when a work capacity review under section 35C finds that a worker has more capacity than is currently being offered by the employer?

The Hon. M.J. WRIGHT: The employer's obligation under 58B is separate from the work capacity review. Section 58B is still important to meet the obligations, and they may be subject to 58B.

Mr HANNA: It is my understanding that what we currently call the two-year review provisions will still be in the legislation, pursuant to new section 35A which is contained in this clause, except that instead of a two-year review it is more or less a two-hour review in the sense that virtually any time after the injury the worker can be reviewed for partial incapacity and have payments deducted for the amount they could allegedly earn with their partial capacity. Is that right?

The Hon. M.J. WRIGHT: This is in regard to designated weekly earnings. It does exist in Victoria. It is not used, because of the ministerial direction, and we are going to have the ministerial direction in South Australia.

Dr McFETRIDGE: New section 35C(3)(b)(i) and (ii) refer to the issue of working capacity being referred to the medical panels. How do you overcome the danger of confusing a medical opinion about suitability for work on medical grounds and incapacity for work—that is, incapacity for work in the relevant legal sense as a reduction of one's ability to sell labour in the open marketplace?

The Hon. M.J. WRIGHT: The medical panel will look at suitable employment having regard to the worker's incapacity.

Mr HANNA: I must say I was puzzled by the minister's answer to my last question, because this new section 35A is quite a critical part of the new scheme as regards income maintenance. New section 35A(1), assuming this goes through, is going to say that if the worker has no current work capacity (and there are very few people who fall into that category), the worker continues to get weekly payments. It also says that, for any period when the worker has a current work capacity, that is, they can do something, they get the difference between weekly payments which they would be entitled to (that is, notional weekly earnings) and the worker's designated weekly earnings.

It is in the new section 35A(3) that designated weekly earnings are defined. If they are currently earning money, that is taken to be designated weekly earnings, but the corporation can determine that the worker could be earning more money than that, or more money than they are currently earning, by saying that they could be performing certain work. And, remember, after the discussions earlier, such work does not actually have to exist. Then designated weekly earnings is the greater of those two possibilities, either what the worker is actually earning or that which the worker could earn with their partial incapacity.

So, in other words, it looks very much like the old two-year review, and it seems to be able to take place any time after the injury. I understood the minister to be saying that this or a similar provision applies in interstate legislation but it is not used because of a ministerial direction. I understood the minister to say that there will be a direction by him as minister that this will not be applied in some sense. I am seeking clarification on that. Why would you put that provision in the legislation if you are immediately announcing that you do not want it to be applied?

The Hon. M.J. WRIGHT: I thank the member for his question. What I said before, or what is important to point out here, is that I intend to direct WorkCover, as in Victoria, not to use this provision unless there are exceptional circumstances. That is exactly in line with what Clayton recommended, that is, it should be a reserve power. When I made reference before—as the member for Mitchell correctly said—I pointed out that there is a similar provision in Victoria and it is not used because of the ministerial direction, and I intend to direct WorkCover not to use this provision unless there are exceptional circumstances.

Mr HANNA: It really does beg the question: what might exceptional circumstances be? On the face of it, this provision covers every worker who has a partial capacity for work. How is the minister in his direction going to guide the corporation as to whom to apply it to and whom to leave alone? There just seems to be no guidance in the legislation itself, so it is important to get on the record how the minister anticipates this might be used, even if it is to be used only sparingly.

The Hon. M.J. WRIGHT: I thank the member for his question. An example might be that the worker is not actively trying to get back to work; that may be something that would occur from time to time and not something that would be happening on a regular basis. In regard to the second part, I would draw to the member's attention to the claims management tool, where the worker has capacity.

The committee divided on the clause as amended:

AYES (37)

Atkinson, M.J. Bedford, F.E. Bignell, L.W.
Breuer, L.R. Caica, P. Ciccarello, V.
Evans, I.F. Foley, K.O. Fox, C.C.
Geraghty, R.K. Goldsworthy, M.R. Griffiths, S.P.
Hamilton-Smith, M.L.J. Hill, J.D. Kenyon, T.R.
Kerin, R.G. Key, S.W. Koutsantonis, T.
Lomax-Smith, J.D. Maywald, K.A. McFetridge, D.
O'Brien, M.F. Pederick, A.S. Penfold, E.M.
Pengilly, M. Piccolo, T. Portolesi, G.
Rankine, J.M. Rau, J.R. Redmond, I.M.
Simmons, L.A. Snelling, J.J. Stevens, L.
Weatherill, J.W. White, P.L. Williams, M.R.
Wright, M.J. (teller)

NOES (2)

Gunn, G.M. Hanna, K. (teller)

Majority of 35 for the ayes.

