LEGISLATIVE COUNCIL

Thursday 5 June 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:00 and read prayers.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:02): I seek leave to move a motion without notice concerning the conference on the bill.

Leave granted.

The Hon. P. HOLLOWAY: I move:

That the sitting of the council be not suspended during the continuation of the conference on the bill.

Motion carried.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:02): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee.

Clause 44.

The Hon. M. PARNELL: In relation to clause 44, which deals with the imposition of levies, the government's amendment proposes a number of things. One is the change of name from 'exempt' to 'self-insured'. There are also amendments in subclause (2) in relation to a levy being payable in the first instance on the basis of an estimate of aggregate remuneration for a particular financial year in accordance with division 7. Can the minister explain what has led to the proposal in subclause (2)? What problem does that subclause intend to address?

The Hon. P. HOLLOWAY: My advice is that this is all about the shift in the levy system to payment in advance rather than in arrears. Because it is prospective, the remuneration involves an estimate, so that requires reconciliation at the end of the year. That is essentially what the process is about.

The Hon. M. PARNELL: Does the government have any estimate or understanding of how that reconciliation process could work? Is there a percentage range that it is working within in terms of adjustments? What impact, if any, would that have on the unfunded liability?

The Hon. P. HOLLOWAY: My advice is that there is not expected to be any difference in the amount of money collected. It is not about either increasing or decreasing revenue; rather just a change in the method.

The Hon. M. PARNELL: I thank the honourable minister for that answer. I had envisaged that there may be problems in going to a forward estimate of wages on which to base the levy, much the same as we have had in areas of social security where people were required to estimate in advance what their income was going to be, and we have seen a lot of people having to repay social security overpayments. It seems to me that, if incomes can be unpredictable at a household level, they would also be relatively unpredictable at an enterprise level. However, I accept the minister's answer for now. There are two amendments (Nos 36 and 37) in the set Parnell 2 which relate to levies. I move:

Page 46, after line 14—Insert:

(2a) Section 66(7)—delete subsection (7)

(2b) Section 66(9), (10) and (11)–delete subsections (9), (10) and (11)

I move this amendment following on from amendments moved in the other place. When the government introduced this bill it had a provision in it originally that was consistent with the recommendation of the Stanley, Mountford and Clayton reports, and that was to reduce the level of cross-subsidies within the levy scheme. As should be fairly apparent by its endorsement by the last

three major reports on WorkCover, the reduction of the level of cross-subsidies in the levy scheme would be in the interests of all stakeholders, with the exception (and this is important) of the very worst-performing employers.

The cap on industry levy rates within the existing legislation, set at 7.5 per cent, means that good employers have to subsidise bad employers. That is clearly the result of not being able to impose a levy greater than the cap, regardless of how bad an employer is. It means that the economic incentives for bad employers to improve their performance are reduced. Higher levels of subsidies from good employers to bad means worse workplace safety outcomes. In other words, by not penalising the worst employers you, in effect, punish the best employers.

The only possible explanation that I can see for the government's backflip, in rejecting the recommendations of all the reports I referred to, is that it has caved in to pressure from the very worst employers, because they are the only ones who have anything to gain by retaining the current level of cross-subsidies within the scheme. I think this is public policy of the very worst kind. I think we are selling the interests of good employers down the river; we are selling the interests of workers down the river, and all of this to pacify the very worst employers in the state, the ones with the worst safety records.

Rather than try to have the government do this backflip, even if that would be the best option in terms of public policy, the next best response is to try and build a bit of honesty back into the legislation. What my amendment (in particular, amendment No. 37) provides for is that the good employers, who are subsidising the bad, get named, because they do deserve to have their good performance recognised. However, very importantly, it will see the bad employers (those imposing additional costs on other businesses) also named—in fact, named and shamed.

I think this sort of transparency will lead to the better-performing employers picking up this issue and demanding an answer from the government. They would, quite reasonably, be asking the government why it backflipped on this issue; why the government pursued a bill so that the bad employers have to meet more of their own costs and then find that the government had backflipped on that. The question is: why should good employers pay for bad?

My understanding, in relation to these levies and how they are approached in other states, is that the other states either have no levy cap at all or they have a substantially higher levy cap than the one that the government is supporting. My plea to members on this amendment is that if they do want to introduce some transparency into the system, if members think that it is important to shine a light on the employers whose bad behaviour is costing other employers money, then they should support this amendment. The flip side of that coin is that if members want to show their support for good employers and recognise publicly their good work, then they should support this amendment, as well.

The Hon. P. HOLLOWAY: As I am sure most members of the committee will understand, there was a recommendation (originally with the Stanley review and also with the Clayton review) in relation to this matter. The government, of course, went through a consultation phase. There was an opinion that we would be no better off going from 7.5 to 15 per cent. There will always be some level of cross-subsidisation within the scheme, whether it be at 7.5 per cent or 15 per cent. As a result of that consultation phase, the government did make adjustments, not just in relation to this clause which dealt with some concerns of employers, but also in relation to step-downs, where they were reduced following representations from unions.

Changes were made to the original proposals as a result of the consultation phase, and this was one of them. Doubling the cap would have had a huge impact on some employers, and high-risk industries are not necessarily the poor performers that deserve such an increase. It is incorrect to say that just because there is a high injury rate that necessarily implies that they are a poor performer. Sometimes the safety record reflects the industry, not necessarily the practices within that industry. While we should always be trying to reduce those injury rates, it is obviously much more difficult with some injuries than with others. That is really the background to the amendment. The government is obviously opposed to it. I am not sure whether the honourable member moved both of his amendments (that is, amendment Nos 36 and 37) because he did speak to both. The government opposes the changes. We came up with a balanced position on the cap as a result of that consultation phase. It is a balance, as these things must always be, and that is why we intend to stick with our position on that.

In relation to the naming of employers, which is covered in the honourable member's amendment No. 37, the government opposes this as it would impose on WorkCover and the employers it covers a process that under any other reporting regime would be considered a severe

breach of commercial in-confidence principles. WorkCover is already regular and transparent in its communications of its financial position, reporting on the funding position twice a year. In addition to this, WorkCover already publishes a detailed summary of the actuarial valuations relied upon in adopting the annual accounts and half-yearly results. The latter informs the levy rate setting process.

WorkCover already provides each employer with their claim details, including their cost. WorkCover already publishes a quarterly report on the scheme's health. So, this is an amendment that is not only not required but also a complete breach of the confidentiality between WorkCover and the scheme's registered employers. Obviously, this government will spare no effort in trying to reduce the rate of injury in the workforce wherever that occurs, but there are other factors. Unfortunately, some industries are inherently more risky or dangerous than others, and we have to take that into consideration as well.

The Hon. M. PARNELL: I will respond to two of the points the minister made, the first of which relates to the point he concluded with, and that is to suggest that high risk industries and poor performance do not necessarily go together, and I agree: they do not necessarily go together. However, the problem as I see it is that, having reached a certain threshold of levy, the incentive to do better in an inherently dangerous industry disappears. That is why the 15 per cent would have been far preferable to the 7.5 per cent.

When I studied labour law at university over 20 years ago, Dr Breen Creighton was the lecturer. He effectively wrote the textbook on occupational health and safety and labour law, and in lesson one on labour law almost his very first comment was, 'All industrial injuries, accidents and illnesses are preventable.' Most of said, 'Well, that can't possibly be true,' but, patently, it can be true.

Certainly, there are some situations where a level of risk does need to be accepted, but I think we are selling workers short if we say, 'The industry is inherently dangerous; you've just got to learn to live with that.' I want to put extra incentives on employers to do better, especially in those high risk, dangerous areas.

The second point I want to raise in relation to commercial in-confidence being a reason members should oppose my provisions in amendment No. 37 in relation to publishing the identities of good performers and bad performers is that I do not accept that that commercial in-confidence principle outweighs the benefits that would come from publishing that information, and the benefit will be both internal and external. The internal benefit will be the pressure that is put on employers to do better. The fact that their details have been published and they have been identified as a poor performer will put internal pressure. It is also going to put external pressure, and that will be pressure from shareholders, and it will be pressure from people that they deal with.

When we think about investors, given that yesterday we passed a bill in this place supporting ethical superannuation, it may even influence investors as to the types of companies that are worth investing in on an ethical basis. One of the considerations that a company might want to take into account in terms of the impact of investment on society (that is one of the tests we put in) is whether an employer is a regular killer and maimer of workers. I would have thought that was a reasonable thing for some people to take into account in relation to whether they invest with that company.

So, I do not accept that commercial in-confidence should stand in the way of these measures, which I say will provide a great incentive to bad employers to do better and will properly reward those employers with good safety records.

The Hon. D.G.E. HOOD: I have a couple of questions for the mover, if I may. First, I am a little confused as to why both amendments are being moved at the same time, as they appear to deal with separate issues, or at least somewhat separate issues. Secondly, I wonder whether the Hon. Mr Parnell will inform the chamber whether there are any other Australian jurisdictions under workers compensation legislation where the 'name and shame', for want of a better term, operates.

The Hon. M. PARNELL: In relation to the first point, it was my attempt to advance the debate. Yes, they are different issues; they just happen to relate to the same clause. I am speaking to them both now but I am happy to move them separately. I will test the will of the committee on both but I will not speak to them twice.

In terms of the honourable member's second question, I am not aware of whether these types of arrangements apply anywhere else but, as I said yesterday, I am always very pleased when this state seeks to be proactive and ahead of the pack when it comes to progressive social

policies. I do not know whether it is used elsewhere, and it doesn't bother me whether or not it is because I think it is a good provision. I will move my two amendments separately.

The Hon. P. HOLLOWAY: I point out to the committee that, while there is an industry-wide cap of 7.5 per cent, we should take into consideration that there is a bonus penalty scheme that operates with a maximum penalty of 50 per cent and a maximum bonus of 30 per cent. If a company had the maximum bonus (30 per cent less), it would be 5 per cent up to 11.25 per cent if there were a maximum 50 per cent penalty. So, there is a range already that takes into account performance, if you like, within the industry.

Even that could provide some difficulty, particularly for small employers, because if you just had one worker who might have had an unfortunate set of circumstances rather than necessarily reflecting negligence or bad practice from the employer, it can obviously have a very significant effect on smaller employers. The committee should take into consideration that, through the bonus penalty scheme, there is a range of rates that would apply within a particular industry. As I said, it would be quite a significant range, so there is the bonus deterrent effect within that scheme.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 46, after line 21—Insert:

(15) The corporation must publish, in accordance with the regulations, any actuarial advice adopted by the corporation in fixing or varying any percentage under this section.

(16) The corporation must publish, on an annual basis, in accordance with the regulations, information that identifies—

(a) each employer whose payments of levies under this section in respect of a particular financial year exceed the costs of claims made under this act in respect of compensable disabilities arising from employment by that employer during that financial year (after applying such assumptions and other principles as the corporation thinks fit); and

(b) each employer whose payments of levies under this section in respect of a particular financial year total an amount that is less than the costs of claims made under this act in respect of compensable disabilities arising from employment by that employer during that financial year (after applying such assumptions and other principles as the corporation thinks fit).

The committee divided on the amendment:

AYES (2)

Kanck, S.M.	Parnell, M. (teller)

NOES (17)

Darley, J.A.	Dawkins, J.S.L.	Evans, A.L.
Finnigan, B.V.	Gago, G.E.	Holloway, P. (teller)
Hood, D.G.E.	Hunter, I.K.	Lawson, R.D.
Lensink, J.M.A.	Lucas, R.I.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

PAIRS (2)

Bressington, A.	Gazzola, J.M.

Majority of 15 for the noes.

Amendment thus negatived.

The CHAIRMAN: The Hon. Mr Parnell has a further amendment to clause 44, amendment No.37.

The Hon. M. PARNELL: I will again test the will of the committee on this amendment, but I will not speak to it further. I move:

Page 46, after line 21—Insert:

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(a) each employer whose payments of levies under this section in respect of a particular financial year exceed the costs of claims made under this Act in respect of compensable disabilities arising from employment by that employer during that financial year (after applying such assumptions and other principles as the Corporation thinks fit); and

(b) each employer whose payments of levies under this section in respect of a particular financial year total an amount that is less than the costs of claims made under this Act in respect of compensable disabilities arising from employment by that employer during that financial year (after applying such assumptions and other principles as the Corporation thinks fit).

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Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

PAIR (2)

Bressington, A.	Lensink, J.M.A.

Majority of 15 for the noes.

Amendment thus negatived; clause passed.

Clause 45.

The Hon. M. PARNELL: This clause amends section 67 in relation to the adjustment of the levy involving individual employers. The clause allows for the adjustment of levies based on practices and procedures in connection with rehabilitation and return-to-work coordinators. Can the minister please list the specific things that an employer might do that would result in an increase in the levy under this clause, and the specific things that an employer might do that would result in a decreased levy under this clause?

The Hon. P. HOLLOWAY: Really, the proposed amendment is a technical one consequential on the insertion of section 28D by clause 9, 'Establishment of the rehabilitation and return to work coordinators'. The clause introduces another matter to be considered by WorkCover when determining whether to adjust to an employer's levy the employer's practices and procedures around the appointment and role of a rehabilitation and return-to-work coordinator, including their compliance with relevant guidelines published by WorkCover. Failure to adhere to this section can result in an additional levy fine imposed on the employer by WorkCover.

The Hon. M. PARNELL: I thank the minister for his answer. My next question is: will there be any appeal rights in relation to decisions made under this clause and, if so, can the minister explain what the process would be in that regard?

The Hon. P. HOLLOWAY: My advice is that, under existing section 72, appeal rights will be the same appeal rights as currently exist for matters to do with the levy.

Clause passed.

Clause 46 passed.

Clause 47.

The Hon. M. PARNELL: I have a few questions in relation to this clause. This clause amends section 68 in relation to a special levy for self-insured employers. My questions specifically relate to clause 47(4), which replaces section 68(3) with the following:

If the corporation is satisfied that there are good reasons for differentiating between different self-insured employers or classes of self-insured employers, the percentage on which the levy for self-insured employers is based may vary from self-insured employer to self-insured employer or from class to class.

Members might not be aware but exempt employers do pay some levy to WorkCover. It seems that this new provision relates to that. My question of the minister is: can he explain how the levies charged to exempt employers are calculated at present, and what factors are taken into account?

The Hon. P. HOLLOWAY: I think the answer to the honourable member's question is that existing section 68(2) in the Workers Rehabilitation and Compensation Act indicates the factors that are taken into account. It states:

(2) The levy payable by an exempt [soon to become self-insured] employer will be a percentage of the levy that would have been payable by the employer if the employer were not registered as an [self-insured] employer and will be fixed by the corporation with a view to raising from exempt [now self-insured] employers—

(a) a fair contribution towards the administrative expenditure of the corporation; and

(b) a fair contribution towards the cost of rehabilitation funding; and

(c) a fair contribution towards the costs of the system of dispute resolution established by this act; and

(d) a fair contribution towards actual and prospective liabilities of the corporation arising from the insolvency of employers.

The Hon. M. PARNELL: I thank the minister for his answer. I had four things that I wanted to ask about. I think a contribution towards the funding of the dispute resolution was mentioned, so that is the tribunal. Regulation of self-employers has been covered. The two remaining issues are: first, is there any financial contribution towards the operation of SafeWork SA; and, secondly, is there any contribution in relation to advertising that is undertaken by WorkCover?

The Hon. P. HOLLOWAY: My advice in relation to SafeWork SA is that under the Occupational Health, Safety and Welfare Act the self-insured employers would pay a levy for that purpose. I understand that it is actually collected by WorkCover but the legislative backing for it is under the Occupational Health, Safety and Welfare Act. Advertising costs would come under '(a) a fair contribution towards the administrative expenditure of the corporation'. So, I think advertising would be regarded as administrative expenditure of the corporation.

The Hon. M. PARNELL: I thank the minister for his answer. My understanding is that as well as those direct fees that are collected for SafeWork SA there is an additional multimillion dollar contribution made by WorkCover itself. So, my question was: in addition to the hypothecated levy, if you like, is there any part of the self-insured employers' levy that does go towards SafeWork SA on top of that additional payment?

The Hon. P. HOLLOWAY: My advice is that WorkCover does pay a sum in the range of $10 million to $12 million to SafeWork SA. We are just trying to find out whether we can get a better handle on how that is considered within the scheme. We will have to get some more information on that, so we will perhaps come back to it. I have some other information for the honourable member which I hope to table after lunch, so perhaps we will see whether we can get it by then.

The Hon. M. PARNELL: I have no further questions on this clause.

Clause passed.

Clause 48.

The Hon. M. PARNELL: I have four amendments, but all of them relate to the issue that we canvassed at some length in relation to regulations, so I will not be moving those consequential amendments.

Clause passed.

Clause 49.

The Hon. M. PARNELL: This clause relates to an amendment to section 70, which refers to an employer's failure to provide information. Can the minister explain what has led the government to pursue this clause, and are there any specific examples of problems that this clause is designed to overcome?

The Hon. P. HOLLOWAY: My advice is that this amendment is consequential to the amendment of section 69 in clause 48 (which we have just passed) that requires employers to estimate remuneration and pay the levy in advance. Because this section will not be based on estimation, penalties for defective returns will be less applicable. The amendment will ensure that employers are obligated to provide any information required under part 5 and that WorkCover will be able to make its own estimates, determinations or assessments if necessary and also impose a fine if an employer does not provide the requested information.

Clause passed.

Clause 50.

The Hon. M. PARNELL: My question on this clause is essentially the same: what is the rationale for this amendment and what, if any, specific problems is it designed to overcome?

The Hon. P. HOLLOWAY: These are technical amendments to bring section 72 into line with the proposed changes to section 69 to require levy payment in advance. Enabling estimation of remuneration to be reviewable and alterable by the board will provide employers with an avenue of appeal if they disagree with the processes and estimations of their remuneration.

Clause passed.

Clause 51.

The Hon. M. PARNELL: This clause relates to the discontinuance fee that is charged by WorkCover to what we now call self-insured employers who seek to leave the scheme. Representations made to me on behalf of the self-insurers make it very clear that they vehemently oppose this clause. As understand it, WorkCover has been in the practice of charging these discontinuance fees for some time, and I also understand that there is some Supreme Court litigation underway about one particular discontinuance fee that has been charged by WorkCover. Can the minister explain what that challenge is, and what are the issues involved that have resulted in this clause (if, in fact, that is the reason this clause has been introduced)?

The Hon. P. HOLLOWAY: The advice I have is that Linfox is challenging the ability of the board to impose the balancing payment, and that is the basis of the legal challenge.

The Hon. M. PARNELL: I have a couple more questions on this clause. Can the minister explain the formula that has been used by WorkCover to determine the fees it currently charges?

The Hon. P. HOLLOWAY: My advice is that the basis for doing that is that it is an incredibly convoluted process to make that determination. However, I am advised that it is subject to a board determination, which is publicly available; it has been gazetted, so I can perhaps provide one later to the honourable member if he wishes.

The Hon. M. PARNELL: On that same line of questioning, the minister talked about gazetting a formula, so my question is: is it intended to change the formula used to calculate the exit fees if this clause is passed? Is that what the minister has said he will provide us: the new formula?

The Hon. P. HOLLOWAY: What we can provide to the honourable member is the current determination that is being gazetted. In the future it will be regulated, but the government will consult on that matter before it happens.

The Hon. R.D. LAWSON: Can the minister assure the committee that the amendments made to these provisions will not have any adverse effect upon the Linfox litigation to which he referred—or any effect at all?

The Hon. P. HOLLOWAY: My advice is that there will be no retrospective application of the provision.

The Hon. R.D. LAWSON: The Self Insurers Association has advised all members, I imagine, of the circumstances in which this amendment was included in the legislation without any consultation whatsoever or prior advice to the self-insurers of the government's intention to do so. Can the minister confirm that the government did not have prior consultation with the self-insurers or their association? If so, what was the reason for that?

The Hon. P. HOLLOWAY: My advice is that there was no consultation but that what this clause seeks to do is to regulate existing practice.

The Hon. M. PARNELL: I understand that the federal government's ComCare system is under review. Did WorkCover or the federal government make a submission to the review in relation to these fees? I understand that many of the self-insureds end up with ComCare.

The Hon. P. HOLLOWAY: My advice is that the state government did make a submission to the review.

The Hon. M. PARNELL: Can the minister explain to the committee the submission in relation to exit fees?

The Hon. P. HOLLOWAY: My advice is that the submission had many aspects, including OH&S. It was prepared by SafeWork SA on behalf of the government. I cannot provide more information here; we do not have access to that.

The Hon. J.A. DARLEY: I will be opposing this clause. Clause 51 of the bill relates to discontinuance fees. The effect of this provision is to impose a discontinuance fee on exempt employers, including self-insured employers, and to effectively legislate or enshrine the concept of exit fees. There is no justification for that impost upon registered employers seeking to exit the scheme, particularly since more than 40 per cent of the total scheme is self-insured and has no unfunded liability, which is quite remarkable when you consider that they operate within exactly the same legislative framework and have the same workers' entitlements as the WorkCover Corporation.

If WorkCover was responsible for maintaining the existing claims of exempt employers, it could be argued that an exit fee is necessary in order to fund these claims. However, this is quite clearly not the case as self-insurers accept the responsibility for any existing claims and liabilities from the moment they become self-insured and WorkCover is also well protected against the risk of self-insurers becoming insolvent. It seems to me that these exit fees, which are especially unfair to small businesses, are nothing more than WorkCover implementing a grab for money as a punishment for employers who choose to leave its mismanaged scheme. I oppose this clause.

The Hon. D.G.E. HOOD: Family First also opposes this clause. Whilst the focus of this bill is obviously the defence of workers rights—and we certainly will maintain that line—this particular clause is an unfair impost on business. It is an exit fee that really should be levied at WorkCover if anyone, certainly not on business, and especially not on small business. We will join the Hon. Mr Darley in opposing this clause.

The Hon. P. HOLLOWAY: I will provide some more explanation. I first make the point that the exit fee applies only to employers with a base levy greater than $100,000; so there is some protection for smaller employers. I would like to provide some comments that the chairman of WorkCover gave to the Statutory Authorities Review Committee that I think are worth including:

> The Board determination around balancing payments—sometimes referred to as exit fees—is about ensuring that the scheme and the remaining employers are not disadvantaged by employers choosing to leave the State scheme while it is in an unfunded financial position. We know that over time the scheme average levy rate has been insufficient to cover the costs of claims—that is why we have an unfunded liability. The current levy rate has a component built in to 'clawback' the unfunded liability over time. All registered employers contribute to this clawback.
>
> When an employer moves from being a registered employer to a self-insured employer, they take over the management and liability of existing claims. WorkCover makes a payment to the employer to take on that liability. By leaving the registered scheme, that employer is no longer contributing to the funding shortfall clawback through their levy. That is, they exit the scheme before they have made an appropriate and fair contribution, meeting their proportion of the unfunded liability.
>
> What the balancing payment seeks to do is to recover the appropriate contribution to the funding shortfall at the time the employer elects to leave the registered scheme. In simple terms, the money an employer owes WorkCover through the balancing payment is offset against the amount that WorkCover pays to the new self-insurer to take on the liability of existing claims. Similar principles apply in the case of an employer leaving the State Scheme entirely and moving to ComCare, though in this case the claims stay with WorkCover, no money is paid to the employer and therefore no set off is applicable.
>
> The Government's proposed legislative changes seek to achieve through legislation and regulation what is already in place.

And, as I mentioned:

> There is a current matter before the Supreme Court which seeks to challenge the validity of the Board determination.

Clause passed.

Clauses 52 to 56 passed.

New clause 56A.