Clause as amended thus passed.

Clause 15.

Mr HANNA: I move:

Page 21, after line 37—Insert:

(2a) Section 36(1b)—After paragraph (b) insert:

or

(c) by virtue only of resigning from employment to undertake study or other employment or work.

Clause 15 deals with discontinuance of weekly payments. I make the simple point that, if a worker resigns from employment to undertake study or other employment, it seems to me that mutuality should not be breached, because the worker in either of these cases is doing something productive. If they go from one job to another, it is not likely to cause a problem in practice, but I do believe there should be an option for injured workers to undertake a course of study to better equip themselves for gaining new employment, and I do not believe they should be breached, that is, by the claims management, if they do that.

The Hon. M.J. WRIGHT: We oppose the amendment. We are opposing this amendment as it means that the worker could quit their current job and begin studying without having that included in a rehabilitation and return-to-work plan. Retraining can already be funded by

WorkCover under particular guidelines. It is not appropriate to legislate to allow a worker to decide independently to quit their job to study and expect that not to breach their obligation of mutuality.

Amendment negatived.

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

Page 22—

Line 13—After 'period' insert: or the second entitlement period

Line 15—Delete 'second' and substitute: third

These amendments are consequential.

Amendments carried.

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

Page 22, lines 23 to 31—Delete paragraphs (a) and (b) and substitute:

(a) if the worker has been receiving weekly payments under this division (or division 7A) for a period that is less than 52 weeks, or for two or more periods that aggregate less than 52 weeks—14 days;

This amendment deletes the proposed notice period of seven days if an injured worker has been receiving weekly payments for less than 13 weeks, and 14 days if an injured worker has been receiving weekly payments for less than 52 weeks. The amendment changes these notice periods to be 14 days if an injured worker has been receiving weekly payments for a period, or aggregate of periods, in total less than 52 weeks. In effect, this means that a worker, who has been receiving weekly payments for less than 52 weeks, will receive 14 days notice of discontinuance of their payments. As proposed in the original amendment bill, in any other case, that is, more than 52 weeks, the worker will receive 28 days notice of discontinuance.

Mr HANNA: On behalf of injured workers, I rise to express my support for this government proposal. I can see that, when you are thrashing someone with the cat-o'-nine-tails and you take the metal tip off the end of the lash, it can only be a good thing.

Amendment carried.

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

Page 22, line 39—After 'dispute' insert: under part 6A

Page 23, line 2—Delete 'arbitration' and substitute: judicial determination

These amendments concern dispute resolution.

Amendments carried.

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

Page 23, line 8—After 'takes effect' insert: (less any amount paid to the worker under subsection (15))

This amendment is consequential to government amendment No. 25, which allows the WorkCover ombudsman to review a discontinuance decision and reinstate the worker's weekly payments during a dispute. This amendment sets out that the amount to be back paid to a worker after a reconsideration in their favour can be less any amount paid to the worker under subsection (15), that is, payments reinstated by the ombudsman.

Mr HANNA: I will ask some questions about the substance of the matter, which will save me asking questions when we get to amendment No. 25. I must say that this is an extraordinary provision. I am not complaining that there is a possibility for workers to have discontinued payments recommenced. I am not complaining about that. However, how extraordinary it is for the WorkCover ombudsman to be given the power to do so. I would be surprised if the minister could tell me whether there are ombudsmen anywhere else in the country, whether it be in the workers compensation jurisdiction, the general jurisdiction or any other jurisdiction, who can actually make substantive decisions about people's rights. Is this something entirely novel in Australian law?

The Hon. M.J. WRIGHT: It may well be. I cannot comment on all other jurisdictions. This amendment is about protecting workers from poor decision making, and we see that as the role of the ombudsman.