The Hon. SANDRA KANCK: I move the amendment standing in the name of the Hon. Ann Bressington:

Page 52, after line10—Insert:

56A—Amendment of section 84—Evidence

Section 84—after its present contents (now to be designated as subsection (1)) insert:

(2) However, the Tribunal must not—

(a) receive any evidence in the form of, or attained through the use of, any photographs, films or video or audio recordings, unless the evidence was obtained under an authorisation issued in accordance with a scheme established by the regulations; or

(b) receive any other form of evidence that appears to have been unfairly obtained.

(3) The Tribunal must, for the purposes of its proceedings—

(a) take steps to ensure that it receives all relevant evidence from any relevant source, including through exercising, as necessary, its powers on an inquisitional basis and by obtaining any form of evidence it thinks fit; and

(b) in the case of a dispute under Part 6A—test the veracity and merit of the relevant compensating authority's decision that has given rise to the matter in dispute.

(4) Without limiting subsection (3), if it appears in any proceedings before the Tribunal that a person may have acted in contravention of this Act, the Tribunal may investigate the matter.

(5) For the purposes of an investigation under subsection (4) (and without limiting any other power of the Tribunal), a member of the Tribunal, or a person authorised by the Tribunal, may exercise the powers of an authorised officer under section 110.

(6) A person is not excused from providing information to the Tribunal, or to a person acting under subsection (5), on the ground of legal professional privilege.

This amendment is extremely important to the Hon. Ann Bressington, and I suspect that most MPs who have been here for any length of time would have had complaints from individuals about the way they had been treated by WorkCover in terms of investigations, evidence and so on. This amendment addresses that.

It reins in the abuse of surveillance services by rogue operators, licensed or unlicensed, or by WorkCover officers who have access to unlimited resources for engaging surveillance operators to intimidate and harass injured workers. Commonly, such surveillance is carried out without any chain of command that will ensure upward accountability where there have been breaches of proper authorisation processes as currently required.

It also seeks to remedy many of the gross injustices perpetrated within the courtrooms of this state via the operations of the scheme critical list. Many cases affected by the scheme critical list show that judicial and quasi-judicial officers have ignored or run roughshod over vital corroborative evidence that might have substantiated legitimate workers rehabilitation and compensation claims. In too many cases, injured workers have been denied the opportunity to present corroborative evidence in support of their claims, and it has become common and accepted practice to deny injured workers the right to call witnesses, amongst other things.

Information supplied by an ex-employee of WorkCover has advised the office of the Hon. Ann Bressington that the scheme critical list was developed by WorkCover in the early 1990s. Because of the political backlash in the early 21st century arising from the airing of an SBS *Insight* program, its title was changed to the significant cases list. I assume that this was done so that it did not have to be produced publicly via the Workers Compensation Tribunal noticeboard, supplied to the unions or workers' legal teams, even though the corporation has stated that the scheme critical list had not deliberately been kept secret and that it would be made publicly available in the future. So, by changing the name, it seems that WorkCover got out of it.

Despite that undertaking by WorkCover, a copy of the scheme critical list has never been placed on the Workers Compensation Tribunal noticeboard since the SBS program was aired. The

Hon. Ann Bressington has brought up this matter in parliament a number of times in the last few months. The information that has now been provided to her is that the list has gone even further underground within WorkCover in the last few weeks and has yet again been renamed. Along with that, a list has been prepared of the restricted few who will have access to it. This is a significant part of the reason for this amendment.

The information provided to me by the Hon. Ann Bressington's office in regard to subclause (5) of the amendment is that it would provide the tribunal with full access to investigative powers as would be afforded to officers of the corporation to investigate the decision-making and professional conduct of officers of the corporation, which cannot be done under the present situation.

Subclause (6) affirms an earlier precedent set by the Full Bench of the Supreme Court in which it was ruled that the corporation was not entitled to protect its own interests but was required to make decisions according to truth and merit. It is a concept that has been corrupted throughout countless immoral judgments that have allowed officers of the corporation to get away with concealing evidence and thereby advance its own interests. Typically, legal professional privilege is claimed. The Full Supreme Court unanimously ruled that the corporation is not entitled to do so.

The Hon. P. HOLLOWAY: Mr Acting Chairman, I am sure that you will recall the case of the scheme critical list because, when the Hon. Ms Bressington moved a motion in this chamber, you very effectively refuted the arguments. Essentially, this Scheme Critical List was an internal document within WorkCover that identified some cases that tested the 1995 act.

The Hon. Ms Bressington's amendment deals with the extent to which the tribunal is bound by traditional evidentiary rules of formal courts. Section 84 of the Workers Rehabilitation and Compensation Act states that the tribunal is not bound by the Rules of Evidence but may inform itself in any way it considers appropriate. The bill does not propose to change section 84.

The Hon. Ms Bressington's amendment would significantly expand section 84 of the act to place a number of important restrictions on the way the tribunal can gather evidence. The amendment would mean the tribunal could: not receive audiovisual evidence, except where authorised; not receive any evidence unfairly obtained; try to ensure that it receives all relevant evidence from any relevant source; investigate any breach of the Workers Rehabilitation and Compensation Act that it becomes aware of; and exercise the powers of entry and inspection set out in section 110.

The amendment would also prevent persons from withholding evidence to the tribunal on the grounds of legal professional privilege. The aim of that amendment is to inject a significantly greater degree of rigor and formality into the evidence-gathering processes under the act. The government strongly opposes the amendment as internally conflicting and inconsistent with the objectives of the act, unclear in parts and also unnecessary.

Informality is a key hallmark of the current dispute-resolution system. It is crucial that the system remains simple and accessible to claimants and not emulate the more elaborate and formal procedures of the courts. As such, the tribunal's rules regarding things like evidence gathering ought to remain as flexible as possible, within reason. This amendment would largely destroy this informality and, in some respects, tie the hands of the tribunal. This can only be counterproductive.

The committee divided on the new clause:

AYES (2)

Kanck, S.M. (teller)	Parnell, M.

NOES (17)

Darley, J.A.	Dawkins, J.S.L.	Evans, A.L.
Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hood, D.G.E.	Lawson, R.D.
Lensink, J.M.A.	Lucas, R.I.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

PAIRS (2)

Bressington, A.	Hunter, I.K.

Majority of 15 for the noes.

New clause thus negatived.

The Hon. P. HOLLOWAY: Mr Chairman, before you put the next clause, I want to clarify something in relation to the scheme critical list. I said it was an internal document (which I was advised that it was) but I should also point out that it was provided to the tribunal for information.

Clause 57 passed.

Clause 58.

The Hon. M. PARNELL: I have a question before I move my amendment. This clause amends section 86A and relates to a reference of a question of law and final appeal to the Supreme Court. I find some of the words in proposed new subclause (2a) to be curious. It provides:

> An appeal cannot be commenced under subsection (1a) except with the permission of a judge of the Supreme Court.

It seems to me that the tried and true form of words is that people are required to obtain the leave of the court. Can the minister provide any assistance in relation to the difference between the two concepts of permission or leave, and is there any case law about the meaning of the words 'the permission of a judge'?

The Hon. P. HOLLOWAY: My advice through parliamentary counsel is that, as a result of consultation with the Supreme Court, amendments were made to a whole range of language that was used in legislation, and this is the language that is now used by the courts. It reflects consultation with the Supreme Court.

The Hon. M. PARNELL: I thank the minister for his answer. I was not aware of that, but that sounds very sensible; permission is a much more logical word to use in these circumstances. I accept the thrust of the minister's answer but, effectively, it is the same theme, just renamed. I move:

> Page 52, after line 23—Insert:
>
> (4) Section 86A—after subsection (3) insert:
>
> (4) No fees may be imposed with respect to a party (other than the relevant compensating authority) commencing proceedings by way of an appeal or a reference of a question of law to a full bench of the tribunal or the Supreme Court if the subject matter of the appeal or the reference relates to an opinion from a medical panel under part 6C.

This amendment seeks to insert a new subsection (4) in section 86A. We will get to medical panels later, but the purpose of this amendment is to say that, if it is a worker rather than the compensating authority who wants to have something tested, they should not have to pay the fees that are normally charged. In relation to Supreme Court proceedings, my understanding that it is over $1,000 to just get your foot into the door of the court. Given the importance of the ability of injured workers to judicially review decisions that have made by medical panels, not putting a barrier of a $1,000-plus fee in their way is the way to go.

The Hon. P. HOLLOWAY: The government opposes this amendment, as it would undermine the role and powers of medical panels as intended in the bill. I think we will be considering some 37 amendments to clause 70 when we get to it shortly—but who is counting? The role of the medical panels to make final and binding decisions on a wide range of medical questions is one of the core elements of the bill.

The Hon. Mr Parnell's amendment appears to presume the broad ability of parties to appeal and obtain references on questions of law from tribunal decisions where the subject matter of that decision relates to a medical panel opinion. This is a very broad scope to appeal or obtain a reference, and such broad scope is not intended by the bill. A key provision of the bill states that medical panel decisions are to be final and conclusive. Therefore, by nature, these issues of medical fact are meant to be considered, resolved and not subject to subsequent appeals or reviews.

The only appeals available from the decisions of a medical panel are to the Supreme Court on procedural fairness grounds (in other words, natural justice), and these appeals will not revisit the medical questions. The government rejects the presumption that final decisions of medical fact will often yield a number of unresolved questions of law. Since the premise of Mr Parnell's subsection (4) is flawed, the government believes there is no need for this subsection.

The Hon. M. PARNELL: I thank the minister for his answer, and I indicate that I will not be dividing on this clause.

Amendment negatived; clause passed.

Clauses 59 to 61 passed.

New clause 61A.

The Hon. M. PARNELL: I move:

Page 52, after line 29—Insert:

61A—Amendment of section 88G—Recovery of costs of representation

(1) Section 88G(1)—delete 'A' and substitute 'Subject to subsection (2), a'

(2) Section 88G(1)—delete 'by regulation' and substitute 'by rules of the tribunal'

(3) Section 88G(2)—delete subsection (2) and substitute:

(2) The tribunal may allow a representative to exceed a limit applying under subsection (1) if the tribunal determines that exceptional circumstances exist.

(3) the scale that applies under subsection (1) must be as close as is reasonably practicable to the scale that applies in relation to civil proceedings in the Supreme Court.

This amendment is about the costs charged for representation and is in response to proposals advanced by WorkCover and, in large part, adopted by the Clayton report in that regard.

Consistent with its approach to this bill and the way in which it administers the legislation, WorkCover took a very one-sided approach in relation to legal costs. As I understand it, according to the comparative performance monitoring data about workers compensation and workplace safety that is prepared for the Workplace Relations Ministerial Council, South Australia has amongst the lowest, if not the lowest, spending on legal costs of any Australian jurisdiction.

Whilst there are fundamental differences between the present cost arrangements at the conciliation and arbitration stage compared with the judicial determination stage, there seems to be consensus that some changes are required at the conciliation and arbitration stage, and there does not seem to be any case made for the sorts of changes that have been proposed at the judicial determination stage. There is very little in the way of a credible rationale to support WorkCover's proposal for fixed costs at the judicial determination stage, and there are some very straightforward arguments against it.

WorkCover's proposal was that there be a fixed amount of costs for matters at the judicial determination stage that settle (I think it was $11,000) and a fixed amount for matters that ultimately go to trial which I think was $15,000. I understand from a survey of recent cases decided by the Workers Compensation Tribunal that the number of days taken for a trial to be completed varied between one and 40. If members think that the 40-day trial was some vain attempt by a worker to win the unwinnable, I point out that the worker won that case, and it was the state government as an exempt employer (a self-insured employer) that had rejected the claim and put everyone through a 40-day trial. It was the government that cost the time and the money.

With that background, combined with the fact that WorkCover wanted to ban lawyers charging more than fixed fees, I think that members should begin to appreciate the nonsense of the WorkCover position. For a one-day trial, $15,000 is a very tidy sum but for a 40-day trial it is obviously hopelessly inadequate. The current system is that workers and employers are entitled to 85 per cent of their reasonable costs which are calculated in accordance with the Supreme Court scale. So, the appropriate costs are paid in each case—not WorkCover's proposal of a one size fits all proposal that suits no-one except the bureaucrats.

As I understand it, WorkCover's proposal would not have limited what employers can receive and pay in terms of costs, so if employers want to get someone famous—perhaps Tom Hughes QC from Sydney—then, all well and good but, if a worker wants to get the best representation to match what the employer is doing, they are banned from doing that. That is just not fair in an adversarial system.

There seems to be some claim from WorkCover that its proposal would protect workers from overcharging by an unscrupulous minority of lawyers, and that is a proper aim, but the way that WorkCover has proposed to address it is highly counterproductive. My simple amendment provides that, if a worker wants to engage representation at higher than usual rates and the tribunal feels that there are exceptional circumstances that justify it, that should be allowed. I commend the amendment to members.

The Hon. P. HOLLOWAY: This clause seeks to amend section 88G of the Workers Rehabilitation and Compensation Act by requiring a scale of charges for representation costs to be fixed by rules of the tribunal rather than by regulation. The government opposes the amendment. The government intends to make a regulation to cap the amount that a lawyer or advocate can charge or seek to recover from a worker, and this will be capped at the amount that is fixed by regulation. This will be done at the same time that the scale of charges is increased to better compensate representatives at the early stages of a dispute. The scale of charges, to be fixed by regulation, will be finally determined after consultation with the legal community; however, it is certain that the Supreme Court rate will be referred to and considered in those deliberations. The government opposes the amendment as we believe that such a step ought to be established through regulation with direct government control and the scrutiny of the parliament, as opposed to doing it through rules made by the tribunal.

New clause negatived.

Clauses 62 and 63 passed.

New clause 63A.

The Hon. M. PARNELL: I move:

Page 53, after line 4—

Insert:

63A—Amendment of section 89A—Reviewable decisions

Section 89A(1)—after paragraph (b) insert:

(ba) without limiting paragraph (b)—a decision on a request for assistance with rehabilitation made by a worker;

The purpose of this amendment is to make sure that, when bad decisions are made about rehabilitation, injured workers have access to justice. The current section 89A(1)(b) provides some access to justice but I am concerned that, in only referring to rehabilitation services, it unduly narrows its operation. For example, the provision of text books for participation in a course of study is not a service, and this amendment is designed to ensure that injured workers have access to justice for items like that when they are denied inappropriately. I do not think it is entirely consequential, but I would like to hear the minister's response. I do not propose to divide on it.

The Hon. P. HOLLOWAY: This is consequential to an earlier amendment that we defeated. The Hon. Mr Parnell's earlier amendment to clause 9 sought to introduce a new section 28E. The government opposed that amendment and opposes this amendment for the same reasons.

The Hon. D.G.E. HOOD: I understand that we are not dividing on this clause but, just for the record, Family First supports this amendment. We certainly believe that what is currently in the bill may be restrictive in that it does not specifically mention non-services, so we support the amendment.

New clause negatived.

New clauses 63A and 63B.

The Hon. M. PARNELL: I move:

Page 53, after line 4—Insert:

63A—Substitution of Part 6A Division 3

Part 6A Division 3—delete Division 3 and substitute:

Division 3—Reference of dispute

91—Reference of dispute

The Registrar must refer dispute for conciliation (unless the dispute is brought to an end before this step is taken by the Registrar).

63B—Amendment of section 92C—Procedure in conciliation proceedings

Section 92C—after subsection (7) insert:

(8) No more than 2 conciliation conferences may be held in particular proceedings without the agreement of the parties (and, subject to obtaining that agreement at the end of a second or subsequent conference, or within a reasonable time thereafter, and subject to any other determination of the conciliator, if the matter remains unresolved after the

conclusion of the conciliation conferences then it will be taken that the conciliation proceedings have not resulted in an agreed settlement of the dispute).

This amendment seeks to insert a different clause 63A to the one that we were just talking about, but this is just a matter of numbering, and also to insert a new clause 63B. This clause relates to conciliation proceedings and my amendment is designed to stop an unfair practice that is sometimes used by WorkCover and some exempt employers to try to grind workers into submission by dragging out disputes and doing it in a way that imposes more costs on injured workers.

It is widely accepted that the costs provisions at conciliation for workers are woefully inadequate, and that means that the longer the conciliation process is dragged out, the more it will cost the worker. As a result, relatively often, WorkCover and some but not all exempt employers and self-insured employers, as a matter of course, drag out the conciliation stage to try to exhaust the injured workers' financial and emotional resources. In other areas, that sort of practice in the law is known as deep-pocketing.

I am aware of a number of recent cases where an exempt employer has sought more and more conciliation hearings and turns up with nothing new to say, not having done what the Workers Compensation Tribunal has ordered them to do, and when the matter is finally referred to a judge, the employer simply concedes at that point, having put the worker to great trouble and expense in the meantime.

If the parties want to have more conciliations, that is all well and good, but, if they do not, then this amendment puts a limit of two conciliations on the process before it is moved on to the next stage of the dispute resolution process. Basically, my amendment proposes that no more than two conferences may be held without the agreement of the parties.

If the parties are getting somewhere and they want to have more conciliation conferences, that is well and good, but let us remove this ability for WorkCover to drag injured workers through endless conciliation proceedings not for the purpose of genuinely trying to reach a conclusion but simply for the purpose of wearing them down. This is an important amendment for me.

The Hon. P. HOLLOWAY: This amendment is to delete division 3 of the Workers Rehabilitation and Compensation Act (that is, section 91 which deals with initial reconsideration and section 91A which deals with reference of disputes to conciliation) and substitute a new division 3 entitled 'Reference of dispute' wherein the registrar must refer the dispute for conciliation unless the dispute has already been brought to an end before this step.

The clause also seeks to amend the existing section 92C 'Procedure in conciliation proceedings' by inserting a new subsection that stipulates that no more than two conciliation conferences may be held without the permission of the parties involved. The government opposes this amendment which seeks to remove a provision that can actually avoid disputes.

The honourable member's amendment seeks to remove the provision for internal reconsideration which currently allows the compensating authority to have a person other than the original decision-maker review the decision in the light of the matters raised in the notice of dispute and either confirm or alter the decision. I have no doubt that there would be some examples where reconsideration has been under utilised; however, there is simply no justification for removing this stage which can prevent unnecessary disputes from progressing.

The Hon. SANDRA KANCK: I agree with the Hon. Mark Parnell that this is an important amendment. I find the government's rationale somewhat strange because this allows such conciliation to continue if WorkCover, the employer and the worker concerned are in agreement that this is the way to go forward. There is a huge power imbalance that works against the injured worker in these situations. This is a small move that I think can go some way towards redressing that imbalance. I think it is an amendment that is very worthwhile supporting if people think that an individual worker does not have the same sort of power that a big corporation has. I cannot think of any examples where it would be otherwise.

The CHAIRMAN: The Hon. Mr Parnell's amendment is in two parts. The first question is that new clause 63A be inserted.

The committee divided on the question:

AYES (5)

Darley, J.A.	Evans, A.L.	Hood, D.G.E.

Kanck, S.M.	Parnell, M. (teller)	

NOES (14)

Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hunter, I.K.
Lawson, R.D.	Lensink, J.M.A.	Lucas, R.I.
Ridgway, D.W.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

PAIRS (2)

Bressington, A.	Schaefer, C.V.

Majority of 9 for the noes.

Question thus negatived.

The CHAIRMAN: I believe the honourable member has moved and spoken to new clause 63B.

The Hon. M. PARNELL: It has been moved, so it is on the record, but I do not propose to speak to it further or divide on it.

The CHAIRMAN: The question is that new clause 63B, as proposed to be inserted by the Hon. Mr Parnell, be so inserted.

Question negatived.

Clauses 64 to 67 passed.

New clause 67A.

The Hon. M. PARNELL: I move:

New clause, page 53, after line 22—Insert:

67A—Amendment of section 95—Costs

(1) Section 95(1)—Delete subsection (1) and substitute:

(1) A party (other than the relevant compensating authority) is entitled, subject to this part and to limits prescribed by regulation, to an award against the relevant compensating authority for the party's reasonable costs of proceedings for resolution of the dispute under this part (including proceedings by way of an appeal or a reference of a question of law to a Full Bench of the Tribunal or the Supreme Court).

(2) Section 95(5)—Delete subsection (5) and substitute:

(5) An award of legal costs cannot exceed—

(a) unless paragraph (b) applies—85 per cent of the designated amount;

(b) in the case of proceedings before the Full Bench of the Tribunal or before the Supreme Court—the designated amount.

(6) For the purposes of subsection (5), the 'designated amount' is—

(a) in the case of proceedings before the Tribunal—the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court;

(b) in the case of proceedings before the Supreme Court—the amount allowable under the relevant Supreme Court scale.

This amendment relates to the question of costs. I spoke earlier about what I believe is the wrong approach proposed by WorkCover in relation to costs—and, in particular, in relation to fixed costs.

Rather than leave it to regulations (which are certainly better than just a plain, old, unrenewable gazettal, as we have discussed before), which may be accepted or rejected by parliament, this amendment proposes enshrining the appropriate costs arrangements into the legislation. In essence, my amendment proposes that at conciliation and at judicial determination

workers and employers are entitled to 85 per cent of the Supreme Court scale in terms of costs, and on appeal to the Full Tribunal or the Supreme Court 100 per cent of that scale.

The Hon. P. HOLLOWAY: The government opposes this amendment, which seeks to remove the allocation of costs against a worker for proceedings by way of an appeal or a reference to a question of law to the Full Bench of the Workers Compensation Tribunal or the Supreme Court by a worker against an opinion from a medical panel under part 6C. Subject to it being a properly made referral of a medical question, there would be no avenue for appealing that matter to the Full Bench of the tribunal. The decision of the medical panel is final and conclusive, and there is therefore no need to have specific costs arrangements in place to deal with those matters.

In any event, steps to provide absolute protection against costs and move away from the circumstances of the costs following the event is contrary to the objectives of the reform package in reducing incentives to unnecessarily delay dispute resolution, and to pursue matters beyond the early stages of a dispute. This can only result in frustrating delays in workers' claims, increased costs for the scheme, and poor return-to-work outcomes for the worker.

The Hon. M. PARNELL: For the benefit of the committee, whilst this is different from the other cost issue that I raised before regarding fixed costs, it is close enough that I think I know the will of the committee. I will not divide on this amendment.

New clause negatived.

New clause 67A.

The Hon. M. PARNELL: I move:

Page 53, after line 22—

Insert:

67A—Amendment of section 95—Costs

Section 95—after subsection (5) insert:

(6) Costs cannot be awarded against a party (other than the relevant compensating authority) in proceedings by way of an appeal or a reference of a question of law to a Full Bench of the Tribunal or the Supreme Court if the subject matter of the appeal or the question relates to an opinion from a medical panel under part 6C.

This is an alternative 67A to the one we have just dealt with, and it relates again to the question of costs, but it is significantly different from the previous one. This amendment relates to costs in matters arising out of medical panel decisions. The experience of medical panels interstate, in particular in Victoria, is that they commonly make bad decisions. They fail to provide procedural fairness, or they fail to apply the law properly. Given that track record and given the cloak of secrecy that is thrown around medical panels, which makes it very difficult to properly evaluate the correctness of what they have done, I think it is simply inappropriate that injured workers and employers get punished if they take issue with a medical panel decision and are not successful.

If the government was prepared to provide some basic transparency and include some basic natural justice and representation rights before medical panels, this amendment might not be necessary. But, if experience of this debate so far is any guide, I have some doubts about whether the government will accept my amendments in relation to medical panels and, as such, I strongly urge members to support this new clause.