Mr HANNA: I suggest to the minister that if we are going to give the WorkCover ombudsman substantive powers to affect people's rights, whether it be favourably or unfavourably,

why is the jurisdiction of the WorkCover ombudsman limited to this question of weekly payments discontinued when there is a dispute taken to the tribunal?

The Hon. M.J. WRIGHT: During the consultation phase that took place, section 36 was raised with us on a fairly regular basis, particularly in meetings with trade unions. This particular solution put forward, we think, helps remedy the situation.

Amendment carried.

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

Page 23—

Line 11—Delete 'determination at arbitration' and substitute: judicial determination or determination

Line12—Delete 'arbitration' and substitute: determination

These amendments are consequential and are to do with dispute resolution, which we have covered earlier.

Amendments carried.

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

Page 23—

Line 17—After 'preceding paragraph,' insert: under subsection (15),

Line 19—Delete 'arbitration' and substitute: judicial determination

Line 27—After 'subsection (5a)(c)' insert: or (15)

These amendments are consequential on the role of the ombudsman in regard to section 26.

Amendments carried.

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

Page 23, after line 44—Insert:

(15) Despite subsections (4) and (5), if—

(a) a worker who has—

(i) received a notice of discontinuance of weekly payments under this section; and

(ii) lodged a notice of dispute under Part 6A,

applies to the WorkCover Ombudsman for a review of the decision to discontinue weekly payments; and

(b) on the application for review it appears to the WorkCover Ombudsman that it was not reasonably open to the corporation to decide to discontinue the payments having regard to the circumstances of the case,

the WorkCover Ombudsman may suspend the operation of the decision to discontinue weekly payments.

(16) Weekly payments reinstated under subsection (15) will continue until—

(a) the notice of dispute is withdrawn; or

(b) the matter is resolved on reconsideration by the corporation or at conciliation (or otherwise between the parties); or

(c) the tribunal—

(i) determines the matter in the exercise of its judicial function; or

(ii) pending its determination of the matter—orders that the worker should no longer have the benefit of the weekly payments due to some unreasonable act, omission or delay on the part of the worker in connection with the proceedings.

(17) In connection with the operation of subsection (15)—

(a) the WorkCover Ombudsman should seek to consider an application for review under subsection (15)(a) as expeditiously as is reasonably practicable; and

(b) the WorkCover Ombudsman has an absolute discretion as to whether or not the worker or the Corporation will be heard on the review, and

(c) a decision of the WorkCover Ombudsman on a review is not subject to appeal or review under this or any other Act or law.

This amendment sets up the role of the ombudsman in regard to section 36.

Amendment carried.

Mr HANNA: I must make the point about the evil of stopping workers' payments once there is a dispute between WorkCover and the claims manager. It is an astonishing denial of justice for people to have their income taken away from them once there is a reasonable challenge to a decision which adversely affects them. We know that this is being done to starve workers into accepting decisions, no matter how unfavourable they are, no matter whether they are reasonable or otherwise. Imagine if you had a dispute with the tax office. If you lodged a dispute it could cut off your income completely until the dispute was resolved. I wonder how many people would challenge their tax assessment if that was the case.

This is incredibly far reaching. It is astonishing that Rann's legislation would go this far in taking away people's rights. Will it have the effect of cutting down the numbers in the tribunal? Of course, it will—but not for the right reasons. If you want to cut down the number of disputes, then get a better management system: do not take away people's income so they are absolutely forced to go along with shonky decisions. That is what this government clause does and it is an absolute disgrace.

The Hon. M.J. WRIGHT: I disagree with that. The current provisions allow for a worker to dispute the cessation of their income maintenance and have it immediately reinstated while the dispute is settled. This effectively encourages the worker to prolong the dispute as long as possible and in some cases to continue the payments. It reduces their will to work towards a settlement and re-focus their energy on rehabilitation and return to work.

What we were told as a result of the review undertaken by Clayton and Walsh is that this is an important component of the package. As has been explained to me, we are the only jurisdiction that does not have the aspect of cessation of payments if there is a breach of mutuality. We spoke earlier about the role of the ombudsman in relation to cessation of payments and we think that is an important safety net.