The Hon. P. HOLLOWAY: The comments I made in relation to the previous clause were actually meant to apply to this one, because we had two new clauses 67A and two different amendments. The comments I made earlier were meant to apply to this clause, but they are close enough for the amendments to apply. The steps to provide absolute protection against costs and move away from the circumstances of costs following the event is contrary to the objectives of the reform package, and that is why we oppose it.

New clause negatived.

Clause 68.

The Hon. M. PARNELL: I have a few questions for the minister in relation to this clause, which inserts a new section 95A. Can the minister inform the committee of particular problems that are sought to be overcome by this provision?

The Hon. P. HOLLOWAY: Section 95A is a new section. There is no provision in the current Workers Rehabilitation and Compensation Act for recovery of costs against a worker's solicitor where they have personally caused unnecessary costs. Most other workers compensation jurisdictions in Australia already allow for a personal order of costs to be made against solicitors.

Currently, if a solicitor increases legal costs through negligence, default or misconduct, the parties to the dispute have to bear the costs. The current structure of the legal costs system is such that there is insufficient incentive for workers and their solicitors to seek an early resolution of a dispute. Costs available at the early stages, conciliation and arbitration, are limited, while those available for judicial determination are more generous and less restricted. This does not provide much incentive for a worker to instruct his or her solicitors to obtain all relevant information for the purpose of conciliation, as the worker recovers only a small contribution to their legal costs from WorkCover, but must pay the balance personally.

The clause inserts a new section authorising the tribunal to make various orders if a party's professional representative has caused costs to be 'incurred improperly or without reasonable causes or has caused cost to be wasted by undue delay or negligence or by any other misconduct or default'.

The tribunal can order that all of the costs between a professional representative and a client be disallowed, or that they repay the cost to their client; that they pay their client all costs that the client has been ordered to pay to another party, or that they pay all or any of the costs of another party. I have also been advised that there was a particular case before the tribunal in which the presidential member said he would have awarded costs against the solicitor, if he were able to so do.

The Hon. M. PARNELL: Given that compensating authorities have to make some contribution to workers' and employers' costs in the ordinary case, has the government given consideration to providing for indemnity costs orders against compensating authorities when those authorities breach relevant requirements, as many workers tell me they do on a regular basis?

The Hon. P. HOLLOWAY: My advice is no.

The Hon. M. PARNELL: I understand that a regular cause of delay is the failure of WorkCover and some exempt employers to provide on time the books of documents required by the Workers Compensation Tribunal. What action is the government taking to address these delays?

The Hon. P. HOLLOWAY: My advice is that this provision would apply equally to both.

The Hon. M. PARNELL: Just so that I understand the minister's response: if there is a delay which is, in fact, due to some action by an employer or an injured worker (the representative's client) but the client instructs the representative that they do not have permission to disclose their responsibility for the delay, in terms of legal professional privilege, how would that situation be dealt with?

The Hon. P. HOLLOWAY: My advice is that that would really be entirely a matter for the tribunal and that it would make a decision based on the facts before it.

The Hon. M. PARNELL: I move:

Page 54, after line 21—Insert:

(4a) However, the act or omission of the professional representative must be the sole or predominant cause of the default under subsection (2).

This amendment seeks to make this clause consistent with what Mr Clayton recommended. Mr Clayton stated:

The proposal to allow for an order for costs to be made personally against a solicitor, where costs are incurred solely as a result of the fault of the solicitor, is again one to which the review gives guarded support. The key element that underpins such support is that such a cost order would only apply where the additional costs result solely from the solicitor's action or inaction.

That was the Clayton recommendation. It is not clear to me why the government has disregarded Mr Clayton's advice on this point—but it has disregarded that advice. I am suggesting that, on this occasion, his advice be followed. The words in my amendment provide that the act or omission of the professional representative must be the sole or predominant cause of the default under subsection (2) in order to trigger that costs provision.

The Hon. P. HOLLOWAY: This amendment seeks to alter clause 28 by inserting a new subsection that clarifies when a professional representative is in default for costs—that is, if they fail to attend meetings, file documents, lodge or deliver documents, be prepared with any proper evidence or account, or any other proceedings which prevent the dispute from progressing. The amendment specifies that the representative is at fault only if an act or omission of the professional representative is the sole or predominant cause of the default.

The government opposes this amendment on the grounds that the original amendment is sufficiently clear in its intent. The clause makes it clear that an order against a professional representative cannot be made by the tribunal unless the representative is informed and is provided with a reasonable opportunity to make representations and call evidence. The government is not swayed by this amendment and sees no good reason to water down a provision that seeks to make professional representatives personally accountable for incurring costs improperly or unreasonably.

The Hon. M. PARNELL: I thank the minister for his answer, but I do disagree because I think the right of a professional representative to respond is very different from the threshold question that establishes their liability for costs, and that is what my amendment seeks to deal with. If the act or omission of the professional representative is not the sole or predominant cause of the default, I do not think they should even be put to that task of having to explain themselves. So, it is a threshold issue.

The committee divided on the amendment:

AYES (5)

Darley, J.A.	Evans, A.L.	Hood, D.G.E.
Kanck, S.M.	Parnell, M. (teller)	

NOES (14)

Dawkins, J.S.L.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hunter, I.K.	Lawson, R.D.
Lensink, J.M.A.	Lucas, R.I.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

PAIRS (2)

Bressington, A.	Finnigan, B.V.

Majority of 9 for the noes.

Amendment thus negatived; clause passed.

Progress reported; committee to sit again.

[Sitting suspended from 13:01 to 14:18]

ABORTIONS

The Hon. SANDRA KANCK: Presented a petition signed by 19 residents of South Australia, concerning women's right to abortion. The petitioners pray that the council will do all in its power to ensure that abortions in South Australia continue to be safe, affordable, accessible and legal.

IRRIGATION BUYBACK

The Hon. SANDRA KANCK: Presented a petition signed by 43 residents of South Australia, concerning extraction of water from the River Murray. The petitioners pray that the council will do all in its power to promote the buyback of water allocations by state and federal governments in order to improve environmental flows and support sustainable agriculture.

PAPERS

The following papers were laid on the table:

By the Minister for Police (Hon. P. Holloway)—

Budget Overview 2008-09 Budget Paper No. 1.
Budget Speech 2008-09 Budget Paper No.2.
Budget Statement—2008-09 Budget Paper No. 3.
Portfolio Statements -Volume 1—2008-09 Budget Paper No. 4.
Portfolio Statements -Volume 2—2008-09 Budget Paper No. 4.
Portfolio Statements -Volume 3—2008-09 Budget Paper No. 4.
Capital Investment Statement—2008-29 Budget Paper No. 5.
Regional Statement—2008-09 Budget Paper No. 6.

By the Minister for Environment and Conservation (Hon. G.E. Gago)—

Corporation By-laws - City of Norwood, Payneham and St. Peters—
No. 1—Permits and Penalties.
No. 2—Moveable Signs.
No. 3—Roads.
No. 4—Local Government Land.
No. 5—Dogs.

LEGISLATIVE COUNCIL REPORT

The PRESIDENT: I lay on the table the report of the Legislative Council of the Parliament of South Australia 2005-2007.

QUESTION TIME

POLICE HEADQUARTERS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:20): I seek leave to make a brief explanation before asking the Minister for Police a question about the $38 million provided in this year's budget for the relocation of the police headquarters.

Leave granted.

The Hon. D.W. RIDGWAY: In yesterday's question time, members will recall that I asked the minister a question in relation to the $38 million that was in *The Advertiser* yesterday which we assume is part of the budget that is being announced today. He indicated that the $38 million is the cost that will be involved in relocating the police headquarters. He then said, 'There are a number of options.'

Further on in his response, he said, 'I guess the government will have the option of whether it leases or seeks to provide its own building.' Given that in the past we have had two big building projects announced by the government (one being the Department for Transport, Infrastructure and Energy new building and of course also a relocation of the new police building), what are the options that the minister is considering, and can he give the building and property industry of this state comfort to know that this is not a hollow promise and that the government will deliver on a new police building?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:22): I thought I answered the question yesterday: that was that you would either lease the building or I suppose you do have the option, through whatever means of financing, of building your own. Obviously, the funding comes out of the police budget, and it does concern the police that the relevant sections of government that make that decision are ultimately within the Department for Transport, Infrastructure and Energy.

I made it quite clear yesterday that the lease on the police building expires in 2012 and, as I indicated yesterday, while the building has served its purpose over the past 15 years or so, it is now at a stage where the police really do need much more appropriate accommodation. That is why, one way or the other, the offices of the police have to be relocated, and the government is determined that that will happen one way or the other.

PRISONS

The Hon. S.G. WADE (14:24): I seek leave to make a brief explanation before I ask the Minister for Correctional Services a question relating to prison overcrowding.

Leave granted.

The Hon. S.G. WADE: According to the Productivity Commission, South Australia has Australia's most overcrowded prisons, at 22 per cent above design capacity. Western Australia is the next most overcrowded system, with 7 per cent overcrowding. The government has already announced that this afternoon's budget will provide for 209 extra spaces. The department's annual report shows that, as at July 2007, South Australia's prisons were holding 1,771 prisoners. The minister's press release of May 2008 shows that by April 2008 the number of prisoners had grown to 1,934. The growth from July 2007 to April 2008 is an annualised rate of 212 prisoners. However, the budget commitment is only 209 extra spaces over four years.

Over four years, the government's announcement will cope with the growth rate of only one year. My question is: given that the additional beds will be full within one year of the four-year program, what strategies will the government use to reduce the impact of overcrowding on access to programs, staff workload and security of our prisons?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:25): I thank the honourable member for his question. As announced several weeks ago, this government does have a strategy. Some $35 million has been provided over the next four years, prior to the new prisons coming online, to ensure that we can meet the increased bed space capacity.

On 7 May the government announced $35 million to provide a further 209 new spaces. This is in addition to the 275 spaces by the end of 2008-09. All bed space options that are identified are discussed with the staff and with the PSA, because we recognise that the services we provide cannot be delivered without their cooperation and assistance. Clearly, we have identified areas where extra bed space capacity can be accommodated. As I said, I am very certain that we would be frugal with a prison such as Yatala, as it is being shut down.

We recognise that we must always provide extra capacity for our women, and we have already done so with transportable capacity and, if need be, we will continue to do so. Most of this will be achieved by doubling up in places where this can still happen. We have also identified Port Augusta prison, where we will build some capacity for traditional Aboriginal men, as well as at Port Lincoln.

I do not have the list here of which bed will go where, but it will be closely managed and will take place in consultation and cooperation with the PSA. Ultimately, what is important is that we have the necessary funding available, which this government has announced as part of its budget.

SUICIDE PREVENTION

The Hon. J.S.L. DAWKINS (14:27): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about suicide prevention.

Leave granted.

The Hon. J.S.L. DAWKINS: Members would be aware of ongoing community concern about suicide across South Australia, particularly in rural and regional areas. Equally, I expect that members may not be aware that the Tasmanian-based community response to eliminating suicide program (CORES) has recently been taken up in regional areas of Victoria and Queensland. This expansion results from the increasing recognition of the value of this award-winning and community-based program around the country. My questions are:

1. Will the minister reconsider funding at least one CORES program in South Australia?

2. If so, will she consider partnering with one or more of the numerous regional community organisations that have demonstrated strong interest in the program?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:28): I have answered this or a very similar question on a number of occasions in this chamber, so I give the honourable member opposite 10 out of 10 for repetition.

The Hon. J.S.L. Dawkins interjecting:

The Hon. G.E. GAGO: He just does not listen to the answer about the incredible amount of work South Australia has done in relation to its mental health services right across the state. Not only are we reforming, rebuilding, relocating and transforming our mental health system right across South Australia but we have also put in place a set of intensive rural and regional drought

response services and support. South Australia has invested an extraordinary amount of time, energy and resources in working with local communities to ensure that they have the appropriate support, not only generally as a service but also specifically in response to the particular pressures that the drought has placed on people.

The South Australian suite of programs and services targeting suicide prevention and postvention covers the activities of the CORES program from Tasmania. I have already raised that in this place before, but obviously the honourable member did not listen to my answer. The CORES program is an initiative developed and implemented by Tandara Community Care Inc, working closely with its local community. It is designed to develop the skills and confidence of community members to assist persons who may be contemplating suicide, and to assist in developing the community's strength and capacity to eliminate suicide.

There have been references to the South Australian government introducing the CORES program. However, the government already has a number of suicide prevention and postvention initiatives in place, based not only on similar programs to CORES but a range of other complementary programs as well. To reduce the impact of psychological distress on the population, the South Australian government has added to the $1 million provided by *beyondblue* under the one-off $25 million boost by committing a further $1.4 million over five years, bringing its commitment to the *beyondblue* depression initiative to $2.4 million. It will enable *beyondblue* to deliver a range of prevention and promotion programs throughout South Australia.

The Social Inclusion Board provided funding of $680,000 over two years (between 2004 and 2006) specifically to support the implementation of locally driven suicide prevention initiatives in South Australian regional areas. These initiatives focused on young people, and in particular young Aboriginal males. Country Health South Australia has provided leadership and coordination for these initiatives, and as a result suicide prevention is now undertaken as part of Country Health SA's mental health promotion activity.

In collaboration with the Australian government and the SA Divisions of General Practice, a primary health care suicide prevention and intervention model has been developed for South Australia called *square*. The model provides for assessment, early intervention, coordinated support and follow up for people at risk of self-harm or suicide through the establishment of partnerships between GPs, mental health and general health services, drug and alcohol services, emergency services, community organisations and community members. It is expected that better partnerships will result in reduced demand for emergency services.

The Hon. J.S.L. Dawkins interjecting:

The Hon. G.E. GAGO: He keeps asking the same question over and over. He is obviously not listening to the answer, so I will keep repeating it. By working with key regional partnerships, the SA Division of General Practice and Relationships Australia are rolling out the primary health care model of suicide prevention and training across the state. Drought affected country areas have been given the highest priority. Implementation and training will be completed by June 2008.

Additionally, suicide prevention training for workers and community members has been identified as a high need area for Aboriginal service providers and the Aboriginal community. In response, the CNAHS and Adelaide University funded two trials of the LivingWorks program, which includes a two-day workshop on suicide intervention skills with ASIST (Applied Suicide Intervention Skills Training) and a half-day workshop specifically for care givers (SafeTALK: Suicide Alertness for Everyone—Tell, Ask, Listen, KeepSafe).

The South Australian government funded the Mental Health First Aid program—and I know I have outlined this before, but obviously I need to do it again—with a total of $225,000 over 2005-06 and 2006-07 to assist in raising South Australian communities' awareness of mental health and the prevention of suicide and self-harm. The program provides the community with information on how to identify and assist people who are experiencing a mental health problem, and also aims to reduce the stigma around mental health issues. The suicide awareness component of the Mental Health First Aid program has been complemented by the *square* program, and I am advised that the Department of Health has funded this important program for a further 12 months.

I could go on and on. As I said, here in South Australia have we committed extensive funds to the reforming and transforming of our mental services right across the state—a commitment of $107.9 million to reform the mental health system that was left in a disgraceful state by the former Liberal government, which simply allowed our mental health services to fall down around our ears. This government has not only rectified that, it has also put together a significant package of mental

health support services to assist people in rural and regional areas who are under additional stress because of the drought. This government is committed to what is a wide range of initiatives.

SUICIDE PREVENTION

The Hon. S.G. WADE (14:36): I have a supplementary question. I refer to the minister's comments in relation to partnerships to prevent suicide in drought-affected areas. I now ask: what is the government's proposal for mental health counsellors this year? I understand we had two last year; how many will there be this year, and where will they be based?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:36): I just seek clarification: is this under our drought initiative?

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: We have put in place over 100 additional clinicians in our mental health system in the last couple of years in a wide range of different positions—mental health nurse practitioners and counsellors—both here in the city and in country areas. Given that the honourable member has failed to give me details of exactly what positions he is talking about, I can tell him that this government has put over 100 additional mental health clinicians on the ground, and these are not people working in administration: these are people working on the ground to deliver first-hand mental health services, treatment and support to mental health care consumers. As I said, this government has injected over $107.9 million into its mental health reform agenda to transform and rebuild our mental health system.

SUICIDE PREVENTION

The Hon. S.G. WADE (14:38): I have a further supplementary question. Given that I was relying on the minister's own advice to this council in answer to my questions, will the minister undertake to provide information to the council? Clearly, her interest in mental health lasts as long as her dorothy-dixers.

The PRESIDENT: The minister will disregard that.

Members interjecting:

The PRESIDENT: Order!

SUICIDE PREVENTION

The Hon. T.J. STEPHENS (14:39): I have a supplementary question arising out of the answer with regard to drought-affected areas. Is the minister aware that doctors in the Riverland are saying that the mental health system and service delivery is an absolute joke and totally ineffective—

The PRESIDENT: Order! That is opinion; it is out of order.

MINING SECTOR

The Hon. I.K. HUNTER (14:39): My question is to the Minister for Mineral Resources Development. Will the minister provide details of any new developments in the mining sector that will particularly benefit communities in the far west of this state?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:39): I thank the honourable member for his question. I am delighted to inform him and other members that the board of Iluka Resources last month approved $420 million in capital investment in its Jacinth-Ambrosia heavy mineral sand mining project, about 200 kilometres north of Ceduna. This announcement by Iluka Resources is further evidence of how the unprecedented surge in mineral resources exploration in South Australia, encouraged by this government, can be successfully translated into new mining operations. As the then acting premier, Kevin Foley, said at the time of the announcement, Jacinth-Ambrosia is just the latest in a steady roll-call of mining projects that have been given the green light in South Australia.

When this government came to office in 2002 there were just four operating mines in the state despite the worldwide commodity boom. Six years later that number has doubled. I am delighted to say that there are many other projects in the pipeline either under construction or being assessed by Primary Industries and Resources South Australia.

The renewed confidence resource companies have to invest in this state is due in no small measure to the Rann government's very tangible support for mineral exploration through the Plan for Accelerating Exploration (PACE). Iluka's decision to go ahead with a $420 million capital investment in its Jacinth-Ambrosia project confirms that the centre of gravity of the mineral sand industry is about to undergo a major shift to South Australia.

I am also heartened by Iluka's confidence that further discoveries of mineral sands are likely to be made within its tenement holding of more than 52,000 square kilometres in the Eucla Basin. New projects, such as Jacinth-Ambrosia, and the potential for other discoveries within the Eucla Basin at Tripitaka, Dromedary and other deposits in the region, as well as mining operations already under way at Mindarie in the Murray Mallee, send a strong signal that South Australia will eventually assume the mantle from Western Australia as the country's major source of mineral sands, in particular, zircon.

Subject to the necessary regulatory approvals, Iluka plans to begin mining and shipping heavy mineral concentrate from South Australia by the end of the first quarter in 2010. The project is estimated to contribute about 3 to 5 per cent of the South Australian Strategic Plan target of increasing mineral production to $3 billion by 2014. Investment by Australian Stock Exchange-listed Iluka Resources in the mineral sands project will create up to 250 jobs during the construction phase of the project.

A large percentage of these positions are likely to be filled locally, including opportunities for indigenous workers. Iluka Resources expects to create 110 permanent jobs during the operation of the mine. This really has the capacity to do great things for the West Coast. Anyone who has been to Ceduna in the past few years cannot help but be impressed by the resurgence in the community there. I think that the fishing is still pretty good over there as well.

State government assistance through the Planning and Development Fund has upgraded the town centre, with plans to extend the redevelopment down to the jetty. Iluka expects to ship heavy sands from Ceduna, which will add even more vitality to that regional centre. The Jacinth-Ambrosia deposits are expected to produce an estimated 2.9 million tonnes of recoverable zircon during the estimated 10-year life of the mine.

Iluka expects to sustain annual production of about 300,000 tonnes of zircon from the Jacinth deposit from the first full year of operation in 2011 until 2014. As I mentioned in my opening remarks, the go-ahead for investment in the Jacinth-Ambrosia project underlines the success and foresight of this government's PACE initiative.

The funding provided through PACE has helped exceed the goal for mineral exploration spending set out in South Australia's Strategic Plan. Expenditure in mineral exploration in South Australia reached a record $331 million in 2007 which, of course, was more than triple the $100 million target set out in the Strategic Plan. This expenditure on exploration is beginning to pay dividends. Iluka's investment of almost half a billion dollars in this project follows the beginning of construction work at the $1 billion Prominent Hill copper and gold mine near Coober Pedy.

Terramin Australia is expected to begin production this month at its lead/zinc mine near Strathalbyn. The Mindarie heavy sands project has already begun to export concentrate, while Termite Resources NL, a 100 per cent owned subsidiary of IMX Resources, has been granted a mining lease for its high-grade iron ore-copper-gold project at Cairn Hill near Coober Pedy.

South Australia is about to ride a mining boom. Iluka is just the latest in what will, I expect, be a long line of successful projects in the state, projects that mean both valuable export dollars for the economy and well-paid jobs for South Australians.

ADMINISTRATIVE AND INFORMATION SERVICES DEPARTMENT

The Hon. J.A. DARLEY (14:45): I seek leave to make a brief explanation before asking the Minister for Police, representing the Treasurer, questions in relation to the dissolution of the Department for Administrative and Information Services.

Leave granted.

The Hon. J.A. DARLEY: Members will be aware that, as part of its 2006 restructure in the Public Service (and referred to in last year's budget), the government dissolved the Department for Administrative and Information Services. Employees and functions of the former department were transferred to the Department of the Premier and Cabinet, the Department of Treasury and Finance, the Department for Transport, Energy and Infrastructure, and the Attorney-General's Department. My questions to the minister are:

1. What savings did the government expect to realise by transferring the functions of DAIS to the other relevant departments I have mentioned above, exclusive of the shared services project?

2. What savings have been realised since the transfer occurred?

3. Who was responsible for ensuring that the savings were realised?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:46): I thank the honourable member for his question. I will refer it to the Treasurer in another place and bring back a response.

TASERS

The Hon. T.J. STEPHENS (14:46): I seek leave to make a brief explanation before asking the Minister for Police a question about tasers.

Leave granted.

The Hon. T.J. STEPHENS: The opposition has welcomed the news that tasers will be trialled for six months in two metropolitan local service areas and also in the Port Augusta LSA. We are delighted that these tools of modern policing will be available to officers who may have to deal with high-risk situations. I have mentioned before in this place that officers in the APY lands have remarked to me in the past that they would really appreciate being equipped with taser devices. The APY lands are an isolated area and, regrettably, small groups of police officers have been forced to confront large groups of violent people from time to time, and the last thing that they want to do is draw their firearms. I believe that including officers in the isolated APY lands in a taser trial is a logical move. My questions are:

1. Did the minister raise this issue with the Commissioner when he was informed of the new (and very welcome) taser policy?

2. What was his response?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:47): I have been discussing the issue of tasers with the Police Commissioner for quite some time now. I certainly recall having discussions with him during the past year. Indeed, the honourable member has asked questions about this issue and I congratulate him on his endeavours in pursuing it, and he well deserves the nickname of 'Taser Terry'. He has certainly been very persistent in that.

The honourable member has asked questions in the past about tasers. If he goes back over the record I think he will see that I have referred to discussions with the police. I think I indicated, not that long ago, that the Police Commissioner was considering what options he felt would be best in looking at the wider use of tasers and, of course, the Commissioner announced that last week. Obviously, the question about where they are best employed is something he has put his mind to. That is what the trials are all about—to ensure that not only the equipment meets the requirements of police but also that, with the further extension of this equipment, the guidelines for its operation can be set to ensure that the best value from tasers is given to the police.

It is important that they be deployed in the right situations. It is also important, of course, that police officers be properly trained in the use of this equipment so that, again, the best value is given. I am sure the honourable member is aware of the benefits of tasers. Undoubtedly, he has seen a demonstration of this equipment. Tasers have a number of benefits, one of which is that, in terms of detection, every time a particular cartridge is fired from one of these devices it is specifically traceable.