Mr HANNA: Needless to say, every single worker who suffers discontinuance of weekly payments because they have lodged a notice of dispute will go to the ombudsman and say, 'Please reinstate my wages because I cannot afford to live without them.' It will happen in every single case. So I do not know how the WorkCover ombudsman will choose between one or the other and say that one worker should have the financial ability to challenge a decision of the claims manager and the next one should not. Surely, the decision will not be based on an assessment of the claim because that is the job of the tribunal.

As I say, it is a provision to starve workers into avoiding notices of dispute. It is similar to what was attempted in John Howard's WorkChoices legislation with anti-strike provisions, which can have the effect of leaving workers without income or facing heavy financial penalties if they persist with strike action. We are doing the same thing here with our injured workers. It is never done anywhere in Australia except by governments that want to give a heavy weighting in the dispute resolution process to those who have deep pockets; and those who have deep pockets are the employers.

The Hon. S.W. KEY: While supporting the bill, I have to register my concern with this provision. Like the member for Mitchell, I have real concerns about people being thrown off the system when they are in dispute. Having worked as an advocate for many years in this jurisdiction, I know there can be disputes about all sort of issues. If an injured worker and their representatives do not have the right to make those claims and question some of the decisions that are handed out to them—and as a result suffer a financial penalty—it is difficult for those workers.

I have a number of constituents who have been in very difficult circumstances because they have not agreed with either their rehab provider or their case manager, and they have already found life very difficult just because they are no longer in the paid workforce. For this to be taken away until there is proof that the dispute is not warranted or vexatious seems to me to be extremely harsh.

The committee divided on the clause as amended:

AYES (37)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Evans, I.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Goldsworthy, M.R.	Griffiths, S.P.
Hamilton-Smith, M.L.J.	Hill, J.D.	Kenyon, T.R.
Kerin, R.G.	Key, S.W.	Koutsantonis, T.
Lomax-Smith, J.D.	Maywald, K.A.	McFetridge, D.
O'Brien, M.F.	Pederick, A.S.	Penfold, E.M.
Pengilly, M.	Piccolo, T.	Portolesi, G.
Rankine, J.M.	Rau, J.R.	Redmond, I.M.
Simmons, L.A.	Snelling, J.J.	Stevens, L.
Weatherill, J.W.	White, P.L.	Williams, M.R.
Wright, M.J. (teller)		

NOES (2)

Gunn, G.M.	Hanna, K. (teller)

Majority of 35 for the ayes.

Clause as amended thus passed.

Clause 16.

Mr HANNA: I have one simple question in relation to clause 16. Obviously there is a provision under the current legislation which allows for review of a person's notional weekly earnings when there are adjustments, for example, to an award to which the worker might have been subject when employed. Will the minister explain more clearly how this is different to the current provisions, because I have not picked up a substantial difference to current arrangements with regard to adjusting average weekly earnings for those sorts of reasons?

The Hon. M.J. WRIGHT: This is not economic adjustment, it is a review to allow non-cash benefits.

Clause passed.

Clauses 17 to 19 passed.

Clause 20.

Mr HANNA: This is one of those moves by the government which is hard to follow when the clause is read out of context, so could the minister briefly explain the effect of deleting this clause and say why it is necessary?

The CHAIR: The minister has indicated that he will oppose the clause when I put the question.

Mr HANNA: Yes, I still have a question as to the rationale. I cannot hear very well what is going on and I would like the minister to explain the reason behind this clause being removed effectively.

The CHAIR: So, you want to know why the minister is going to oppose it?

Mr HANNA: Yes.

The Hon. M.J. WRIGHT: We are not proceeding, which allows the existing legislation to stand in regard to leave entitlements.

Clause negatived.

Clause 21 passed.

Clause 22.

Dr McFETRIDGE: This clause is going to restrict severely the use of redemptions, and a number of employer groups, particularly self-insurers, have approached the opposition to say that this is a concern for them. I ask the minister to clarify why the government is going down this path. A self-insurer I have spoken to uses redemptions as early as three months to assist some of their workers back into the workforce, which seems a rather strange way, but it is a concern, so can the

minister explain some of the background to this clause and indicate how he expects it to assist in reducing the unfunded liability?