Unlike with firearms, where ammunition is much more difficult to trace and that has to be done forensically, with tasers the time of firing and everything else is automatically recorded in these devices. So, this equipment provides a lot of safeguards. However, the important thing is that it be deployed correctly, both for the protection of the police officer and also to minimise any harm to individuals.

However, the honourable member's question was essentially about the APY lands. Undoubtedly, that is an area where this equipment could have some benefits. I understand that, initially, apart from the local service areas the Commissioner was looking at trialling it in the Port Augusta region. That LSA is ultimately responsible for the APY lands, so I would assume that, if the equipment is effective during the trial, one of the first areas where these devices would be

extended to would be the APY lands, but that is really an operational matter for the Commissioner, so I will take that part of the question on notice and bring back a response.

SMITH, SGT M.

The Hon. B.V. FINNIGAN (14:51): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about Sgt Michele Smith.

Leave granted.

The Hon. B.V. FINNIGAN: Recently, Sgt Michele Smith from the Port Pirie local service area was recognised for her dedication to policing, particularly for her outstanding efforts in improving road safety by being named South Australia Police Officer of the Year. Will the Minister for Road Safety outline some of Sgt Smith's achievements?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:52): I thank the honourable member for his important question. Dealing with road trauma is a big part of police work, and officers in rural South Australia are all too familiar with its devastating consequences.

Working and living in Port Pirie, Sgt Michele Smith tragically has to deal with road trauma and its heartbreaking effects while in the line of duty. Commendably, after finishing work for the day, Sgt Smith regularly involves herself on a volunteer basis with various road safety initiatives. Sgt Smith has been involved in the Port Pirie Community Road Safety Group for the past two years. She has played a major role, not only in her position as Secretary organising meetings, the minutes and agendas but also in establishing the use of road safety signage and trailers to spread the vital road safety message in her community.

One of the many innovative projects Sgt Smith developed was the '30 Lives, 30 Reasons' exhibition, which toured the Mid North of South Australia during October and November last year. The exhibition was centred around remembering local people killed on local roads. It was about remembering the holes in the communities and the pain that does not go away, and acknowledging the victims as real people, not nameless statistics.

The families and friends of these people were approached to provide their stories; they also provided photographs and personal items. The exhibition was set up to evoke a typical rural environment and featured a large, handmade Quilt of Remembrance. Entwined in the quilt and placed throughout the display were 30 black road markers, which represented the lives lost—people who once were familiar faces in the district—and visitors to the exhibition had to navigate their way around these markers. The exhibition ran for four weeks, toured seven Mid North locations and was viewed by over 2,000 people.

Sgt Smith has also been involved in the Road Accident Awareness Program (RAAP) that visits schools raising awareness about the dangers of driving and about how one simple decision can have life-changing consequences. I have spoken on a number of occasions in this chamber about the RAAP program and the good work of the South Australian Metropolitan Fire Service.

Sgt Smith has also been a prime mover in organising drink drive awareness campaigns, as well as chairing a number of community-based committees, particularly in the areas of crime prevention, community support and education. A particular emphasis is on the drug and alcohol safety issues affecting local youth in the rural area around Port Pirie. She also works collaboratively with community service providers such as Country Health SA, Families SA, Drug and Alcohol Services SA, the Department of Education and Children's Services and non-government organisations. Sergeant Smith was nominated for the Police Officer of the Year award by the Port Pirie Region of Country Health SA and the Victim Support Service.

On behalf of the government and, of course, the Minister for Police, the Hon. Paul Holloway, I offer my heartfelt congratulations and thank Sgt Smith for her tireless efforts. Her dedication to improving her community, particularly in the area of road safety, is second to none and she has potentially saved countless lives in her local service area and beyond.

MONTANA METH PROJECT

The Hon. A.L. EVANS (14:56): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about television advertising.

Leave granted.

The Hon. A.L. EVANS: Honourable members may by now have seen two television ads discouraging binge drinking which were publicised by the minister on 29 May 2008. These advertisements will run over the next seven months at a cost of $600,000. Family First applauds these advertisements as an effective way of discouraging binge drinking. I was reminded on seeing these ads of how similar they are to the advertisements used on the Montana Meth Project that I have raised in this place previously. The minister said, almost a year ago to the day, on 30 May last year, in reply to my last question about the Montana Meth Project:

> I have had an opportunity to look at the Montana advertising program; it is quite compelling to watch and quite powerful. I am not sure of its suitability here in Australia, but I asked my department to look at it and assess whether it fits or is appropriate to be included as part of South Australia's education program.

In the face of the ice epidemic in Australia, and given that the minister's new binge drinking advertisements are 'quite compelling to watch and quite powerful', my question to the minister is: will she now run a South Australian version of the Montana advertising campaign to also send a compelling and powerful message to our young people to deter them from using meth?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:58): I think I have spoken on this issue on a number of occasions because it is an area that has been raised by the honourable member more than once. We have had a look at this. The Montana Meth Program commenced in September 2005 in the US and included a mass media campaign and other policy and law enforcement initiatives. The program states on its website that the methamphetamine use by young people in Montana is dramatically higher than the national average and that the state is in the top 25 per cent of states in the US in relation to the misuse of that substance.

The Montana Meth Project has the goal of reducing prevalence of first-time methamphetamine use by changing the attitudes and beliefs of young people about the risks and also the social acceptability of meth use. The Montana Meth Project aims to raise awareness about risks. The campaign message is 'Meth—not even once'. It is not clear whether this campaign has directly impacted the prevalence of methamphetamine use in Montana. The 2007 Montana Meth Use and Attitudes Survey Report states:

> Usage appears to be neither higher nor lower than in past surveys.

However, the survey does indicate changes in perceptions of risk associated with methamphetamine use by young adults and parents.

Obviously in terms of the policy initiatives, particularly concerning advertising campaigns that are very costly, we very much try to focus on evidence-based programs and those that can be evaluated, where possible, as actually being effective. The Montana campaign was not designed to deal with the circumstances surrounding methamphetamine use in Australia or with consideration of Australia's National Drug Strategy.

The Montana rates of methamphetamine use differ from South Australian rates. In 2005, the Montana Youth Risk Behaviour Survey found that 8.3 per cent of Montana high school students had used methamphetamine, whereas in the 2005 Australian secondary school students survey in South Australia it was reported that the figure was 4.5 per cent of students, so it is roughly half that reported in Montana. SA rates are not significantly different from those around Australia as a whole, and this is in contrast to Montana. As the program states, the usage rates of methamphetamine amongst young people in Montana are much higher than the national average rates.

For social marketing campaigns to be effective they must be tailored to suit the audience. The Australian government focus-tested two of the advertisements for the Montana Meth Project as part of the development of the current phase of the National Illicit Drug Campaign and, according to those focus tests conducted here, the materials were considered to be attention-grabbing—as I stated when I first watched them; they are certainly compelling viewing—but they were also found to be lacking in credibility, particularly with high risk groups. In fact, when they were focus-tested here in Australia, they did not resonate with the group we would obviously be targeting.

The third stage of the Australian National Drugs Campaign which aims to prevent young people using illicit drugs was launched in August 2007, and the campaign includes a new methamphetamine commercial called 'Don't let ice destroy you.' It features a clinician in an emergency department treating someone suffering from psychosis caused by using a form of methamphetamine or ice.

I know that the member, as I did, found the Montana message to be very compelling and very dramatic, but when it was tested here for the Australian cultural climate, if you like, it did not resonate, so it is unlikely that we would proceed with a similar advertisement. Obviously we are focus-testing messages that resonate with our high risk groups. The campaign's advertising will run in print media, television and online.

APY LANDS

The Hon. R.D. LAWSON (15:03): I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Aboriginal Affairs, a question on the subject of entry onto the APY lands.

Leave granted.

The Hon. R.D. LAWSON: I refer to the deeply disturbing news that a member of the staff of the Premier's department has been entering the APY lands, despite the fact that her entry permit to do so has expired. When the Premier abolished the Department for Aboriginal Affairs and moved that department's responsibilities into his own department and appointed Ms Jos Mazel as his executive director (thereby displacing the respected Peter Buckskin from office), concern was expressed on the lands about the attendance of public servants thereon.

The practice under this government and preceding governments has always been that public servants obtain the relevant entry permit from the APY executive when attending the lands. Now it appears that the duly-elected executive of the Anangu Pitjantjatjara has not renewed Ms Mazel's permit, and yet she is still attending on the lands, contrary to the wishes of the duly-elected body.

In an interview yesterday with ABC Radio, the Premier said, 'The law is very clear: public servants don't need a permit.' In fact, section 18 of the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act provides that persons who are public servants entering the land for the purpose of carrying out functions assigned to a minister or instrumentality of the Crown, or an administrative unit of the Public Service, must have the written authority of their minister to do so. My questions are:

1. Is it a fact that Ms Mazel does not hold, or did not hold at the time she was entering the lands, a written authority from the minister appointing her?

2. If she did hold such a permit, why did she not disclose that fact to the APY executive?

3. Has the government now abandoned the practice followed for many years that public servants attending on the lands would do so in compliance with not only the spirit but also the letter of the land rights act?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:06): I will refer the honourable member's question to the Minister for Aboriginal Affairs in the other place. I am certain that he will provide a response in relation to the circumstances that led to the visit without a permit, if that was actually the case.

WORLD ENVIRONMENT DAY

The Hon. R.P. WORTLEY (15:06): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about World Environment Day.

Leave granted.

The Hon. R.P. WORTLEY: World Environment Day is an important global reminder of the need to think globally and act locally in relation to the environment. While the need for environmental action has risen to great prominence within the public consciousness, is it still the responsibility of governments to show leadership on this issue? My question is: will the minister inform the council on what this government has prepared for World Environment Day 2008?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:07): I thank the honourable member for his question and his ongoing interest in this area. I could say a great deal in response; however, I will try to contain my comments and be brief, as I am mindful of the time.

I am pleased to inform the chamber that a wide range of activities is taking place today to help teach South Australians about the small things that can be done to help save the environment. World Environment Day is celebrated in about 100 countries, and the theme this year is 'Kick the carbon habit.' It is really a chance for South Australia to show its credentials in this area, given that we are leading the nation in addressing climate change.

Our official program began last night, with noted environmentalist Terri Irwin joining staff from the Department for Environment and Heritage at the Ridley Centre for the latest 'Stirring the Possum' forum. The event went extremely well, with hundreds of people attending, and I was lucky enough to be amongst them. It is clear that environmental action is proving to be more popular by the day, and Terri Irwin is a very inspirational speaker.

Those members lucky enough to get some fresh air before today's sitting may have noticed that Rundle Mall is already abuzz with World Environment Day activities, including an interactive science laboratory and a native plant display. The fun-filled display is designed to educate South Australians, young and old, about Australia's original vegetation and native fauna and how they can take this knowledge home and create an environment that is welcoming for local birds and the like.

Of course, many of the great initiatives that come to the fore on World Environment Day are ongoing. In fact, this government leads the nation in many ways in relation to environmental policy. We have set ironclad targets on biodiversity preservation through South Australia's Strategic Plan and other strategies.

This government is protecting more remnant vegetation and proclaiming more parks and reserves than ever before. Not only are we creating five biodiversity corridors through the NatureLinks program that will link remnant vegetation and native fauna across the state, but we are also creating an urban forest of three million trees. The halfway mark was reached on Tuesday, with the assistance of Terri Irwin.

Not only are we working to offset carbon emissions with programs like the three million trees, but we are also reducing our emissions, with government fleet cars moving towards more environmentally friendly fuel options, whilst simultaneously leading the way by investigating renewable energy, including solar and geothermal. We are also leaders in recycling, a major greenhouse gas saver through both kerbside and container collection; and our carbon neutral cabinet plan, announced by the Premier in January, will see this government become the first carbon neutral ministry in the nation, with all our official travel offset with the purchase of carbon credits.

WORLD ENVIRONMENT DAY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:11): I do apologise for putting this supplementary question to the chamber, but did the minister take Bindi Irwin down to the Mount Bold Reservoir to see the flora and fauna that will be flooded and lost to South Australia when the reservoir is extended?

Members interjecting:

An honourable member: No answer.

The PRESIDENT: The Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: What is the minister doing to protect the flora and fauna in the Mount Bold Reservoir area that will be flooded once the reservoir is expanded—

The PRESIDENT: Order! Opinion.

The Hon. D.W. RIDGWAY: —extended on World Environment Day? I would like an answer, Mr President.

The PRESIDENT: The minister will avoid the opinion in the question.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:11): I have already gone on the record in terms of talking about native vegetation and both fauna and flora in the Mount Bold area in the past, so all of that is already on the record. There has been no decision in terms of increasing the reservoir capacity in that area as yet. As the honourable member well and truly knows, there is a very extensive and thorough planning process that would need to be gone through if that reservoir capacity was to be expanded.

That includes an environmental impact statement that assesses the value of what is there, and the potential impact that any expansion of the reservoir capacity would have on that environment. There is a statutory public consultation period, so everyone will get to see the facts and figures and have an opportunity to input. It would be completely irrelevant to take someone to look at that when, in fact, no decision has been made.

MARBLE HILL

The Hon. M. PARNELL (15:13): I seek leave to wish the Minister for Environment and Conservation a happy World Environment Day and to make a brief explanation before asking her a question about Marble Hill.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. M. PARNELL: I am being distracted by people suggesting I should not ask this question, but it is an important issue. Last Tuesday 3 June, the minister made a ministerial statement regarding Marble Hill. In this statement the minister referred to signing a heads of agreement with Dr Patricia Bishop and Mr Edwin Michell regarding their intention to purchase Marble Hill. The minister stated that '...they have agreed to guarantee public access to the site on at least seven days a year, and construct a small museum as part of the restoration.' The minister also referred to the newsletter of the National Trust of South Australia, and quoted the trust as stating:

> ...there are two fundamental objectives in relation to Marble Hill. These are to ensure that the building and its grounds are properly conserved and that the house remains accessible to the public.

My question to the minister is: will this guaranteed public access to the site include access to the restored house or will access be restricted to the grounds and museum only?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:15): I thank the honourable member for his question and for his interest in this very important heritage site. As we know, the site—once used as the governor's summer residence—was damaged by fires almost 50 years ago. Most unfortunately, it has lain in ruin since then and there has been a steady and gradual deterioration due to the elements as well as to vandals. So, as environment minister, I was very pleased to be part of at least the preliminary agreement. The sale has not yet been finalised but a heads of agreement has been signed, so there is a preliminary commitment, if you like, by the government and by the proponents to completely restore this very important historical site.

The proponents have committed to a range of conditions, including access to the site for seven days a year, and a commitment to its historical restoration that includes input from a heritage architect as well as DEH so that we can ensure any development of the site is closely monitored and supervised. It also includes a condition that the site not be subdivided, so the house and its magnificent grounds will remain in perpetuity—and, of course, the grounds are essential to the whole feel and value of the house so it would have been a real shame to lose any of the surrounding land and gardens. These conditions will be set into the title of the land so that they are passed down in perpetuity, providing a certain assurance to South Australians.

Although some general commitments have been agreed to, the next step is an independent valuation of the site, and we need to wait for the design plans to be developed by the proponents. The exact details of where access will be have not yet been signed off, but I reassure members that the commitment of the proponents, Mr Michell and Dr Bishop, is very deep and genuine. They see it as a civic responsibility to restore the building and that, rather than a commercial focus, is their main driving force. They are very keen to restore the building and be able to show it off to the general public. They are also committed to building a small museum.

I am quite confident that they will be looking at every opportunity possible to showcase the house, the museum and the grounds to the general public.

MARBLE HILL

The Hon. M. PARNELL (15:20): I have a supplementary question. In response to the minister's answer that the detail in relation to access has not yet been signed off, will the minister ensure that the public will have access to the restored house?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:20): I have already responded to that, and that is that we will wait to see the details of the plans before proceeding further.

MARBLE HILL

The Hon. SANDRA KANCK (15:20): I have a further supplementary question. In determining the future of Marble Hill, did the minister and her department consider retention of Marble Hill as an authentic heritage ruin, as compared to complete restoration; and, if it was considered, why was maintaining it as a ruin not considered?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:22): The government did not have a dedicated or prescribed view of the future for that particular site. We were aware that it had lain in ruin for many years—50 years or so—and that it was in a very poor state and had been continually deteriorating over the years. We were also aware that the cost of even comprehensively maintaining the site was exorbitant, and we know that the site, as I said, over those 50 years has slowly deteriorated not only in terms of the elements but also through vandalism.

We went through a process of asking for expressions of interest from the general public and opening the door to any ideas, views and initiatives that the public might have for the future of that site. We put quite limited caveats on that expression of interest. I cannot remember all of them, but it included maintaining the integrity of the heritage values of the site and, I think, public access as well. As I said, I cannot remember the details of those caveats but there were a couple of quite general ones.

So we threw that open to the public and were prepared to consider a wide range of views from partnerships or any ideas that anyone was prepared to put forward. We were prepared at least to look at them. Although a number of people took away documents of expression of interest, we received only one application in terms of the expression of interest, and that is the one before us.

It was a proposition that more than met our aspirations. We were extremely pleased and delighted to have a response from two people committed to heritage restoration, and they have a strong track record in past initiatives and a deep public commitment and sense of public service to the South Australian community in terms of being prepared to invest huge amounts of money. These are very expensive operations and they are prepared to commit to that financially. As I said, the decision has not been finalised yet but we are hoping it will proceed to finalisation.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 3196.)

Clause 69.

The Hon. P. HOLLOWAY: I have some information for the committee. The Hon. Mark Parnell raised some issues yesterday and this morning, as did the Hon Ms Bressington. During the course of debate on this bill I indicated to certain members that I would obtain information and advise the committee accordingly. The Hon. Ann Bressington asked about legal costs incurred by WorkCover, and there was a specific focus on disputes around rehabilitation. I am advised that total legal costs for 2006-07 were of the order of $10.7 million, a reduction from the 2005-06 cost of around $14.4 million. I am further advised that in terms of dispute numbers rehabilitation-related disputes account for approximately 3 per cent of total disputes.

Secondly, on the issue of loss of earning capacity, the Hon. Mark Parnell asked when the use of the loss of earning capacity assessment ceased. I advised the committee that it was around 1996 or 1997, but I have been advised that it was in fact 1996. At the time, in consultation with the then minister (Hon. Graham Ingerson) WorkCover issued a policy directive to its agents that those provisions no longer be used, except for claims already paid by that method.

I am advised that self-insurers must notify WorkCover of an intention to make a LOEC assessment, and WorkCover has the power to direct them on how to do so and, consistent with the approach taken by WorkCover, self-insurers are not using the provisions. As to property damage costs, the Hon. Mark Parnell asked a question about claims for property damage. I am advised that the payments made in regard to claims for property damage under section 34 appear to be very

small. In the limited time available, a report has been run against the specific section 34 cost code in the WorkCover database. In the financial year ending 30 June 2007, costs amounted to around $1,150; for financial year 2006 around $2,560; and, for year ending June 2005, about $4,000.

The Hon. Mr Parnell asked about the contribution self-insurers make to the funding allocated to SafeWork SA. I am advised that self-insurers contribute to the funding provided to SafeWork SA by WorkCover, given that this is considered to be an administrative cost under section 68(7)(a). The Hon. Mark Parnell inquired about redemption activity, and I advised that there had been a rise in redemption numbers in the June 2006 quarter. I undertook to advise the committee of redemption numbers for the past several financial years, and I seek leave to insert in *Hansard* a statistical table outlining those redemption numbers.

Leave granted.

WorkCover date: Redemption numbers by financial year to 30 June 2007

Financial Year	Number of redemptions
1995-96	1,897
1996-97	2,224
1997-98	1,168
1998-99	1,277
1999-2000	923
2000-01	779
2001-02	830
2002-03	1,113
2003-04	505
2004-05	864
2005-06	1,436
2006-07	431

The Hon. P. HOLLOWAY: Members will see from the data that redemption numbers fluctuate over time and, as I advised the committee last night, there was an increase in activity in the financial year ending 30 June 2006.

Clause passed.

New clause 69A.

The Hon. M. PARNELL: I move:

Page 55, after line 3—Insert:

69A—Amendment of section 97B—Powers of Tribunal on application

Section 97B—after subsection (1) insert:

(1a) If—

(a) a worker applies to the tribunal for expedited determination of claim; and

(b) the medical evidence before the relevant compensating authority supports the claim; and

(c) the relevant compensating authority does not, within 5 business days after being served with notice of the application, seek additional medical evidence in relation to the matter; and

(d) the tribunal is satisfied that there appears to be no other reasonable grounds to dispute the worker's entitlement in relation to the claim,

the tribunal must decide the matter in favour of the worker.

This amendment tries to address the enormous difficulties faced by injured workers due to major delays by WorkCover and exempt employers in dealing with the valid issues that they raise. There are far too many stories of atrocious and unjustifiable delays by WorkCover—probably due to the very serious under-staffing of case managers—to ignore them. As I understand it, a major issue in terms of EML and delays is the extreme level of staff turnover in terms of case managers because, with such extremely high staff turnover, you cannot hang on to experienced staff who one would hope can deal with things quicker than the inexperienced staff.

As I understand it, in many cases—maybe even the majority—WorkCover will simply not accept the views of workers' doctors and will require reports from WorkCover-selected doctors before making a decision. While I think this is an unfortunate approach, provided WorkCover gets on with it and requests such things quickly, this can probably be tolerated. But what I do not think we should tolerate is the common situation where, even when the worker goes to the Workers Compensation Tribunal about the failure of WorkCover to take action, it still does nothing until a day or so leading up to the hearing. That is the common story told to me by advocates for injured workers.

The common scenario is that a claim is made but nothing is done. The worker finally goes to the tribunal to force some action and the matter is listed for a time about two weeks later and, a day or two before the hearing is listed, the worker's lawyer gets a call from WorkCover saying that it will now make a medical appointment to get a second opinion. I do not think that is good enough. WorkCover goes on and on about the need to deal with these matters quickly, but the fact is that it does not. If WorkCover says that it is taking swift action on these matters then it has nothing to fear from this amendment, which I commend to the committee.

The Hon. P. HOLLOWAY: The government opposes this amendment as it believes that the current Part 6B of the Workers Rehabilitation and Compensation Act is a sufficient avenue of redress to injured workers. There is no substantial evidence that existing powers to seek an expedited decision has failed injured workers. The current provisions are also a balance in that they offer the same avenue of redress to workers and employers. If the proposed subsection was supported, there is no clear reason why the same power could not be granted to employers.

Importantly, the government has taken steps to significantly reduce the focus on determining and disputing liability through the introduction of provisional liability. This will allow the payment on claims to commence within seven days without needing to await claim determination. This is a further indication that this amendment is unnecessary.

New clause negatived.

Clause 70.

The Hon. M. PARNELL: I move:

Page 55, after line 24—Insert:

(5a) On completion of the processes under subsections (3) and (4), the minister must provide the name and details of any person under consideration for appointment by the Governor under subsection (2) to—

(a) the United Trades and Labor Council; and

(b) South Australian Employers' Chamber of Commerce and Industry Inc.,

and either of those bodies may, within 4 weeks after receiving the name and details, object to the person being recommended to the Governor.

(5b) If the minister receives an objection within the period contemplated by subsection (5a), the minister must consult with the body making the objection and if after consultation the body still maintains its objection and the minister proceeds to make the recommendation, the minister must cause a report on the matter to be prepared and have copies of the report laid before both houses of parliament.