The Hon. M.J. WRIGHT: I thank the honourable member for his question. This package of reform is about improving return to work. It includes improved return-to-work incentives and strengthens the work capacity tests. It is important to ensure that the right incentives are in place, and the use of redemptions has created a lump sum culture and created a reason for injured workers to remain on the scheme in the hope of getting a large settlement. The review was clear that the continuation of redemptions would undermine the return-to-work incentives that this package will deliver. So, it was a fairly strong recommendation of Mr Clayton in regard to redemptions. Of course, he has put in there three different areas where redemptions can be applied, and the third one states:

> The tribunal has determined, on the basis of a joint application made to the tribunal by the worker and the corporation in contemplation of an agreement being entered into under this section, that the continuation of weekly payments is contrary to the best interests of the worker from a psychological or social perspective.

I think the shadow minister refers to the consultation and, yes, the issue of redemptions has been raised in a number of quarters, both by the business sector and also by the trade union movement. However, what Clayton argues strongly about is that the mentality of a lump sum culture is not good for the scheme and it is not good in regard to working towards getting people back to work.

Mr HANNA: I do have something to say about redemptions because, all along, I have suggested that, instead of what I call the amputation process to assist this sick patient—that is, the WorkCover fund—there is a much better way of fixing the scheme financially. It may take longer but it will be more effective and have a sounder basis in the long run. It does not have to involve the drastic cut to workers' payments which Rann's WorkCover legislation is putting forward.

I have said all along that a more cooperative management of claims with a very strong focus on early return to work—and I mean in the first few days or first few weeks—is an essential component. I have also said that use of redemptions is absolutely essential. If there is any doubt about this, a very clear scientific comparison can be made between the way that the self-insured employers use redemptions and the way that WorkCover claims agents have, over the years.

The self-insured employers, generally, have their insurance fund in the black—in other words, they are performing well—and they use redemptions frequently and judicially. What they seem to be good at is picking out employees, injured workers, who are likely to remain on the scheme for a very long time, and fairly sizeable redemptions are offered very early in the process. It might be as soon as the injury has settled, medical reports are in and it becomes apparent that it is going to be a big ask in the long term to return a worker to productive employment: that may be for physical reason; it may be for psychological reasons; it may be for both.

However, what the self-insured employers will then do is offer a substantial package, perhaps several years of income—perhaps hundreds of thousands of dollars in some cases—to get workers off the scheme. They can see that a man in his 30s or a woman in her 20s is potentially going to be on the scheme for decades if they are not offered an attractive package and both can separate mutually agreeably.

The figures are interesting, and it will be interesting to see be minister's response to some of these figures. There is an injured worker (Mr Phil Moir) who, I think, is well known to the minister. He has obtained a number of figures, often from WorkCover itself, to establish the history in relation to payment of redemptions. My own experience, through injured workers I have known and through discussions with injured workers' advocates and lawyers, is that redemptions have been stingy for most of the last decade. Interestingly, that has corresponded with the blow-out in unfunded liability.

The total number of injured workers on the scheme is increasing by maybe 200 or 300 per year. However, most significantly, it is the number of workers, whether counted after two years or after three years, that is increasing bit by bit every year. If we get to those workers and we recognise who is going to be on the scheme for two, three or four years, we can recognise those workers for whom there is, in reality, a very low prospect of return to work.

Some statistical work has actually been done on the likelihood of return to work as we go further down the track post injury and, not unexpectedly, the likelihood of return to work diminishes. That is why, as I said before, we have to concentrate on early return to work, not in the first year, but in the first weeks, to get someone back to work. These figures are interesting.

The Hon. Rob Lucas has made the assertion that WorkCover's financial position worsened when it started paying out workers less by way of redemption of entitlements. It appears that WorkCover has sought to correct the Hon. Rob Lucas by means of a press release dated 18 March 2008. This is how it has been relayed to me. WorkCover has suggested that, in 1996 and 1997, an average of 2,061 redemptions were paid and, in 2007 and 2008, an average of 417 redemptions were paid. So, one can see the drastic reduction in the number of redemptions paid over a decade. Remember that these are done by agreement, so, obviously, insufficient money is being offered to injured workers who want to get off the scheme.

We know that over the same decade low activity has grown from under $100 million unfunded liability to something approaching $1 billion unfunded liability. I think that the details on probability of return-to-work figures that I referred to earlier are worth putting on the record. Again, I have obtained these from Phil Moir. I do not know whether or not he is always right, but he does state very clearly that he has received the statistics from the WorkCover Corporation itself.

The statistics state that the following probability of return to work exists after the following periods: after three months, 50 per cent; after six months, 40 per cent; after nine months, 33 per cent; after one year, 25 per cent; after two years, 12 per cent; after three years, 6 per cent; after four years, 4 per cent; and after five years, 3 per cent.

If anything like that is accurate—and that is said to be based on WorkCover SA Claims Statistics 2005—quite clearly, for workers who have been on the scheme for over a year, one might say that serious consideration needs to be given to offering payouts. From the many long-term injured workers to whom I have spoken, many would accept an extraordinary discount to what their entitlements would be were they to stay on the scheme and receive income maintenance until retirement age.

Many workers would take a payout of perhaps just a few years' income maintenance, whereas they might have 30 years until retirement age. So, one can see how it makes commonsense to get such people off the system. To do so with their full agreement, after they have had legal and financial advice, is not to dismiss them but actually to respect them, because it means they can get on with their lives. It means that they do not have to have the hassle of the claims manager breathing down their neck, directing them to medical appointment after medical appointment, often repeating the same information to the same doctors and receiving very similar reports.

Interestingly, on page 31 of the 2003 WorkCover Corporation annual report, it was explicitly stated that there had been a move away from redemptions as a means of resolving WorkCover's issues. Clearly, the unfunded liability had increased at an even greater rate than over previous years. Elsewhere, I have referred to other reasons for the increase in unfunded liability, for example, the political cut to the WorkCover levy instigated by the Liberal government prior to the 2002 election and also the period when the WorkCover did not have a CEO. I think that there was a lack of direction for a period before and after the Labor government came in, as I recall.

To bring this discussion to a conclusion, redemptions are a valuable tool in reducing unfunded liability. When I was at the Injured Workers Conference a few weeks ago now, I did some figures on the back of an envelope. I know life is not always as simple as this but, given that WorkCover has over $1 billion in investments (I would have to check the share market to know exactly how much that would be, but it has a lot of money in the bank, so to speak) and given that there are several thousand injured workers, even if you had 2,000 injured workers who might have an average of 20 years of income maintenance to be spent on each of them, and you were able to pay them out at two or three years' wages—they would be wages which on average would be less than average weekly earnings of South Australians—you might have a payout of somewhere between two-thirds of $1 billion and $1 billion.

That is a huge amount of money, but the point is that, if you paid it out in a short period and then checked your unfunded liability, you would probably find that the whole system would be in the black because an actuary would look at that and say, 'Instead of 6,000 injured workers, for example, we've got 4,000 injured workers on the system, and we've actually got rid of lot of the long tail': those who—for an actuary—are causing the most financial harm to the scheme.

It seems to me that, with the use of redemptions, you could turn the scheme around virtually overnight, whether it means six months or 12 months, and that is the problem with this government proposal to virtually cut out redemptions. Yes, there are a couple of exceptions they have specified there, but redemptions are virtually cut out of the scheme as far as WorkCover is concerned.

I understand what the minister says about getting a return-to-work culture. I understand his reference to Mr Clayton and saying that there has been a lump sum culture where people have, perhaps, hung on for redemptions. I am not sure about the evidence in relation to the psychology of that, but that is the claim. It seems to me that, if you were starting the scheme from scratch, you could organise it in a way that there were no redemptions; it would just not be an option, as the government is now proposing.

The problem is that the government is proposing this culture at a time when already there are thousands of workers on the scheme, injured long term, and they are the ones who are being made to suffer because of mistakes earlier in the management of the scheme and their claims. It is all very well to take redemption out of the scheme now, but the problem is that the damage has already been done. It is tragic that Rann's government proposes that the way we deal with that tail, rather than pay people out and give them a couple of years' pay and some dignity, is to simply cut them off the system with the new section 35 and related provisions.