I made the point late last night—and I think I made it again first thing this morning—that, of all the issues of importance in this bill, this was one of the big ones. This is the issue of medical panels. There is no doubt that the very large number of amendments has filled the government with dread. I do propose to move these amendments, but I will test the will of the committee on a couple of occasions. There are dozens and dozens, but I will concertina them. I do want to put some things on the record and ask some questions, because this is a key part of the bill. It is the part of the bill on which the legal profession has been the most vocal—as have other advocates for injured workers—because they can see built in to this medical panel system a great deal of unfairness.

This is one of the worst clauses in the entire bill. This clause is insidious, because it denies workers a fair go and cuts their benefits by stealth. The medical panel provision is a recipe for bad decisions, it is a recipe for wrong decisions and it is a recipe for injustice. The clause creates a star chamber, where injured workers are paraded in front of three to five doctors with no right to have a support person with them, no right to representation and no record of what takes place.

Under the bill, panels of doctors will make binding, final and conclusive decisions not only on genuine medical matters but also on legal and factual matters for which they have no

qualifications or expertise to decide. In practice, workers will have to meet a far higher standard of proof than is legally required, as doctors are trained to use and think in a medical standard of proof (which may be considered something more like a 99 per cent probability) as opposed to a civil legal standard (which is simply more likely than not).

In practice, workers will have little or no ability to challenge decisions that are wrong and unjust. Workers who are inarticulate or intimidated by formal examinations by a panel of up to five doctors are likely to be severely disadvantaged, as most likely they will not have anyone to speak on their behalf and they may not understand or even be able to articulate what is important. Some doctors have expectations about the levels of pain that workers should endure that are inappropriate, or an inadequate understanding of what is involved in manual work, and ill-informed and inappropriate views about those issues will lead to disastrous results for many workers.

Doctors are not trained or experienced in finding facts where there are disputes about facts. Doctors are not trained as decision makers or experienced in dealing with competing claims. There will be serious miscarriages of justice. There is no evidence that the Workers Compensation Tribunal is doing a bad job. We expect that for many injured workers their experience of medical panels will be very much like a star chamber.

The WorkCover proposal argued for medical panels on the basis that doctors, not judges, should make medical decisions and that medical panels would be quicker and more efficient. It is true that at present judges have to choose between competing medical opinions. However, in so doing, judges often have regard to the accuracy of the factual premises underlying doctors' opinions, a doctor's relative experience in the relevant area and a range of other factors.

Critically, decision-making on these issues by judges is completely transparent. The ludicrous definition of what is to be a medical question in the bill makes it clear that doctors will be deciding whether workers have the skills, qualifications and experience to operate highly specialised equipment, for example, in the mining industry. There is no good reason for defining questions, such as questions about what is suitable, as medical questions.

The efficiency claims by WorkCover are flawed or wrong for at least two reasons. First, to the extent that quicker outcomes are delivered, it will be very much a cheap and nasty system that puts more value on cheap and quick outcomes than correct and transparent outcomes. Secondly, to a very large extent, I understand that the existing level of disputation about medical issues is due to the decision by compensating authorities to seek opinions from doctors who are almost certain to generate disputes due to the predictable nature of the opinions they give.

The bill does not allow appeals from medical panels on the merits. Only appeals that show that the process was so badly flawed that the decision must be remade are allowed. Whilst it is not dealt with in the bill or in any of the published supporting material, it appears that the limited process appeal from decisions of medical panels will be to the Supreme Court using the ancient common law remedy of prerogative writs.

It almost goes without saying that Supreme Court litigation is expensive. It will deny workers access to justice and, in practical terms, will mean that medical panels can operate very much as a law unto themselves, with reviews of their decisions most likely occurring when employers or compensating authorities are dissatisfied, and that will, over time, develop a body of law that cracks down on decision-making against employers' interests but gives medical panels almost free rein to make decisions against workers' interests.

Under the system, it will be almost impossible for lay advocates, such as union workers and compensation officers, to represent injured workers in appeals against medical panel decisions.

There are no filing fees at present for any applications or appeals within the Workers Compensation Tribunal. The filing fee for the limited process appeal against a medical panel decision appears to be $1,075, which I expect will be a major barrier for injured workers seeking access to justice but not any substantial impediment to compensating authorities. It appears that, unlike the courts and the Industrial Relations Commission, whose rules may be disallowed by parliament, there is no parliamentary supervision of the way in which medical panels operate, which is governed by ministerial guidelines and directions from the convenor of medical panels.

The bill defines a medical question that may be compulsorily referred to a medical panel in an absurdly broad way which means that, inevitably, doctors will have to make decisions about facts where there are disputes about what happened, what a particular job involved, and so on. They will also have to make decisions about what the law is. They will have to engage in

speculation about what may happen in the future. They will have to decide what reasonable obligations on workers are in rehabilitation plans.

Whilst there are many doctors to which the following comment does not apply, there are likely to be some doctors who have very little or no insight into the experience of injured workers. Some may say the same of judges. At least when a court makes a decision on these matters injured workers can have someone speak on their behalf and, if the court gets it wrong, the worker can appeal on the merits.

I understand that some employers and, certainly, some employer advocates are also very concerned about this proposal as they believe that it will result in very poor quality decision making. Unless the medical panel orders otherwise, any worker called before a medical panel must appear in private, without anyone else there to support or represent them. I am told that doctors preferred by compensating authorities are extremely resistant to having anyone attend with workers that they are to examine, and I would expect that practice to continue under the medical panel system.

Even if support people were allowed, without an advocate to make sure that the right questions are asked there can be no confidence in a fair outcome. As I understand it, there will be no record of any proceedings or examination, whether by video or transcript, available to the worker to allow them to establish that what they said was not properly taken account of. The decision making of medical panels will be placed under a cloak of secrecy, largely denying workers the ability to overturn wrong decisions. If the very limited procedural appeal right is used, no member of the medical panel or any consultant they choose to use can be compelled to give any evidence about how or why they came to their opinion.

So, under this bill, when a person is hit by a car and there is a dispute about the compensation they should receive because they were hurt as a result of reckless driving, it is okay to have doctors give evidence to a court to have the judge make the decision and to have the proper appeal rights but it is not okay if a person is hurt by a negligent employer. So, once again, this government has double standards, and those double standards mean making injured workers second-class citizens.

The government likes to say that it is tough on law and order. The fact is that it is much tougher on injured workers than it is on criminals. But where there is no question that a person has done the act of committing a crime but they say they are not mentally fit to stand trial, is it a medical panel that decides whether or not that is right? Of course not. It is a judge who makes those decisions. They hear evidence from medical experts and make decisions. If they get it wrong, there can be an appeal. The bill takes that away from injured workers. It forces a more arbitrary and unfair and less transparent system on injured workers than criminals have to deal with.

The bill sends a clear message that the government wants a tougher system to apply to injured workers than applies to criminals, and that is the type of double standard of this medical panel proposal. That is why the SDA, the ETU, the AMWU and the FSU were so critical of the panels. They said, in a submission that most members would have received, that this proposal should be scrapped. They raised all the issues that I have raised before in my summary.

The Law Society has also been very vocal in relation to panels. It said:

> The proposed introduction of medical panels is a matter of considerable concern. The Law Society has taken a strong position opposing the introduction of panels. The principal reason for this is that the definition of 'medical question' is so broad. The fact that they are used elsewhere in Australia does not legitimise them if there are cogent reasons why they should not be adopted.
>
> While the Law Society acknowledges that medical practitioners are best placed to determine medical matters—that is what they are trained for—we do not accept that medical practitioners are in a better position 'to determine the medical matters of a claim' than trained judicial officers. Two points can be made on this: first, we are dealing with a specialist jurisdiction containing judicial officers who have had many years experience in dealing with medico-legal claims and disputes. Their training and experience has been focused on analysing and resolving disputes. We are here assuming that the first instance hearings will take place before deputy presidents rather than arbitrators. The second point, which is perhaps more important, is definitional: what is meant by a medical question?

In fact, the Law Society's submission goes on to deal with the material that I spoke about before. I will not read all of the Law Society's lengthy submission, but it does go to show the breadth of opposition to these provisions. The Law Society's submission, as well as raising the question of medical issues and the appropriateness of medical panels to resolve them, also goes into some length about the absence of appeal rights. It states that the establishment of these medical panels amounts to a derogation of the powers of the tribunal. It also shows, in its view, a lack of confidence in the tribunal. It states:

This lack of confidence is not shared by lawyers who practise on both sides of the personal injury fence. Indeed, this conclusion appears to be reinforced through the removal of the first instance hearings from the deputy presidents to, in the main, non-legally qualified arbitrators.

I wanted to put the information on the record, but I have a couple for questions of the minister about medical panels. I understand that these panels are modelled on the Victorian provisions; however, I understand that those provisions have been amended and modified on a number of occasions largely because of the problems that have occurred with that system. Can the minister inform the committee whether the model used was, in fact, the latest model, or was it the original model?

The Hon. P. HOLLOWAY: My advice is that the board made a recommendation at the end of 2006 (in about November) and, further, Mr Clayton made a recommendation in his report. Clause 70, which relates to medical panels, has far more amendments, I think, than any other clause in this bill; I think there are 37, and then there are another 34 to part 6D. I will make some general comments in relation to this clause, and that might save me repeating myself later on.

Obviously, the Hon. Mark Parnell and some other members are opposed to the provisions. Many of the 40-odd amendments seek to either virtually negate the provisions in clause 70, or at least strongly, to varying degrees, qualify them. As I said, if I speak once perhaps it will save me repeating myself on the numerous amendments we have.

The introduction of medical panels in the South Australian scheme would enable disputes over medical matters to be decided by medical experts not by non-medically trained arbitrators or members of the judiciary as currently exists. They would also improve the quality and speed of decision-making, thus improving return to work and claims management outcomes. Medical panels are used by and are proven effective in other jurisdictions, and various interstate medical decision-making arrangements have been examined in the context of the potential for medical panels in South Australia. There is a belief that they will generate conditions under which these key improvement areas are more likely to be achieved, rather than having an immediate and tangible outcome in the short term; improve return-to-work and claims management outcomes, and improve the experience of injured workers and employers.

Based on the experience of other jurisdictions, efficiently managed medical panels are likely to contribute to improved quality of decision-making; final and binding decisions not subject to review on medical grounds; improved speed of decision-making; and change in behaviour and culture. In conjunction with other proposed changes, these improvement areas are likely to be central to the achievement of scheme outcomes, particularly improving return-to-work rates and getting injured workers back to work sooner. In the longer term, the effective functioning of medical panels would contribute to the achievement of the principal objectives outlined above.

I also have some comments taken from the Clayton report. One recommendation was that medical panels be introduced embodying the combination of structures and approaches drawn from the Victorian and Queensland models in the manner outlined in the WorkCover Corporation proposals. Clayton also recommended that, in its consultation process, the review take soundings from representatives of the Australian Medical Association and prominent practitioners from a number of specialties on this issue.

The response was generally positive; namely, that there was, in fact, over most relevant specialties, such a critical mass of practitioners of the requisite calibre and stamp that would allow, with reasonable confidence, a move to establish medical panels in the South Australian system. Mr Clayton also stated in his report:

Critical to the successful operation of medical panels are issues of leadership and resourcing. It is widely recognised that one of the key features for the success of the Victorian medical panels and the high level of general support that it enjoys across the spectrum of workers compensation stakeholders is the quality leadership at the convenor and deputy convenor level and in key support roles, such as that of medical adviser. It cannot be emphasised strongly enough that if South Australia proceeds to introduce medical panels, the quality of the senior leadership, particularly the convenor and the choice of senior support staff, is absolutely critical.

The government supports that in line with those recommendations and comments. As I say, we oppose all the amendments which, in varying ways, seek to either totally negate the effect of clause 70 or else water it down in other ways. Hopefully, I will not have to repeat those comments when we discuss that large number of amendments.

The Hon. M. PARNELL: In relation to being able to fill positions on these medical panels, will the minister advise whether the government, WorkCover or Employers Mutual have had any

communications with medical practitioners seeking indications of whether they would be interested in being appointed to these panels?

The Hon. P. HOLLOWAY: In Mr Clayton's report, he commented in his consultation process that the review take soundings from representatives of the AMA and prominent practitioners from a number of specialties. The response was generally positive; namely, that there was, in fact, over most relevant specialties such a critical mass of practitioners of the requisite calibre and stamp that would allow, with reasonable confidence, a move to establish medical panels in the South Australian system. Mr Clayton really did that work in his report.

The Hon. M. PARNELL: Will the minister provide information about the advice that I have received, that is, that Employers Mutual Ltd has had discussions with Sydney-based doctors about flying them in for week-long bookings to sit on these medical panels?

The Hon. P. HOLLOWAY: The medical panels will be appointed by the Governor, and that, of course, means cabinet; and they will be independent of both WorkCover and EML.

The Hon. R.D. LAWSON: At this stage, I might indicate that, whilst Liberal Party members will not be supporting the deletion of the medical panel system from the legislation, it ought be recorded that this is an issue upon which we have had some considerable reserve. But, as the minister has pointed out, Mr Clayton, in his report, recommended the introduction of medical panels, and the government has embraced that aspect of the recommendations as part—and a very important part—of its plan to rectify the woes of WorkCover. I think it is worth putting on the record some of Mr Clayton's comments in relation to medical panels. At page 134 of his report, Mr Clayton said:

> A significant proportion of disputes in the South Australian Workers Compensation Scheme involve medical questions, and such disputes can often become protracted with significant delays. The absence of an avenue for a definitive ruling on medical matters compounds this situation of disputation and delay. The use of independent medical examinations in this existing scheme, while not generating significant costs in the overall scheme claims expenditure, does generate delay and disputes through the variation in medical opinions on the same injury or illness condition. This is particularly a concern in relation to independent medical examinations' opinions relating to the assessment of permanent disability.

Mr Clayton said, at page 136:

> One of the features that is quite embedded in much personal injury litigation and disputation is that of the 'duelling docs'. This is the phenomenon of medical experts that present highly divergent views, on matters such as the work-related causation or symptomatology of a particular injury or condition, that are deliberately sourced by each side of a dispute from practitioners with known and predictable positions. The review supports the establishment of medical panels as a means of focusing decision-making on medical issues at a more evidence-based level and limiting the negative impact, in both social and economic terms, of a plethora of unproductive medical reports.

Any legal practitioner who has had any experience at all in personal injury and work injury litigation will know the truth of that observation—the fact that tribunals are presented with two medical opinions and a lawyer is asked to judge which of those medical opinions is the one which is most appropriate.

Anyone who has had any experience in this field will know the truth of Mr Clayton's observation that medical reports are sourced by the injured worker from particular medical practitioners who are sympathetic to workers and injured persons, and insurers source medical reports from medical practitioners who are known to be less sympathetic to the position of injured persons. That phenomenon has been around for a very long time and has often been commented on by judges at the highest possible level.

What this scheme seeks to do is have the medical questions resolved by the medicos rather than have medical opinions being judged by lawyers. I would have thought that in any sort of logical system that is fair enough. Obviously, one of the difficulties is the wisdom of the particular medical practitioner who is offering the position.

These medical panels that are to be established will work, or will not work, depending upon the quality of the persons who are appointed to them. The Hon. Mr Parnell presents the most pessimistic view: that they are not competent, that they represent merely a cheap and nasty solution, that doctors do not have the capacity to assess evidence and that they do not have the capacity, for example, to decide what is suitable work for a worker.

At the moment, they are the people who are making those recommendations. They put in their reports what they say is suitable and, ultimately, it is a lawyer—admittedly, an experienced lawyer, a good finder of fact—who makes the choice between those things. There is no doubt that

in South Australia, according to the figures, we have a large number of disputed claims—for example, I think about two-thirds of the number of disputes that they have in New South Wales, which is a jurisdiction which has five times the number of claims. WorkCover, supported by Mr Clayton, says that these medical panels will reduce disputation. If disputation is reduced, it will certainly reduce costs. It will certainly mean that disputes are resolved more quickly. While we are not entirely happy with this solution, our position is that it ought to be given a trial. As Mr Clayton said at page 134, paragraph 4.13.2:

> Medical panels, under a variety of nomenclature, exist in various forms in a number of Australian schemes. Thus there are Medical Assessment Tribunals in Queensland, Medical Panels in Victoria and Tasmania—

although it is said that in the latter case they are rarely used—

> Medical Assessment Panels and Industrial Diseases Medical Panels in Western Australia and Approved Medical Specialists and Medical Appeal Panels in New South Wales.

Comment is made that the longest standing use of medical panels is in Queensland, extending back to 1955.

Material has already been placed on the record in relation to this debate in reference to Victoria. It is undoubtedly true that in Victoria the establishment of medical panels in the initial phase led to a large number of disputes in the courts as to their effect. It is interesting to see that the Law Society has opposed—and I suppose one should say not surprisingly—the introduction of medical panels. The Law Council of Australia was enlisted in this exercise and it has provided members with a submission dated 13 May this year. It is quite an extensive submission, I would think written by somebody with experience in Victoria.

The best case that the Law Council of Australia was able to present, which was a good example under the heading 'Real impact of workers', was where a woman was injured at work resulting in her having to have a hysterectomy. She has ongoing psychiatric problems—obviously, a very serious and sad case. The medical panel in Victoria was asked to determine the degree of impairment she suffered and the question was whether or not she had suffered a 'total or total loss of use of her sexual organs'. The medical panel reached the conclusion, which I would have thought was fairly common sense notwithstanding my limited anatomical knowledge, that she had not suffered a total loss of the use of her sexual organs. She had not suffered that. However, there was an appeal and the Supreme Court of Victoria found that, as a matter of law, she had.

The real question being asked of the medical panel was the medical question of whether she had suffered a real loss. Lawyers came to a different conclusion as a matter of law. That does not seem to me to be a case which illustrates the inappropriateness of the use of medical panels. Certainly they reached a different conclusion, but I would have thought that it was a reasonable medical conclusion to reach on a medical subject.

The government has also, it appears to me, accepted the submission of Business SA in relation to this matter when it asked, in a submission in January last year, for the use of medical panels in certain circumstances. It spoke of the fact that some 21 per cent of all disputes are section 41 disputes. Its submission states:

> The dispute resolution process encourages the parties to engage in doctor-shopping for a favourable medical opinion. In almost all cases, medical experts commissioned by the worker and the compensating authority provide assessments on the extent of a worker's permanent residual disability that represents the high or the low end in quantitative terms respectively. The dispute resolution process is such that workers really have nothing to lose by disputing the compensating authority's assessment of residual disability in the hope of negotiating a higher assessment and consequently a higher payment.

The submission concludes: 'The process of obtaining a binding assessment could be reduced by the use of medical panels.' In short, we believe that a trial of the use of medical panels is appropriate. The situation of WorkCover is so dire (and has become so dire by reason of the inactivity of this government) that remarkable measures should be taken. This is one of the remarkable measures.

If it does not work and if the predictions of the Law Society and the Law Council and the unions in relation to this turn out to be correct, there will be an opportunity at some time in the future, I am sure, to overcome the problem either by alterations or reversing this decision.

Another ground of our scepticism in relation to medical panels is the difficulty of actually finding appropriately qualified medical practitioners who are prepared to undertake this task. We are glad to see that, in this bill, the government has adopted a Queensland method of selecting panels which involves the use of experts rather than simply having a minister make a selection. As

I mentioned earlier, the critical element in this whole new scheme will be the quality of the people appointed to the panels.

I have one question for the minister in relation to this: does the government have any estimate of the time it will take to establish panels and when they will begin operation?

The Hon. P. HOLLOWAY: Based on discussions with other jurisdictions around the country, suggestions are that it will take about 12 months to establish these panels—that is, 12 months from the start of planning.

The Hon. SANDRA KANCK: My position on medical panels, I suppose, has been a little ambivalent. I think I mentioned in my second reading speech an example that I was given of a person going to 16 different doctors, so the issue of doctor-shopping would appear to be a problem, although I am not certain what percentage of workers take on that practice. What I am clear on is that the huge bulk of injured workers are genuine and, obviously, they are seeking the best outcome.

It is very clear that not all doctors want to be involved in WorkCover. Just today, I made a medical appointment with a specialist, and the first question I was asked was whether it related to a work-related injury; if so, this doctor did not take patients. That in itself makes tribunals a little more attractive.

In the end, the problem for me is the issue of very vulnerable people having to face up to a tribunal. When people have gone through what I can only describe as trauma in the WorkCover system, to front up on their own, when they are in a very vulnerable emotionally unstable position, is an incredible feat in some cases. The fact that they have to be on their own, with not even anyone to advocate for them to ensure that the right questions are asked and so on, as the Hon. Mark Parnell says, I think is a big detriment to the way the government has constructed this legislation.

I would have considered having an amendment drafted to address the issue of a person being able to have an advocate when appearing before the tribunal. However, as it has been made clear in the three days of committee stage debate, neither the government nor the opposition will entertain any amendments. That being the case, because of my concern about the fragility of injured workers and how they can be taken advantage of, intimidated and messed around, in the end I will come down against the concept.

Had the government and the opposition been willing to entertain some amendments, I would have moved one to bring this about. However, because of the regime we are operating under in this place right now, that will not be a possibility. So, my general principle now in relation to the medical panels is that I will be opposing them.

The Hon. D.G.E. HOOD: This is a vexed issue, and we have heard a lot of argument on both sides. At the end of the day, for Family First this issue comes down to the question: who is best to make the decision with respect to the wellbeing of an injured worker? It is widely known that we oppose the legislation because we believe that it infringes too many of an injured worker's rights. But, in relation to this amendment, I cannot get past the fact that doctors, not lawyers, are the best people to assess what is in the best interests of individuals.

Lawyers will dispute facts forever and, in my experience, doctors make good decisions every day. They assess people's condition and make a decision quite quickly on the appropriate treatment. I think that it is in the worker's best interests to trial the medical panels, at the very least, as a means of producing more speedy treatment and giving them access to the best possible advice with the minimum possible time required. So, on this occasion we will oppose the amendment.

Amendment negatived.

The Hon. M. PARNELL: We have heard a range of general comments and discussion on medical panels, and that is fine; it was very important to get all those views and put the basic information on the record. I move:

Page 59, line 12—After 'Medical Panel' insert:

> unless the relevant compensating authority (on a reconsideration) under that Part, or the Tribunal, considers that the question relates to a matter that falls outside the range of matters that should be subject to determination under this Part

I will not speak in support of my amendment at any great length. The Hon. Robert Lawson talked about the well-known fact of there being insurance doctors and other doctors who can be predicted

to go the other way. Of course, that results in more disputation rather than less. Any lawyer worth their salt will know that, if the usual suspects are trotted out, they can be challenged in court.

So, getting the choice of doctors right is actually a good method of reducing disputation. It still does not affect the fundamental flaw in the entire medical panel regime, but if we are to have such a regime we should at least make sure that we get the doctors right. This amendment introduces a bit of transparency into the process and includes a role for the major stakeholders so that they can have a say about their appointments.

In appointing people to these medical panels, it is critical that the government only appoint persons who have the confidence of workers and employers, and that is what this amendment is designed to ensure. The alternative could well be significant lobbying by WorkCover, or its claims agents, to ensure that only doctors supportive of its side will end up on these panels. I urge the committee to support the amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment, as the proposed selection process for appointments to medical panels is already transparent and adequately representative of employee and employer interests. A selection committee will advise the minister on the most appropriate appointments to the medical panel. The selection committee will be made up of a representative of the independent body supporting the medical panel, the AMA and medical college representatives, and employer and employee representatives. I will not repeat all the other arguments that I made earlier.

Amendment negatived.

The Hon. J.A. DARLEY: I move:

Page 57—

Lines 30 to 37—Delete paragraph (b)

Lines 38 to 40—Delete paragraph (c)

Page 58—

Lines 3 to 5—Delete paragraph (e)

Lines 8 and 9—Delete paragraph (g)

Lines 13 and 14—Delete paragraph (i).

The purpose of amendment Nos 4 through to 10 is to delete certain questions referred to in the bill as medical questions that can be referred to a medical panel under division 2 of the bill. If a medical panel is to consider questions referred to it as proposed in the bill, they should be limited to questions that are purely medical in nature.

The questions identified in this clause involve medical issues and factual questions, or medical questions which involve medical issues, factual issues and legal issues. They cannot be considered purely medical questions and as such should not be referred to a medical panel for consideration.

As outlined by the Law Society, it is unfair to expect workers to accept a decision that has been made by a panel that has not had the relevant training and does not possess the relevant knowledge to make a fair and objective assessment or reach a fair decision: that is the role of judicial officers.

Medical practitioners cannot be considered better equipped to determine legal matters as compared to trained judicial officers with years of experience in a very specialised jurisdiction involving medico-legal claims and disputes. I would agree that such a concept implies a fundamental lack of confidence in the dispute resolution process, and I would urge all honourable members to support the amendments.

The Hon. P. HOLLOWAY: Collectively, the Hon. Mr Darley's amendments would effectively negate the whole purpose of the medical panel, so that is why we are opposing them.

The Hon. M. PARNELL: I certainly support the honourable member's amendments. My suggestion, by way of process, is that we can probably deal with all these things together. We have the Hon. John Darley's amendments Nos 4, 5, 6, 7, 8, 9 and 10; we have my amendments Nos 45, 46, 47, 48, 49, 50, 51 and 52 in Parnell 2; and, I think, amendments Nos 9 and 10 in Parnell 3 also relate to this topic.

The minister is correct: removing these paragraphs from the interpretation of 'medical question' does prevent the panel from dealing with the issues that the government would wish it to deal with. However, in terms of each of these paragraphs it is possible, and sometimes very easy, to determine that the questions are not only medical questions but are questions of fact—and, in some cases, questions of law.

I will not go through every single one of them but will use just one example. Mr Darley's amendment No. 4 proposes to remove paragraph (b), which provides:

> a question whether a worker's disability—
>
> (i) in the case of a disability that is not a secondary disability or a disease—arose out of or in the course of employment; or
>
> (ii) in the case of a disability that is a secondary disability or a disease—arose out of employment or arose in the course of employment and the employment contributed to the disability; or

The point is that in deciding those questions there are very often disputed questions of fact. One such fact, for example, could be: what precisely did the worker do in their employment? The worker said that the injury happened at work but no-one saw it. Is the worker telling the truth? That is a question of fact to be determined. Doctors are not trained or experienced in resolving disputed questions of fact, and that is what this subclause requires them to do.

Another area of the definition that demonstrates that in reality medical panels will decide issues far beyond their expertise is the requirement that they decide what employment is suitable or not. That involves questions about the appropriateness of a worker's skills and experience to carry out a particular job—clearly not a medical question. However, under the government's proposal, in this clause it is.

So, both the Hon. John Darley's amendments and my amendments seek to strike out paragraphs (b), (c), (e), (g), (h) and, in fact, the bulk down to (r), from the list of matters to be regarded as medical questions, with only the few remaining that are clearly solely medical questions. I urge members to support all these amendments.

Amendments negatived.

The Hon. M. PARNELL: I move:

Page 58, lines 15 to 23—Delete paragraphs (j) and (k)

I do not propose to speak to the amendment further.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 58—

Lines 24 to 26—Delete paragraph (l)

Lines 27 to 29—Delete paragraph (m)

Amendments negatived.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): With respect to amendments Nos 50 and 51 in the name of the Hon. Mr Parnell, the same amendments are on file from the Hon. Mr Darley. The Hon. Mr Parnell's were on file first, so I call on him to speak to them together.

The Hon. M. PARNELL: I move:

Page 58—

Lines 30 and 31—Delete paragraph (n)

Lines 37 to 39—Delete paragraph (q)

Amendments negatived.

The Hon. M. PARNELL: I move:

Page 58, line 40—Delete paragraph (r)

Amendment negatived.

The Hon. M. PARNELL: There is a series of amendments that relate to the same issue, that is, to change the medical panel system from a compulsory process to a voluntary one. In my

view, if these medical panels are such a good thing it should be not be a problem that they be made voluntary. Rejecting this amendment would prove that the concerns of workers are legitimate; that they do have cause to fear these provisions. I move:

Page 59—

Line 2—Delete 'require a worker' and substitute 'with the agreement of the worker, refer a worker'.

Line 6—Delete 'to submit himself or herself'.

Amendments negatived.

The ACTING CHAIRMAN: I advise the committee that the Hon. Mr Parnell should speak to his amendment No. 55, Parnell 2 and then we can also hear from the Hon. Mr Darley about his amendment No. 11, Darley 1.

The Hon. M. PARNELL: I move:

Page 59, lines 10 to 12—Delete subsection (3).

I do not propose to speak further on it.

The ACTING CHAIRMAN: Does the Hon. Mr Darley wish to move his amendment and speak?

The Hon. J.A. DARLEY: I move:

Page 59, lines 10 to 12—Delete subsection (3) and substitute:

(3) The tribunal must invite submissions from any party to the relevant proceedings (or his or her representative) before imposing a requirement under subsection (2).

This amendment relates to the functions of medical panels in relation to tribunals. I question the need to re-establish medical panels, because I understand that they were previously a provision of the South Australian scheme and were abolished due to a lack of doctors available and the delays associated with convening them.

Having said that, if medical panels are to be introduced then their roles should be limited. Clause 98F of the bill provides that the function of a medical panel is to give an opinion on any medical question referred to it under the act and that the corporation or the tribunal may require a worker who claims compensation, or who is in receipt of weekly payments of compensation under the act, to submit himself or herself for examination by a medical panel, or to answer questions arranged by the medical panel in order to determine any specific medical question.

Subclause (3) provides that a medical question that constitutes or forms part of, or arises in connection with, a matter that is the subject of dispute under part 6A of the act must be referred to a medical panel. Part 6A of the act deals with dispute resolution. The effect of this clause is to require all questions which form part of, or arise in connection with, the matter that is the subject of a dispute to be considered by a medical panel.

This amendment is intended to do two things: the first is to provide the tribunal with the discretion to determine whether questions ought to be considered by medical panels. The second is to require the tribunal to invite submissions from any party to the relevant proceedings, or his or her representatives, before imposing a requirement under subsection (2). The parties would include both the worker and the employer.

This amendment forms part of a set of amendments which has been endorsed by the Australian Lawyers Alliance. It would afford the worker the opportunity to make submissions to the tribunal about the need for submitting himself or herself for examination by a medical panel and provide the tribunal with the discretion to allow or disallow such an examination, as the case may be. As will become apparent in the next two amendments, in instances where questions are referred to medical panels, the tribunal will not be bound by the findings of that panel. I strongly urge honourable members to support this amendment.

Amendments negatived.

The Hon. M. PARNELL: I move:

Page 59, after line 31—Insert:

(2a) Any question of law—

(a) that has been raised by a party; and

(b) that is in dispute; and

(c) that is relevant to the medical question.

must have been resolved by a determination of the tribunal as part of the proceedings between the parties before the medical question may be referred to the medical panel.

The government has put forward its medical panel proposal on a misleading basis and it says that lawyers should not make decisions about medical matters. If that is the view of the government, then I would hope it would agree that doctors should not make decisions about legal issues, and that is what this amendment seeks to do: to ensure that legal issues are decided by judges, not doctors.

Amendment negatived.

The Hon. M. PARNELL: My amendment No. 58, Parnell 2 is consequential, so I will not proceed with it. I move:

Page 60, after line 18—Insert:

(8) The medical panel must cause a reasonable record of its proceedings to be made and kept in accordance with guidelines established by the minister after consultation with the Law Society of South Australia Inc.

This forms part of a set of amendments that relate to natural justice.

These amendments are about ensuring that injured workers get natural justice from medical panels, that they get an opportunity to comment on draft opinions, that the medical panel provides an explanation for the opinions it forms, and that there is a record of proceedings so that, if something inappropriate has happened, it is transparent. This amendment is part of a package along with amendment Nos 60, 61, 62, 65 and 66, but I move only amendment No. 59 for now.

The Hon. P. HOLLOWAY: The government opposes this amendment. Importantly, the act will stipulate that each medical panel to which a medical question is referred will be required to give a certificate as to its opinion. An opinion of the medical panel must include a statement setting out the reason, or reasons, for the opinion. This is a strong statement that the proceedings of the panel will be transparent. The panel will be fully supported by administrative and ancillary staff providing appropriate secretarial duties and record-keeping functions.

The Hon. D.G.E. HOOD: I rise briefly to indicate Family First's support for the amendment. We think that it will just further add to transparency which, in these circumstances, can only be a good thing.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 60, lines 28 to 33—Delete subsection (4) and substitute:

(4) The opinion of a medical panel on a medical question referred to the medical panel is evidence that will apply for the purposes of determining any relevant question or matter in the absence of evidence to the contrary (and that may apply despite other evidence if it outweighs that other evidence).

This amendment, along with amendment No. 64, is about ensuring that medical panel opinions are ultimately subject to the proper processes of the Workers Compensation Tribunal in terms of facts, law and, where there is countervailing evidence, medical opinion also. This is about making sure that injured workers have the same rights to due process as the rest of the community.

The other absolutely critical thing that this amendment does is to require medical panels to make decisions based on the ordinary civil standard of proof, and I think this is critical. I will say that these are the last two amendments on the question of medical panels. There are some other consequential amendments, and some in relation to the WorkCover ombudsman, but I am treating this as a test for the whole issue of medical panels, and I will be dividing on this amendment if I do not have the will of the committee.

The Hon. P. HOLLOWAY: The government opposes the amendment, as we consider it inappropriate to undermine the final and binding nature of the medical panel's decisions. The government's proposed legislation sets out that, once a medical panel issues its determination, the decision is final and binding and is only reviewable through judicial review on procedural fairness grounds. This amendment would ensure that the medical panels established under this act would be toothless and would add no value to the management of the scheme.

The committee divided on the amendment:

AYES (3)

Darley, J.A.	Kanck, S.M.	Parnell, M.(teller)

NOES (16)

Dawkins, J.S.L.	Evans, A.L.	Finnigan, B.V.
Gago, G.E.	Gazzola, J.M.	Holloway, P. (teller)
Hood, D.G.E.	Hunter, I.K.	Lawson, R.D.
Lensink, J.M.A.	Ridgway, D.W.	Schaefer, C.V.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

PAIR (2)

Bressington, A.	Lucas, R.I.

Majority of 13 for the noes.

Amendment thus negatived.

The Hon. J.A. DARLEY: I move:

Page 60, after line 33—Insert:

(5) Subsection (4) does not prevent the tribunal making a finding of fact, including a finding of fact as to a medical question, on the basis of other evidence that it receives in proceedings before the tribunal.

This amendment is intended to ensure that, where questions are referred to a medical panel at the discretion of the tribunal, the findings of the panel are to be used as evidence for the purposes of determining the claim and will not prevent the tribunal from making a finding of fact, including a finding of fact as to a medical question on the basis of other evidence that it receives in the proceedings. I strongly urge honourable members to support this amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment.

The Hon. M. PARNELL: I support the amendment.

The Hon. R.D. LAWSON: Given that the government does not envisage that the medical panel will be established until next year, will the minister indicate when the government proposes that this bill will come into operation? Is it envisaged that parts of it will come into operation immediately and other parts at some later time? If the act is brought into operation immediately but the medical panels are not appointed until a year later, what is going to happen about medical disputes arising for resolution after the act comes into operation but before the medical panels are appointed? In other words, will the tribunal continue to decide medical questions until such time as the medical panels are appointed?

The Hon. P. HOLLOWAY: We discussed this when we were discussing clause 2. I did indicate then that the implementation of this bill would be staggered. Obviously, in relation to medical panels, if it takes up to 12 months—as was the experience in other states—to establish them, then the tribunal would continue to perform the function until those parts of the bill that needed the medical panels were commenced.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 61, lines 24 to 28—Delete subsection (3)

This relates to the WorkCover ombudsman and is the other part of clause 70; the first part being the medical panels. My amendment seeks to ensure that the proposed WorkCover ombudsman is devoted full-time to this position. The government's bill proposes that that they can hold other positions. In other words, they can just be a part-timer. This role, if it is to have any meaning, needs to be a dedicated role, and so I would urge all members to support this amendment.

The Hon. P. HOLLOWAY: The government opposes this amendment as it unnecessarily restricts the field of choice for an appointment to the position of WorkCover ombudsman. Some applicants for the position of ombudsman may have other part-time roles, consultancies or board memberships, providing there is no conflict of interest. It will be up to the government to determine whether the other positions the applicant may have conflict with the ombudsman role. If the

government does not believe that such conflicts exist then the talent pool of people who can take up the ombudsman's role will not be arbitrarily reduced.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 64, after line 28—Insert:

(6a) Without limiting a preceding subsection, the WorkCover Ombudsman must include in the WorkCover Ombudsman's annual report information about the extent to which disabled workers have been able to return to work during the course of the relevant financial year (whether on a permanent or temporary basis and whether in previous or new employment or work)

This amendment relates to a requirement for reporting return to work, and it requires that the WorkCover ombudsman must include in his or her report information about the extent to which disabled workers have been able to return to work during the course of the relevant financial year.

This is an important amendment because, when the government talks about return to work and return-to-work figures, it is usually only talking about discontinuance rates, and that is the rate at which payments to injured workers can be stopped, which is a very different thing from a return to work. I think that, if the government had any real interest in improving return to work, it should be measuring it properly. My understanding is that the government and WorkCover do not do that.

I am not aware of any system in place to record or keep track of what happens to injured workers, or even a sample of them, once WorkCover stops paying them. There is no information kept, either, about when their payments are stopped whether they return to work or go on to commonwealth sickness benefits.

So, the first step in trying to improve return to work is to understand what is happening at present, and that is what this amendment is directed to: reporting information about actual return-to-work outcomes, not just how quickly WorkCover can kick injured workers off the scheme.

The Hon. P. HOLLOWAY: This amendment requires the WorkCover ombudsman to include in the annual report information about return-to-work rates of the financial year, specifying whether they were on a permanent or temporary basis and whether in previous or new employment or work.

The government opposes this amendment as it is completely unrealistic to be able to provide that sort of detail around return-to-work rates. Additionally, reporting on statistics is not the role of the WorkCover ombudsman. The development of data about return-to-work rates is a complex exercise, and this is currently conducted independently and nationally through the comparative performance monitoring reports and Campbell's return-to-work survey, and I have quoted that during the debate on this bill. These projects have been operating for a number of years and have been developed with extensive technical input. It would be unrealistic to expect that the Ombudsman could undertake such a role.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 64, after line 28—Insert:

(6a) The Industrial Court may, by order, on the application of the WorkCover Ombudsman, enforce a direction or determination of the WorkCover Ombudsman under subsection (1).

This amendment is designed to give the Ombudsman a role in enforcing directions, and it requires that the Industrial Court may, by order, on the application of the WorkCover Ombudsman, enforce a direction or determination of the WorkCover Ombudsman under subsection (1). What that means is that we want to give the Ombudsman some real teeth to make sure that the directions given can be enforceable.

The Hon. P. HOLLOWAY: This amendment unnecessarily involves the Industrial Court in directions of the Ombudsman. The Ombudsman is already authorised to give directions to WorkCover or employers around the operational requirements of sections 58B and 58C. The Ombudsman also already has, under section 99D(1), functions to recommend, investigate and assist various WorkCover matters with the aim of improving the operation of the scheme. If a matter under investigation by the Ombudsman was subject to dispute, it would be the Workers Compensation Tribunal that would deal with it, not the Industrial Court.

Amendment negatived.

The Hon. SANDRA KANCK: So that the Hon. Ann Bressington's views are on the record, I move the amendment standing in her name:

Page 66, after line 8—Insert:

99HA—Abrogation of legal professional privilege

A person is not excused from providing information to the WorkCover Ombudsman in accordance with a requirement imposed under this part on the ground of legal professional privilege.

The explanation provided to me by the Hon. Ann Bressington's officers is that this amendment ensures that no officer of the WorkCover Corporation can claim legal professional privilege to get away with concealing information or evidence about the truth behind allegations and counter-allegations. This is especially important in cases where the lawfulness of corporate conduct and decision-making are under question.

The Hon. P. HOLLOWAY: The government opposes the amendment. The ombudsman will already have appropriate powers to obtain information under proposed section 99F.

Amendment negatived; clause passed.

Clause 71.

The Hon. M. PARNELL: I move:

Page 68, after line 12—Insert:

(2) Section 103A—after subsection (2) insert:

(3) Without limiting any regulation made under subsection (1), the following classes of persons performing the following classes of work will be taken to be prescribed for the purposes of this section:

(a) volunteer fire-fighters with respect to the following classes of work:

(i) any activity directed towards—

(A) preventing, controlling or distinguishing fires;

(B) dealing with other emergencies that require SACFS to act to protect life, property or the environment;

(ii) attending in response to a call for assistance by SACFS;

(iii) attending a SACFS meeting, competition, training course or other organised activity;

(iv) carrying out any other function or duty associated with the activities of SACFS under the Fire and Emergency Services Act 2005 or the Emergency Management Act 2004;

(b) SASES volunteers with respect to the following classes of work:

(i) any activity directed towards dealing with an emergency, or undertaking a rescue;

(ii) attending in response to a call for assistance by SASES;

(iii) attending a SASES meeting, competition, training course or other organised activity;

(iv) carrying out any other function or duty associated with the activities of SASES under the Fire and Emergency Services Act 2005 or the Emergency Management Act 2004.

(4) In this section—

emergency has the same meaning as in the Fire and Emergency Services Act 2005;

SACFS means the South Australian Country Fire Service;

SASES means the South Australian State Emergency Service;

SASES volunteer means—

(a) a member of SASES; or

(b) a person who, at the request or with the approval of a member of SASES who is apparently in command of any SASES operations, assists with dealing with an emergency or the threat of an emergency,

who receives no remuneration in respect of his or her service in that capacity;

volunteer fire-fighter means—

(a) a member of SACFS; or

(b) a fire control officer under the Fire and Emergency Services Act 2005; or

(c) a person who, at the request or with the approval of a member of SACFS who is apparently in command of any SACFS operations, assists with dealing with a fire or other emergency or the threat of a fire or other emergency,

who receives no remuneration in respect of his or her service in that capacity.

This is one of two amendments about which I sent out a note to all members of the Legislative Council suggesting that they pay particular attention to it, not that they should not pay attention to the other amendments, but this one and another fall into a category of amendments that are so sensible, and to my mind so basic and important, that it should be very difficult for anyone to oppose them.

This amendment basically seeks to level the playing field in relation to volunteers who put themselves in harm's way on behalf of the community. The regulations under the Workers Rehabilitation and Compensation Act provide that volunteer firefighters are covered by WorkCover, as presumptive employees of the Crown. That is a good thing; we should protect these people who put their lives on the line for the community in case they do get hurt or even killed.

My amendment seeks to do two things: firstly, it enshrines the protection of volunteer firefighters into the legislation, rather than leaving it to regulations but, most importantly, it gives our fantastic volunteers in the State Emergency Service the same protection as volunteer firefighters. Everyone who puts their life on the line for the community deserves our support. They deserve protection if things go wrong. The volunteers in the SES deserve that protection. If the government or members vote against this amendment, what they are saying to every SES volunteer is 'We don't care if you are killed or injured volunteering for us. You don't deserve the same level of protection as the CFS volunteers.' I think, if we are to give proper thanks to the volunteers who put their life on the line, all members should be supporting this amendment.

I wrote to the minister in another place and asked him what consideration had been given to this since it was dealt with in the other place in April. Basically, I asked the minister what consideration he had given to that issue. I have a reply from the minister in which he thanked me for the letter and referred to the regulation I mentioned before which says that the CFS volunteers are a prescribed class of volunteers. But in relation to the SES workers, he said:

> This is not something that was raised by Clayton. It is not an unreasonable proposal, and the government may consider it in time. However, any decision to deem classes of person or work within the ambit of the Workers Rehabilitation and Compensation Act is a serious one. It deserves detailed and careful analysis and can be done by regulation at a later time. For those reasons, as I say, it is not an unreasonable proposal and we may look at it in time.

The minister then goes on to say:

> I am advised that the State Emergency Service (SES) Volunteers could be prescribed under the same Regulation as the CFS volunteers and as I have already stated the Government may consider doing this in time. In the interim, it is important to note that I am further advised that the SES volunteers receive equivalent benefits to those received by CFS volunteers via an administrative arrangement with the South Australian Fire and Emergency Services Commission.

That letter was dated 2 June.

It seems to me that, in the absence of a cast-iron guarantee from the government that it will include SES volunteers in the same scheme under which the CFS volunteers are included, we need this amendment.

The Hon. CARMEL ZOLLO: As Minister for Volunteers I would like to take the opportunity to respond to this amendment. As the honourable member has said, the issue is not one that was raised in the Clayton review. Section 103A of the act allows for the prescription of specific classes of persons to be covered. The Crown is the presumptive employer of persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the state.

As we have already heard, the CFS is prescribed in regulations and not in the act itself. The SES is covered by an administrative arrangement so, currently, the only persons prescribed in regulations are the CFS volunteers. However, as we have already heard and I am placing on record, the SES volunteers are covered by an administrative arrangement, more for historical reasons than anything else.

So, under a ministerial agreement that dates back to 1988, SES volunteers suffering injury or illness whilst performing approved and endorsed SES activities are provided with benefits that

are equivalent to those available to paid employees as prescribed under the act. The cover is also extended to the various volunteer marine rescue groups and squadrons.

It is the view of the government that it is not something that needs to be defined in the act, and it is better suited in the regulations, where it does currently sit. There is no real need to include the CFS and the SES in the substantive legislation. I would like to place on record that this government makes every effort to ensure the safety of our volunteers on duty. Our volunteers are invaluable to all of us.

Should any injury occur, however, our first priority is to assist the volunteer to achieve timely compensation, rehabilitation and a safe return to work. Our volunteers are able to go about their role protecting the community knowing that they are protected should they be injured. The arrangement also provides for compensation for self-employed or unemployed members in receipt of unemployment benefits. SES volunteers are covered for any injury incurred travelling to or from their home to an operational call-out.

Again, I place on record that, while SES volunteers are not a prescribed class of volunteers under the Workers Rehabilitation and Compensation Act, arrangements have been in place with the government since 1988 for benefits to be paid equivalent to those provided by that act, and these arrangements extend to the marine rescue volunteers as well.

It is the view of the government that the specifics of the prescribed class of volunteers are not something that need to be defined in the act, and they are better suited in the regulations where they currently sit. In relation to the SES, yes, the minister in the other place made a commitment to revisit this issue by regulation at a later time, and I certainly make that commitment as well.

I should also place on record that, since 2004, all new claims have been managed by the South Australian Fire and Emergency Services Commission (SAFECOM), which is a division of the justice portfolio. SAFECOM manages all claims for the CFS, MFS and SES and effectively treats the claims of SES volunteers in the same way as the others.

Any decision to deem classes of person or work as covered by the Workers Rehabilitation and Compensation Act is a serious one—and I think that is what was also written to the honourable member—and it is one that does deserve detailed and careful analysis. Again, I reiterate that, like the minister in the other place, I am happy to visit this at a later time, and I will give that undertaking.