The Hon. M.J. WRIGHT: I have heard these arguments before, and it would be fair to say that opinions tend to be fairly polarised when considering redemptions. Certainly, lawyers are in favour of it, but that is not to say that other groups have not also spoken about the importance of redemptions. Certainly, my advice from WorkCover is that it does not fix the problem .

We have taken the recommendation from the Clayton Walsh review in regard to redemptions, and perhaps I should quote Clayton at this stage. He says:

> ...redemptions fundamentally undermine the principle and dynamics of a return-to-work focused workers compensation scheme.
>
> This is particularly so in the modern understanding of the purposes of workers' compensation schemes as schemes that aim, where prevention initiatives have failed, to return injured and ill workers back to employment at their maximum potential as expeditiously as possible.
>
> The presence and operation of a system of redemptions has a corrosive effect upon the establishment and maintenance of a return-to-work culture. One of the major recommendations of the 2004 Mountford McEwan review was 'for eliminating redemptions entirely' because of their impact on scheme culture. This review is in full sympathy with this approach. However, it baulks from a total blanket ban on any redemption...

I think the point needs to made—and it has been made by me previously, and the member for Mitchell has also acknowledged it—that some proviso has been included and, when I have talked particularly to the business community (self-insurers), they acknowledge that there is some room to move. We have the advice from WorkCover and we have the advice from what I think was a good piece of work by Mountford and McEwan back in 2004. That is then backed by the work of Walsh and also Clayton to support what the government has put forward.

The Hon. S.W. KEY: It is interesting to note the Law Society's summary and comments on the proposed amendments, dated 31 March 2008, which goes through the points the minister and the member for Mitchell have made. On page 5, the summary states:

> The Law Society believes that redemption by agreement should remain in the legislation. The Society does not agree with the view that the existence of redemptions and the ability to redeem creates a compensation culture. The ability to finalise liability is important in appropriate cases. Indeed the proposed section 42(2)(e)(iii) acknowledges this.
>
> Moreover, redemption was not introduced into the Act until amendments in 1995. Despite that, there were frequent media reports of a so-called compensation culture in the late 1980s and early 1990s—well before redemption was introduced into the legislation.

It is also interesting to note the comments made by Graham Harbord, as follows:

> At present a long term injured worker may have future weekly payments and medical expenses redeemed by payment of a capital sum. This recognizes the fact that many long term injured workers may be able to use such capital sums to further rehabilitate themselves or even to set up a small business for instance, and get on with their life.
>
> The new proposed redemption provisions provide that such capital sums will only be paid where either the rate of weekly payments does not exceed $30.00 or the worker has attained the age of 55 years or more, or where the Tribunal determines, on the basis of a joint application by the worker and WorkCover, that the continuation of weekly payments is contrary to the best interests of the worker and as such a capital sum should therefore be paid. In practice this will severely reduce the discretion of the parties to settle upon a redemption payment. By contrast, it should be noted that many exempt employers make such payments in excess of the usual payments made by WorkCover. Such employers have no 'unfunded liability'.

I also point to the fact that, when we are talking about what workers survive on before and after they are off the scheme, we need to look at average weekly earnings, and I refer to the ABS statistics of November 2007, at page 14. The full-time adult ordinary time earnings are seen to be

$1,046.70 for a male and $886.80 for a female (as we know, we do not have equal pay). As members in this chamber have said tonight, not everyone will be eligible for a pension, but let us look at a disability pension as an example. The information available in March 2008 from the Centrelink customer service centre states that the maximum rate of disability support pension for someone over 21, or under 21 with children, is $537.70 per fortnight for a single and $449.10 each per fortnight for a couple.

If you contrast that with those people who have managed to get average weekly earnings (and, as I said, I am going on the November 2007 figures), and look at what they might get if they were eligible for a disability support pension, I really wonder what we are suggesting injured or disabled workers should live on.

Clause passed.

Progress reported; committee to sit again.

STATUTE LAW REVISION BILL

The Legislative Council agreed to the bill without any amendment.

STATUTES AMENDMENT (PUBLIC ORDER OFFENCES) BILL

The Legislative Council agreed to the bill without any amendment.

At 23:13 the house adjourned until 9 April 2008 at 11:00.