The Hon. M. PARNELL: I thank the minister for her answer, but it is not the undertaking that I was seeking. We have had a long time to get this right, to get these volunteers incorporated into legislation at the same level or (by way of my amendments) an improved level. I do not think that our volunteers should be forced to rely on administrative arrangements.

They may have worked well up to now, but there is no guarantee that they will work into the future. This is a practical and a symbolic message that we are sending: that we are going to recognise in law the value of these volunteers. The CFS has it: the SES does not. Let us level the playing field.

The Hon. D.G.E. HOOD: Family First supports the amendment.

The committee divided on the amendment:

AYES (5)

Darley, J.A.	Evans, A.L.	Hood, D.G.E.
Kanck, S.M.	Parnell, M. (teller)	

NOES (14)

Dawkins, J.S.L.	Finnigan, B.V.	Gazzola, J.M.
Holloway, P.	Hunter, I.K.	Lawson, R.D.
Lensink, J.M.A.	Lucas, R.I.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C. (teller)	

PAIRS (2)

Bressington, A.	Gago, G.E.

Majority of 9 for the noes.

Amendment thus negatived; clause passed.

Clause 72.

The Hon. M. PARNELL: My amendment is consequential; I will not be moving it.

The Hon. SANDRA KANCK: I indicate that the amendment in the name of the Hon. Ms Bressington is also consequential.

Clause passed.

Clause 73.

The Hon. M. PARNELL: I move:

Page 68—

After line 19—Insert:

(1) Section 106—after subsection (1) insert:

(1a) Without limiting subsection (1), if the only reason for a delay in the determination of a claim relates to the amount of compensation to be paid to a disabled worker, the Corporation should seek to make an interim payment or interim payments that reflect the extent to which the parties are not in dispute.

After line 22—Insert:

(4) For the purposes of this section, a reference to the final determination of a claim includes a reference to the completion of any proceedings under Part 6A.

The situation that these amendments are designed to address is where a claim is accepted but because, for example, WorkCover says the weekly compensation should be, say, $500 and the worker says it should be $600, the worker does not get paid at all until the dispute is resolved. I acknowledge that sometimes WorkCover does pay the lesser amount to start with, but not always. So, this amendment means that where there is a dispute WorkCover will at least pay that lesser amount to reflect the extent to which the parties agree.

The Hon. P. HOLLOWAY: The government opposes this amendment, as this provision seeks to circumvent the government's amendments to the Workers Rehabilitation and Compensation Act in relation to the cessation of payments to a claimant while a dispute is yet to be resolved.

Amendments negatived; clause passed.

New clause 73A.

The Hon. M. PARNELL: I move:

Page 68, after line 22—Insert:

73A—Insertion of section 106AA

After section 106 insert:

106AA—Interest

(1) If—

(a) an amount is payable under this Act by a compensating authority; and

(b) the amount is not paid within a time determined in accordance with the regulations; and

(c) no other provision is made under this Act for the payment of interest on the unpaid amount,

the amount payable will be increased by interest at the prescribed amount.

(2) In this section—

compensating authority means the Corporation or a self-insured employer.

I indicated before that there are two specific amendments that I circulated to honourable members that fall into the category of a no-brainer, if you like, and this is the second of those. This amendment will fix a problem with the legislation that has been recognised as a problem by the Supreme Court for many years. Except to a limited extent with respect to weekly payments, there is no clear due date for payments of workers compensation, and there is no provision for interest on late payments other than weekly payments. The Supreme Court dealt with this issue in its 1998

decision in Della Flora v Workers Rehabilitation and Compensation Corporation of South Australia. In that decision His Honour Chief Justice Doyle said:

> It is a curious feature of the act that it makes no general provision about the time at which a worker becomes entitled to require payment of compensation payable to the worker under a determination made by the corporation in the worker's favour. Nor is there a general provision about the worker's rights in the event of a payment not being made when it should be made.

He goes on:

> Overall, there is no provision in the act that clearly identifies the time at which an entitlement to receive weekly payments, payable under a determination by the corporation, becomes enforceable at the instance of a worker.

In conclusion, the Chief Justice says:

> I would add that, in my respectful opinion, this aspect of the act requires reconsideration. I consider that there is much to be said for a legislative provision dealing specifically with the time within which payment of the various types of compensation must be made. Leaving this to the court, to be decided as a matter of implication, seems undesirable.

Justice Nyland in the same case said:

> The lack of certainty as to the date on which payments of compensation should be made is, however, undesirable. I support the suggestion made by the Chief Justice that this aspect of the act be reconsidered.

This is a simple amendment. Injured workers and those who have to administer the act should have clear guidelines about when payments must be made. The Supreme Court says that they do not have the guidance that they need, and we should fix that. I think that a sensible amendment like this goes to the heart of what we are doing here in the upper house. We have clear direction from the Supreme Court that this simple amendment, which does not cost anything, would make the administration of the act easier for everyone. I urge all honourable members to support it.

The Hon. P. HOLLOWAY: The government opposes this amendment. The honourable member has drawn the attention of the committee to the Supreme Court decision in Della Flora. As I understand it, this case involved a party seeking a lump sum for non-economic loss and that party wanting payment made on that lump sum prior to the resolution of a dispute. The government is of the view that the existing provision is appropriate and it is with quite sound reasoning that a matter should be finalised before payment is made.

In relation to the payment of interest, the vast majority of payments made to injured workers are by way of weekly payments. The late payment of weekly payments due to a worker is capable of having an adverse impact on an injured worker. This is why it is necessary to have suitable arrangements in place for the payment of interest on arrears or weekly payments. Section 47 of the current act already suitably provides for this.

I am not aware of this issue being raised in the consultation that has been undertaken by the independent review of the WorkCover scheme. Similarly, I am not aware of this being a systemic issue within the scheme. If it is, it seems that this could be addressed operationally and through management of the contractual arrangements with the claims agent and self-insurers. Once in place the WorkCover ombudsman would be in a position to give a sense of the scale of complaints regarding these matters. If in that person's view the problem was widespread, they would make recommendations for operational change and perhaps a future legislative change once the scope of the alleged problems is better understood.

The committee divided on the new clause:

AYES (5)

Darley, J.A.	Evans, A.L.	Hood, D.G.E.
Kanck, S.M.	Parnell, M. (teller)	

NOES (14)

Dawkins, J.S.L.	Finnigan, B.V.	Gazzola, J.M.
Holloway, P. (teller)	Hunter, I.K.	Lawson, R.D.
Lensink, J.M.A.	Lucas, R.I.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

PAIRS (2)

Bressington, A. Gago, G.E.

Majority of 9 for the noes.

New clause thus negatived.

Clause 74.

The Hon. J.A. DARLEY: I move:

Page 68, after line 26—Insert:

(1a) Section 107B—after subsection (3) insert:

(3a) If a worker has died as a result of a compensable disability, a reference in this section to a worker will be taken to include a reference to a person who has an entitlement to a payment under section 44 or 45A on account of the death of the worker.

This amendment simply relates to access to information from WorkCover by a relevant person following the death of a worker as a result of a compensable disability. The amendment arises as a result of a matter of which I became aware whereby a domestic partner of a worker who died at work tried to obtain a copy of WorkCover's file relating to the deceased in accordance with freedom of information legislation. I understand that she was refused access to her deceased partner's file pursuant to section 107B of the Workers Compensation and Rehabilitation Act, which concerns the right of access to files by a worker.

In this case, I am advised that WorkCover refused to release the information requested as the deceased had no will at the time of his death and the partner could not prove next of kin. This is despite the fact that she was the one who received compensation as next of kin under the act and, ultimately, signed the relevant claim forms with WorkCover. I am further advised that WorkCover actually instigated an investigation into the domestic partner because they alleged that she and the deceased were not together at the time of his death, despite their having been together for 10 years and having a son together from that relationship.

As mentioned, section 107B of the act relates to right of access to claims files. It provides that the corporation, or a delegate of the corporation, must, at the request of a worker, provide the worker, within 45 days after the date of the request, with copies of all documentary material in possession of the corporation or the delegate relevant to a claim made by the worker, and make available for inspection by the worker, or a representative of the worker, all non-documentary material in possession of the corporation or the delegate relevant to a claim made by the worker.

The section also provides for appropriate availability of non-documentary material for inspection. The only material that the corporation or delegate is not obliged to provide are materials that are relevant to the investigation of suspected dishonesty in relation to the claim or materials that are protected by legal professional privilege. The aim of the amendment is to ensure that information that can be requested by a worker can equally be requested by anyone with an entitlement pursuant to sections 44 or 45 of the act where the worker has died as a result of a compensable disability.

Sections 44 and 45 relate to compensation and review of weekly payments respectively, and anyone with an entitlement would include a spouse, a domestic partner, a dependent child or a dependent relative. It seems at odds that a request for information by, say, a spouse or partner pursuant to section 107B of the act would be fettered when that person is entitled to receive compensation or weekly payments as a result of the death of their partner. I ask members to support this amendment.

The Hon. P. HOLLOWAY: The government opposes this amendment, as section 107B was inserted into the Workers Rehabilitation and Compensation Act to provide injured workers with the ability to monitor their active case file and how their claim, rehabilitation and return-to-work management was progressing. If a worker unfortunately dies as a result of a work injury, their dependants are entitled to compensation, payable on death, in the form of weekly payments and a lump sum, increased by this very bill to the significant amount of $400,000.

The Hon. SANDRA KANCK: I am quite appalled to hear that explanation, and it is an illustration of the culture and attitude within WorkCover, where everyone is treated with suspicion. This seems to me to be a sensible amendment, and I indicate Democrat support for it.

Amendment negatived.

New clause 74A.

The Hon. M. PARNELL: I move:

Page 68, after line 28—Insert:

74A—Insertion of section 107C

After section 107B insert:

107C—Worker's right to be accompanied to a medical appointment

(1) Subject to subsection (2), a worker who is attending an appointment with a medical expert or Medical Panel in connection with the operation of this Act is entitled to be accompanied by a companion.

(2) Subsection (1) does not apply if the medical expert of Medical Panel requests on any reasonable ground that the companion not attend.

Under the legislation, injured workers can be compelled to attend medical examinations in certain circumstances, and that can be very distressing, particularly in situations that commonly arise where the doctor preferred by WorkCover has previously examined the worker and been rude, dismissive, made major factual errors in their report or has made the worker's injury worse—for example, by forcing a joint to move inappropriately in order to test its range of movement.

One thing that would certainly make the experience a little less distressing is if the worker had a right to a support person, but we do not have that arrangement. I say that injured workers have enough to deal with with their pain, dislocation and uncertainty about the future without being subjected to stressful situations or clear rights to a support person.

The Hon. P. HOLLOWAY: The government opposes this amendment as we consider it unnecessary. It is intended that the current practice surrounding independent medical examinations will continue in medical panel examinations. Injured workers will have the right to request that a relative, friend or representative attends with them for support. The amendment bill provides for the medical panels to authorise such an attendance, and it is not envisaged that workers would be prevented from bringing a companion to an examination. The legislation empowers the minister to establish guidelines for the operation of the medical panels, and I understand that this issue will be suitably addressed in those guidelines.

New clause negatived.

Clause 75 passed.

New clause 75A.

The Hon. M. PARNELL: I move:

Page 68, after line 33—Insert:

75A—Insertion of section 111A

After section 111 insert:

111A—Inspection of workplaces by officials of employee associations

(1) An official of an employee association may, at any reasonable time, enter any workplace at which 1 or more members of the association work if the employee association has assessed, on reasonable grounds—

(a) that workers at the workplace have suffered a significant number of compensable disabilities; or

(b) that a significant number of workers at the workplace are concerned about the rehabilitation programs and arrangements that apply at the workplace.

(2) An official of an employee association who has entered a workplace under subsection (1) may—

(a) inspect work carried out at the workplace and note the conditions under which work is carried out; and

(b) interview any person who works at the workplace about—

(i) the performance of work at the workplace; and

(ii) arrangements associated with rehabilitation programs at the workplace and the implementation of relevant rehabilitation and return to work plans.

(3) The powers conferred by subsections (1) and (2) may be exercised at a time when work is being carried out at the workplace.

(4) Before an official exercises powers under subsections (1) and (2), the official must give reasonable notice to the employer.

(5) For the purposes of subsection (4)—

(a) the notice must be in writing; and

(b) a period of 24 hours notice will be taken to be reasonable unless some other period is reasonable in the circumstances of the particular case.

(6) An official exercising a power under subsection (1) or (2) must not interrupt the performance of work at the workplace.

Maximum penalty: $3,000

(7) In this section—

employee association means an association of employees registered under the Fair Work Act 1994 or the Workplace Relations Act 1996 of the Commonwealth.

Currently, there is no right for officials of employee associations to enter worksites to inspect premises for unsafe acts. That is out of step with other states, which all have occupational health and safety rights of entry. Officials of employee associations are trained in occupational health and safety and are best placed to hear concerns from members and to raise such concerns with management.

The present system of government inspection goes only so far. I think that the extra level of scrutiny by officials of employee associations would ensure safer worksites. I believe that there is no evidence that these rights of entry have been abused by officials of employee associations interstate, so I urge support for this amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment as the proposed new power of entry and inspection is excessive and unnecessary. A number of existing provisions grant extremely broad and potent powers of entry and inspection—for example, those in the Occupational Health, Safety and Welfare Act, in the Fair Work Act and, most importantly, in sections 110 and 111 of the Workers Rehabilitation and Compensation Act.

New clause negatived.

Clauses 76 to 78 passed.

New clause 78A.

The Hon. M. PARNELL: I move:

Page 70, after line 16–Insert:

78A—Amendment of section 115—No contribution from workers

Section 115(2)—delete subsection (2).

I think all honourable members would agree that workers should not be discriminated against for exercising their lawful rights to claim workers compensation for work injuries. This amendment and the next amendment, which I will move shortly, protects them against that.

The Hon. P. HOLLOWAY: The government opposes this amendment, as the proposed new section is unnecessary. Existing protections under both the Workers Rehabilitation and Compensation Act and the Equal Opportunity Act 1984 are sufficient. A number of the proposed offences would also already be offences under other acts; for example, deliberately injuring a worker in employment would be assault, and threatening and intimidating a worker would constitute workplace bullying or, at worst, a type of assault.

New clause negatived.

New Clause 78B.

The Hon. M. PARNELL: I move:

Page 70, after line 16—Insert:

78B—Insertion of section 115A

After section 115 insert:

115A—Discrimination against workers—employers

(1) An employer must not—

(a) injure a worker in employment; or

(b) threaten, intimidate or coerce a worker; or

(c) discriminate against a worker in connection with employment, by reason of the fact that—

(d) the worker has made a claim under this act; or

(e) the employer is liable to pay any sum under this act to or in relation to the worker.

Maximum penalty: $2,000.

(2) If in proceedings under this section all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the act of the employer was not actuated by the reason alleged in the charge lies on the defendant.

(3) If a person is convicted of an offence against this section, the court may, in addition to any penalty that it may impose, make an order requiring the person to compensate a worker for any monetary loss suffered by virtue of the contravention constituting the offence.

New clause negatived.

New clause 78A.

The Hon. SANDRA KANCK: On behalf of the Hon. Ann Bressington, I move:

Page 70, after line 16—Insert:

78A—Insertion of section 115A

After section 115 insert:

115A—Worker not required to disclose certain information

A person who has received compensation under this act in respect of a compensable disability is not required to disclose to a prospective employer (and may treat any relevant question as not requiring him or her to disclose to a prospective employer) information concerning the fact of—

(a) the occurrence of the disability; or

(b) the making of a claim under this act; or

(c) the payment of compensation,

unless the disclosure is reasonably required for, or in connection with, the rehabilitation of the person or an issue associated with occupational health, safety or welfare.

As most members would know and understand, injured workers have a lot of difficulty in applying for jobs, because prospective employers, once they find that the person is carrying an injury, will find lots of reasons not to employ them. What this amendment does is to give those injured workers the right not to disclose that they have a disability or that they have made a claim for workers compensation. It requires then that the employer would have to assess the worker's capacity for that job on the basis of skills competency and nothing else which may unduly disadvantage or discriminate against them.

The Hon. P. HOLLOWAY: The government opposes this amendment, as I am advised that this is the current state of the law in any event. An employer can only ask questions in an application for employment relevant to the job being applied for by a worker, including questions which are relevant to occupational health, safety and welfare, but not necessarily detailed questions about workers compensation claims. I am also advised that this matter may be one that needs to be dealt with in industrial relations law, not workers compensation.

New clause negatived.

Clause 79.

The Hon. M. PARNELL: I move:

Page 70, lines 19 to 23—Delete subsection(4) and substitute:

(4) Subsections (2) and (3)—

(a) do not apply to—

(i) any action taken by an employer with the consent of the corporation; or

(ii) any agreement or arrangement entered into by an employer with, or with the consent of, the corporation,

provided that a worker is not disadvantaged; and

(b) do not apply to any action, agreement or arrangement that advantages a worker.

This amendment protects workers from losing rights under the act simply because WorkCover believes they should. Unless members support the amendment, the bill will allow an absurd arrangement where injured workers' rights can be given away simply because WorkCover says they can be.

The Hon. P. HOLLOWAY: The government opposes the amendment. It believes the additional caveats proposed do not add significant value. The intent of the clause is to ensure that an offence is not technically created by an employer entering into an arrangement that is authorised by WorkCover. The amendment does not water down the provisions, and it remains an offence to enter into a contract to avoid the act in situations where it would either advantage or disadvantage injured workers. This will not change, and on this basis the amendment is unnecessary and is opposed.

Amendment negatived; clause passed.

Clause 80 passed.

New clauses 80A, 80B and 80C.

The Hon. SANDRA KANCK: On behalf of the Hon. Ann Bressington, I move :

New clauses, page 70, after line 26—

Insert:

80A—Insertion of section 121

After section 120A insert:

121—Dispute as to happening of event

(1) If, in any proceedings under this Act—

(a) the happening of an event of any description is in question; and

(b) in the course of a business, a system has been followed to make and keep a record of the happening of all events of that description,

oral or other evidence to establish that there is no record of the happening of the event in question is admissible to prove that the event did not happen.

(2) If evidence is, or is proposed to be, tendered under this section, the body before which the evidence is, or is to be, tendered may—

(a) require that the whole or a part of the record concerned be produced; and

(b) if the whole or a part of the record required to be produced is not produced—reject the evidence or, if it has been received, exclude it.

80B—Amendment of section 122—Offences

Section 122(4)—delete subsection (4)

80C—Insertion of section 122AA

After section 122 insert:

22AA—Special offences relating to officers of Corporation

(1) A prescribed person who—

(a) dishonestly obstructs or interferes with a disabled worker's right—

(i) to make a legitimate claim for compensation under this Act; or

(ii) to commence proceedings at common law on account of the worker's compensable disability; or

(b) deceives a disabled worker with a view to the worker withdrawing or discontinuing a claim or proceedings of a kind referred to in paragraph (a); or

(c) takes steps to improperly influence any process under this Act,

is guilty of an offence.

Maximum penalty: $50 000 or imprisonment for 1 year.

(2) A person who—

(a) aids, abets, counsels or procures the commission of an offence against subsection (1); or

(b) solicits or incites the commission of such an offence,

is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 1 year.

(3) If proceedings for an offence are commenced under this section the Director of Public Prosecutions must prepare a report on the matter and furnish the report to the Attorney-General and the Minister.

(4) In this section—

prescribed person means—

(a) a member of the staff of the Corporation; or

(b) a person acting on behalf of the Corporation.

The Hon. Ms Bressington's office has indicated to me that this is an amendment of great importance to her. I will have only a few comments to make about it, but I am sure it would have been longer had the Hon. Ms Bressington been here.

The reason this amendment is being moved is that it restores a crucial part of the commonwealth Evidence Act which was removed in the early 1990s. The Hon. Ms Bressington wants the amendment moved because it affirms the importance of producing primary, corroborative material to establish the merits of a case or the truthfulness and/or plausibility of an allegation. This is particularly important in cases where workplace records, or the existence of something similar, may come into dispute or question—such as minutes of meetings, reports, case notes, history files, and especially records of workplace disciplinary counselling or warning proceedings.

This section also aims to provide for a tangible means by which allegations of workplace violence or bullying can be corroborated where conflicting accounts amount to little more than cases of 'he said/she said', with few witnesses or few witnesses willing to come forward because of fear of reprisal.

The Hon. P. HOLLOWAY: The government opposes all three proposed new clauses. In terms of the first, regarding evidence disputes over occurrence of events, the current law and practice are quite sufficient in this area. Section 84 of the Workers Rehabilitation and Compensation Act is deliberately broad. Informality is a key hallmark of the current dispute resolution system, and it is crucial that the system remain simple and accessible to claimants and that the tribunal remain flexible in its powers.

Greater inflexibility will tie the hands of the tribunal, and this would only be counterproductive, disadvantaging workers as much as helping them. There are plenty of rules, practices, conventions and accepted ways of dealing with evidence in courts and tribunals. The tribunal presidents and officers would be well aware of these and would apply them judiciously according to the facts of each case. A blanket solution to the issue of oral evidence and its admissibility would be unwise.

In relation to the second proposed new clause, on offences, most of the offences in the Workers Rehabilitation and Compensation Act can, by nature, be committed only by the parties—mainly employers and workers. Therefore, it is nonsensical to make them offences that can be committed by WorkCover and staff. This amendment is partly consequential on proposed section 122AA, which creates a series of special offences by WorkCover staff. The government opposes this change; therefore, the deletion of subsection (4) of section 122 is not necessary.

With respect to the third proposed new clause, 'Special offences by WorkCover officers', the current law is quite sufficient in this area. There has not been any recent evidence to suggest that such offences are warranted. Other laws are quite capable of holding WorkCover or its officers liable for wrongdoings in the administration or enforcement of the Workers Rehabilitation and

Compensation Act. WorkCover has a very sophisticated and robust internal audit capability and complaints management framework, including a team of dedicated staff members, to deal with complaints of wrongdoing by WorkCover or Employers Mutual. The creation of a WorkCover ombudsman proposed in the bill should further assist in holding WorkCover and Employers Mutual to account in its claim processes.

The Hon. SANDRA KANCK: In moving the amendment I spoke only to new clause 80A, and I should also include the comments that Ms Bressington's officers provided on 80B and 80C, which again target what I was talking about earlier today—the scheme critical list and its illegal and corrupt nature. The amendments also seek to ensure that unlawful corporate activity of the past is not legalised retrospectively, as would be the case in this bill. The amendment affirms the fact that the creation and application of the scheme critical list was not only corrupt by today's standard but also that its prejudicial intent was corrupt at the time it was first conceived and created.

New clauses negatived.

New clause 80A.

The Hon. M. PARNELL: I move:

New clause, page 70, after line 26—

Insert:

80A—Insertion of section 123

After section 122A insert:

123—Civil penalties

(1) An application may be made under this section to the Industrial Court to recover an amount as a civil penalty from a person who has acted in contravention of this Act.

(2) An application may not be made under this section in respect of a contravention of a provision of this Act that constitutes an offence—

(a) unless the Corporation has served on the person a notice in the prescribed form advising the person that the person may elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Corporation's notice to make such an election in accordance with the regulations; or

(b) if the person serves written notice on the Corporation, before the making of such an application, that the person elects to be prosecuted for the contravention.

(3) If, on application under this Act, the Industrial Court is satisfied on the balance of probabilities that a person has contravened the provision of the Act to which the application relates, the Industrial Court may order the person to pay an amount as a civil penalty.

(4) The maximum amount that may be awarded under this section is—

(a) in the case of an award against a natural person—$50 000;

(b) in the case of an award against a body corporate—$150 000.

(5) In determining the amount to be paid by a person as a civil penalty, the Industrial Court must have regard to—

(a) the nature and extent of the contravention; and

(b) any detriment resulting from the contravention; and

(c) any financial saving or other benefit that the person stood to gain by committing the contravention; and

(d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and

(e) the deterrent effect that the amount to be paid may have on the person who has committed the contravention; and

(f) any other matter it considers relevant.

(6) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to the contravention of a provision of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(7) Proceedings referred to in subsection (6) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.

(8) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—

(a) the person gave the evidence or produced the documents in the course of proceedings under this section for the recovery of an amount as a civil penalty; and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention of this Act giving rise to the proceedings under this section.

(9) However, subsection (8) does not apply to criminal proceedings in respect of the making of a false or misleading statement.

(10) Proceedings may only be commenced under this section by—

(a) the Corporation; or

(b) a worker who has suffered a compensable disability; or

(c) an employee association where the relevant contravention had, or could potentially have, a detrimental affect on a member, or a person eligible to become a member, of the association.

(11) Proceedings under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 5 years after the date of the alleged contravention.

(12) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(13) The Industrial Court may join the Corporation, or any worker or employee association, as a party to any proceedings under this section (as if the Corporation, the worker or the employee association were an applicant under this section).

(14) The Industrial Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

(15) An amount recovered as a civil penalty under this section—

(a) may be paid into the Compensation Fund; or

(b) may be paid to any worker who has been adversely affected by the contravention of the relevant provision; or

(c) may be divided into 2 or more parts and paid under any combination of payments under paragraph (a) or (b) (or both),

as determined by the Industrial Court.

(16) In this section—

employee association means an association of employees registered under the *Fair Work Act 1994* or the *Workplace Relations Act 1996* of the Commonwealth.

On a number of occasions in this debate I have referred to WorkCover's failure to ever enforce various aspects of the legislation when it is breached by employers. No information has been put in this debate that I was incorrect in saying that. This provision allows for the people most affected by these laws, that is, injured workers, either directly or through their unions, to enforce the law.

The Hon. P. HOLLOWAY: The government opposes this amendment because it does not believe that a detailed civil penalties framework is necessary or warranted under the Workers Rehabilitation and Compensation Act. This is a serious and comprehensive proposal. The government cannot support such a proposal without robust and detailed consideration, especially of the net benefits it would bring to the scheme and potential financial and administrative burdens. In any event, there are already comprehensive arrangements in the act that establish penalties for breaches of the act, and the flexibility of the levy system is used to impose sanctions on employers for breaches of their obligations.

New clause negatived.

Clause 81.

The Hon. SANDRA KANCK: On behalf of the Hon. Ann Bressington, I move:

Page 70, line 36—Delete 'authority' and substitute:

entity

This amendment is about making the code of claimants' rights apply not only to compliance by WorkCover Corporation with the rights of injured workers but also to bind any person or body that may trespass against these rights. I also indicate that there are similar amendments, Nos 24, 25, 26, 28 and 29, in this regard. If this one is defeated, obviously, I will not move those other amendments.

The Hon. P. HOLLOWAY: The government opposes the amendment as the purpose of a code of claimants' rights is to outline the way in which claimants can expect to be treated by compensating authorities and their agents. Registered employers have a very different role in the scheme. They are not compensating authorities and have no delegations to administer the Workers Rehabilitation and Compensation Act by, for instance, fielding and determining claims. The focus of the proposed code is on claims and claimants. By nature the claimant is complaining about something to do with the handling of his or her claim. In most important respects the claim is handled by a compensating authority.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 70, after line 38—Insert:

(ab) setting out requirements for a relevant authority to provide appropriate information to claimants or potential claimants, including information about—

(i) the extent to which the worker is entitled to the provision of rehabilitation and support, including through the provision of equipment, facilities or services at home; and

(ii) the extent to which the relevant authority may assist with the payment of accounts for medical services, including through the making of direct payments to service providers; and

(iii) the processes involved in claiming and receiving compensation for any permanent impairment; and

This amendment would require that the code of claimants' rights require that compensating authorities should provide claimants with basic information about their rights, and that just does not happen at present.

The Hon. P. HOLLOWAY: The government opposes the amendment.

Amendment negatived.

The Hon. SANDRA KANCK: On behalf of the Hon. Ann Bressington, I move:

Page 71, after line 24—Insert:

123C—Injured Workers Advisory Committee

(1) The Minister must establish a committee to be called the *Injured Workers Advisory Committee*.

(2) Subject to subsection (3), the committee consists of 9 members appointed by the Minister on the basis that they are considered by the Minister to be suitable representatives of workers who have suffered compensable disabilities.

(3) 1 member of the committee must be a person nominated by—

(a) the National Committee of Whistleblowers Australia Inc; or

(b) the National Committee of *Transparency International*.

(4) At least 1 member of the committee must be a woman and at least 1 must be a man.

(5) The members of the committee will hold office on terms and conditions determined by the Minister and, at the expiration of a term of office, are eligible for reappointment.

(6) The functions of the committee are—

(a) to provide advice to the Minister on matters relating to workers rehabilitation and compensation; and

(b) to make recommendations relating to—

(i) the matters to be addressed in the Code of Claimants' Rights; and

(ii) any proposals to vary the Code; and

(c) to carry out other functions assigned to the committee by the Minister.

(7) The Minister will appoint 1 of the members of the committee to be the presiding member of the committee.

(8) The procedures of the committee will be determined by the committee except that—

(a) a quorum of the committee is 5 members; and

(b) a decision supported by a majority of members present at a meeting of the committee is a decision of the committee.

(9) The committee must meet at least 6 times in any year.

(10) The committee may, with the approval of the Minister, establish subcommittees to assist the committee.

(11) A subcommittee may, but need not, consist of, or include, members of the committee

This sets up an injured workers advisory committee, the aim of which is to provide a means for injured workers to be genuinely represented within the WorkCover system. It is something that has been severely lacking and the primary reasons why the directions of the WorkCover Corporation have been hijacked by big business and corporate self-interest.

The Hon. P. HOLLOWAY: The government opposes the amendment.

Amendment negatived; clause passed.

Clauses 82 and 83 passed.

Schedule 1.

The Hon. M. PARNELL: I move:

Clause 4, page 74—

Lines 21 and 22—Delete '(in this clause referred to as the new provisions')

Lines 24 to 38—Delete subclauses (2) and (3)

Clause 5—Delete clause 5 and substitute:

5—Discontinuance of weekly payments

The amendments made to section 36 of the principal act by section 16(1), (2) and (3) of this act extend to weekly payments commenced before the relevant day, or commenced on or after the relevant day, in relation to compensable disabilities occurring before the relevant day but otherwise the amendments made by section 16 of this act only apply in relation to workers who suffer compensable disabilities on or after the relevant day.

The amendments relate to retrospectivity, and I think this parliament has been very wary of retrospective changes in the past, as it should be. My amendments Nos 79, 80 and 81 are about removing such retrospectivity. Workers who were injured many years ago having their income slashed, or stopped altogether because of laws that were not even dreamt of when they were injured, is just plain unfair. I think that all members who believe that it is unfair should support these amendments.

I also say that this was the last of my amendments upon which I had proposed to divide, but I will not divide on this. However, we may have a division on the third reading once we are beyond the committee stage.

The Hon. P. HOLLOWAY: The government opposes the series of amendments moved by the honourable member because they propose the removal of sections 35B and 35C from the bill. Sections 35B and 35C are essential components in the bill which establish the framework for weekly entitlements for long-term claimants. The new provisions are consistent with equivalent provisions interstate.

Current sections 35(1) and 35(2) assume that injured workers are entitled to weekly payments indefinitely, subject to WorkCover reviews of weekly payments that may find some work capacity. In reality, this onus is difficult to discharge. The Clayton report described the current laws as opaque and tortuous. New work capacity tests and the responsibility and balance transitional provisions are key elements in addressing the scheme's unfunded liability.

Amendments negatived.

The Hon. SANDRA KANCK: On behalf of the Hon. Ann Bressington, I move:

After clause 16—Insert:

17—Offence provisions

(1) The amendment effected by section 80B of this act operates prospectively and retrospectively.

(2) Section 122AA of the principal act, as enacted by section 80C of this act, operates prospectively and retrospectively.

This amendment again targets the scheme critical list, or whatever name it is known by now, and seeks to ensure that the criminal practices of the past are not retrospectively legalised by the government's current bill.

The CHAIRMAN: I think that this was lost in the main part of the bill.

The Hon. SANDRA KANCK: It was consequential, was it?

The CHAIRMAN: Yes.

Amendment negatived; schedule passed

New schedule 2.

The Hon. J.A. DARLEY: I move:

Page 77, after line 4—Insert:

Schedule 2—Review

1—Review

(1) The minister must, as soon as practicable after 31 December 2010, appoint an independent person to carry out a review concerning—

(a) the impact of this act on workers who have suffered compensable disabilities and been affected by the operation of this act; and

(b) the impact of this act on levies paid by employers under part 5 of the principal act; and

(c) the impact of this act on the sufficiency of the compensation fund to meet the liabilities of the WorkCover Corporation of South Australia under the principal act; and

(d) such other matters as the minister may determine.

(2) The person appointed by the minister under subclause (1) must present to the minister a report on the outcome of the review no later than 4 months following his or her appointment.

(3) The minister must, within 6 sitting days after receiving the report, have copies of the report laid before both houses of parliament.

(4) In this clause, terms used have meanings consistent with the meanings they have in the principal act.

(5) In this clause—

principal act means the Workers Rehabilitation and Compensation Act 1986.

This amendment essentially provides that, as soon as practicable after 31 December 2010, a review of the act must be carried out by an independent person appointed by the minister, and that a report on the outcome of the review must be laid before both houses of parliament within six sitting days after receiving the report. The person appointed by the minister to carry out the review under subclause (1) must provide the report to the minister no later than four months following his or her appointment.

The review will be undertaken in order to consider the impact of the act on workers who have suffered compensable disabilities and who have been affected by the operation of the act; the impact of the act on levies paid by employers under Part 5 of the act, which deals with registration and funding; the impact of the act on the sufficiency of the compensation fund to meet the liabilities of the WorkCover Corporation of South Australia under the principal act; and such other matters as the minister may determine.

Honourable members will recall that during my contribution to the second reading debate I suggested that a paradigm shift is required in the culture of the WorkCover Board and the WorkCover Corporation. I also mentioned that the opposition has maintained that it is committed to fixing the WorkCover scheme. This amendment would force whoever is in government—whether it be the present government or the opposition—to revisit the WorkCover issue by, or shortly after, 31 December 2010 and ensure that the act is achieving what was originally intended, and identify

any areas of concern or failure in that respect. I strongly urge honourable members to support this amendment.

The Hon. P. HOLLOWAY: The government opposes this transitional provision. It goes without saying that the government will closely monitor the impact of the bill after it becomes law. It will draw on the expertise of WorkCover, and other related bodies, which will also closely monitor the impact of the bill. This is no special event. It is simply regular good practice that any organisation and government would do after carrying out an initiative involving major change.

There is no need to enshrine this process in legislation as this would simply impede the ability of the government to act flexibly in this regard. For example, it may want to conduct such a review at the end of 2009 or at the end of 2011, or it may simply decide that ongoing monitoring and reviewing is sufficient. The government is also concerned about the cost of conducting another major formal review so soon after the Clayton review. Arguably, such a review is not necessary. These transitional provisions are not common in other states and territories.

The Hon. R.D. LAWSON: I indicate that Liberal members will be supporting this sensible amendment. The minister said that a provision of this kind will impede the flexibility of the government of the day. Actually, it is designed to do that. Flexibility means the flexibility to duck and weave, and avoid conducting a review of this kind. We know from the history of WorkCover itself that there have been a number of promises. Bills have been introduced, and I illustrated that the other day when I mentioned the bill introduced by the government in 2003 and indicated that nothing was done about it. That was political flexibility that the government was seeking on that occasion. So, we will be supporting this sensible initiative of the Hon. Mr Darley.

The Hon. SANDRA KANCK: That was very pleasant news, Mr Chair. It looks as though, out of all of the amendments moved in this place, this will be the only successful one. It is a sensible move. It has to be done after December 2010, which means that it will be at least three years after the Clayton Walsh review. I can hardly see why having a review would impede whatever it is that the government wants to do. This is about accountability. There are enormous changes. This is a massive shake-up in workers compensation in this state, and it will have huge implications. I think a review is an extremely sensible measure.

The Hon. D.G.E. HOOD: Just to make it unanimous, Family First also supports this sensible amendment.

Members interjecting:

The Hon. D.G.E. HOOD: Well, almost unanimous.

The committee divided on the new schedule:

AYES (12)

Darley, J.A. (teller)	Dawkins, J.S.L.	Evans, A.L.
Hood, D.G.E.	Kanck, S.M.	Lawson, R.D.
Lensink, J.M.A.	Parnell, M.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.

NOES (5)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Zollo, C.	

PAIRS (4)

Bressington, A.	Hunter, I.K.
Lucas, R.I.	Wortley, R.P.

Majority of 7 for the ayes.

New schedule thus inserted.

Title passed.

Bill reported with an amendment.

[Sitting suspended from 18:05 to 19:30]

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (19:33): I move:

That this bill be now read a third time.

The Hon. M. PARNELL (19:33): I will make a brief contribution on the third reading. This is a sad day for South Australia. This is the day that the Labor government abandoned working South Australians. Have no doubt about it—this bill is an absolute abomination. This is the worst piece of legislation that I have seen in my time here and, according to the unions that I have consulted on this bill, it is the worst piece of industrial legislation ever introduced by a Labor government, probably in the history of South Australia.

The process was appalling from start to finish. It started with an unholy delay; the government delayed introducing the legislation because they did not want it to be confused with the Prime Minister's WorkChoices bill. They rushed it on, there was an appalling lack of consultation and, what is worse, a total abrogation of responsibility from the Liberal Party to do their job as an opposition to try to amend this law. The Liberals left it to the cross-bench members to try to fix up this mess.

Make no mistake about it: this legislation is a mess. We have passed an amendment to say that we will come and look at it again in a few years but I doubt that it will take that long. We will be back here during the term of this parliament to fix up mistakes that could easily have been fixed up in the committee stage of this bill.

However, what is most distressing for me is that in the background to this is real pain for injured workers. As the result of this government's bill and this parliament's actions, thousands of South Australian working families face major disruption to their livelihoods. Hundreds of South Australians (perhaps more) will lose their homes as a result of the cuts to their entitlements under this bill if they are unlucky enough to be injured at work. This is a horrible legacy for the government to be leaving this state.

I have tried over the past several days to represent the people that the old parties have abandoned. I make no apology for the fact that it did take us some time. At the end of the day this bill has been rushed through. When you look at how long it took, it was not a long time. In fact, it was not nearly as much time as it deserved.

But in the third reading, I want mainly to put on the record my thanks to the many people who have provided their advice, support and encouragement to me and the Greens in trying to fix this awful legislation. The first person I would like to thank is Janet Giles, the Secretary of SA Unions, who members would know has been—

The Hon. I.K. HUNTER: On a point of order, Mr President, I point out that the camera person in the gallery should be training his camera only on the member speaking.

The PRESIDENT: I remind the camera person that the he should have his camera trained only on the person who is on their feet.

The Hon. M. PARNELL: Janet Giles, the Secretary of SA Unions, has sat here in the gallery watching us do our work day after day after day. She is a busy person; she has other things to do. But it shows how serious the trade union movement sees this legislation; how serious it considers it that we are cutting the entitlements of vulnerable people.

I would also like to put on the record my thanks to the very many union leaders and activists who have helped with this campaign; in particular, Jan McMahon from the Public Service Association, and many others; Wayne Hanson; members from the CFMEU; and others who are too numerous to mention. I would also like to put on the record my thanks to Rosemary McKenzie-Ferguson from the Workers Injured Resource Connection; Andrea Maddeley from the group VOID; and other experts and other activists, such as Phil Moir.

I also acknowledge the expertise and work of Kevin Purse, whose work I have referred to extensively throughout this debate. But, most importantly, I want to thank the dozens and dozens of injured workers who contacted my office and provided me with the stories and the anecdotes that I used to illustrate how bad these new laws are. If it was not for those people, this law would just seem to be an economic measure about the unfunded liability. It is not: it is about real people who have been injured at work, and this parliament has done them a huge disservice by cutting their standard of living.

This is a disgraceful piece of legislation, but I am comfortable that I will sleep well. I will have no trouble looking union leaders in the eye. I will have no trouble looking injured workers in

the eye, because I have stood up for their rights. I wish I could say that other members of this place, apart from my colleagues on the cross-benches, had done likewise. I will be opposing the third reading of this bill.

The Hon. SANDRA KANCK (19:39): I suppose that, if there was one word I would use to describe both the process and outcome of this bill, it would be 'disappointing', but it is typical of the Rann government to take legislation and to effectively ram it through. We have not had adequate discussion, and the rate at which we dealt with amendments this afternoon in order to get this through on the timetable the government wants was really quite disgraceful.

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: So there is another 'd' word. I remind members that back in 1986 the Democrats held up the WorkCover legislation for many months, and the consequence of it was amendments to legislation that resulted in what was the best WorkCover legislation in Australia. It happened because there was adequate consultation. That has not happened in this particular case.

Members of the opposition reminded us that, when they were in government, their legislation was held up for 500 days, and the Labor Party in opposition thought that that was a very good thing but, now that it is in government, it thinks that ramming things through is the way to go. I am disappointed in the government at not being willing to accept a single amendment of the many that were moved. It has quite clearly an obsession with this issue of the tail of the scheme and it had a determination that there was only one way to deal with it and that was its way when, in fact, many other ways could have been considered.

I also express my disappointment in the opposition. I believe that we are here as legislators—that is what we are paid to do—to look at legislation and make it the best possible. The opposition has failed in that task. I understand what it has done strategically, and some members expressed that to me, and their view was that the government has made its own bed with this and it has to lie on it. I certainly have looked at this in terms of what might be best for injured workers in this state, and I have been prepared to consider amendments to make things better for them.

Ultimately, this bill, described as an act to amend the Workers Rehabilitation and Compensation Act 1986, is actually a bill to limit and restrict the rights of injured workers in this state. Another D-word: they are the ones who will be devastated by this. I indicate that I will be opposing this at the third reading.

The Hon. R.D. LAWSON (19:42): The principle which guides us as legislators from the Liberal Party is that we will always endeavour to improve any bill, irrespective of whether we propose to vote in favour of or against the bill ultimately. This bill presents a peculiar challenge. The bill represents a non-negotiable government package, passed through another place very quickly to solve a problem. Admittedly, it is a problem of this government's making, but it is a very serious problem for everybody in this state, not only for injured workers but also it is a serious problem for employers, exempt employers, the government itself as the ultimate guarantor of the scheme, the citizens of the state generally, and for our economy.

I emphasise that this bill is a package of measures. The government claims that it is a balanced package which provides some benefits and some detriment to all sectors. In some, admittedly only a few, injured workers will have entitlements to increase compensation; in others, access to compensation will be circumscribed. WorkCover and exempt employers will lose the significant right to redemptions that they previously enjoyed and, of course, injured workers will lose the opportunity which they presently have to receive exemption.

The government claims that it has struck the right balance; that is a matter of debate and clearly a matter of judgment. On the other hand the unions, including the PSA, say that the balance is not correct. Employer groups who presented material to the opposition have said at best that this bill represents a score of only 6.5 out of 10. The unions want us to defeat the bill and the government is insisting that we pass it without amendment. For us the question was: should we seek to cherry pick and pluck out of the bill those things which might be of advantage to some and not pick out other things which might be seen to be a detriment?

We certainly had misgivings all along about the abolition of redemptions, for example, and the introduction of medical panels. But in the end we have agreed to the government's package. It is the package on which they will be judged. We are delighted, ultimately, that there will be a review in three years, and I commend the Hon. John Darley for introducing an amendment which will

ensure that there is a review. At that time this government will be judged; at that stage, we will see whether—

Members interjecting:

The Hon. R.D. LAWSON: Well, at that stage, of course, there will be a Liberal government and it will be able to introduce measures to remedy the defects. With those remarks, I indicate that we will support the third reading and the passage of the bill.

The Hon. D.G.E. HOOD (19:45): I rise very briefly to indicate what I have said in my second reading speech and throughout the committee stage: that Family First will oppose the third reading and, indeed, opposes the bill. We have serious misgivings about much of this bill which we have discussed throughout the committee stage, but I think the fundamental issue for us is quite simply that the real problem with the WorkCover system is not the injured workers: it is that it has been poorly managed.

The WorkCover Corporation has done an appalling job of managing a very serious situation and yet, really, this bill misses any direct significant implications and any really negative consequences for WorkCover when one considers the way that they have managed the process, and that is the real shortcoming of this bill in our view. For that reason, and for many others that I have outlined throughout the very long discussion that we have had over the last couple of weeks, we certainly oppose the third reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (19:46): In closing this third reading debate, I will be very brief. Obviously, for members of the Labor Party, dealing with changes to workers compensation is always a difficult issue. It brings no particular joy that we have to deal with these issues. However, the fact is that it is obviously in the interests of injured workers that any workers compensation scheme be financially sustainable.

The fact is, whether we like it or not, our workers rehabilitation and compensation scheme is the most expensive scheme in the country, but it is also demonstrably—and by a big margin—the least effective at getting workers back to work. The principal driving force behind the government's changes (based of course on the review of Mr Clayton) is to get workers back to work.

So we can hear all the bleeding heart stories from the Hons Mr Parnell and Ms Kanck, but, whether he likes it or not, the fact is that Mr Parnell wants a scheme to continue that is notoriously and demonstrably ineffective at getting workers back to work. If he has his way, his system will keep workers, who in other jurisdictions would be back at work, in the scheme, which is failing those workers, and that is statistically and demonstrably correct.

It is all very well for people like the Hon. Mr Parnell to lecture members here. We have a difficult choice to make. The fact is that this government is faced with difficult choices. We have to make those choices, and it gives us no joy to do that, but if as a result of the changes made to the scheme, we can improve our return to work record and if, as a result of that, we can make our scheme more effective, it will also in the process actually create more jobs within the state because we cannot afford to have our costs out of kilter with those in other states because if we do, it will reflect on employment.

Of course, the Hon. Mark Parnell can just take a very myopic, narrow, tunnel-vision approach, but when you are in government you have to look at the overall scope of issues facing government. We have to ensure that our system works such that it is in the best interest of the community at large, which means that we have to ensure that workers get back to work.

I have met workers in the past who have come through the workers compensation scheme. A lot of it is not a pretty sight. The Hon. Mr Parnell and others have told us how bad the system is in relation to what it does to these workers. Well, why then does he want to keep it that way? I think that is the question that needs to be asked.

Time will tell whether or not these changes work, but at least I will sleep easy knowing that we have tried to improve a system that gets workers back to work and not leave them as they are at the moment, where we have the most ineffective scheme in this country at getting workers back to work. As for the Hon. Ms Kanck, I just want to say what a total phoney she is. The honourable member headed off overseas for a trip, missed the 13 hours of debate on the second reading and then deigns to lecture us in the third reading: 'We haven't had enough time to consider the bill.' What a phoney you are, Ms Kanck—what a total, utter, unadulterated phoney you are.

The Hon. Sandra Kanck: We are going to personalise it now, are we?

The Hon. P. HOLLOWAY: No; I am just pointing out to the Hon. Ms Kanck that she tries to lecture us about not having enough time. Well, why was she not here to endure 13 hours of debate? There was plenty of time then. She chose not to be here. She chose to be somewhere else, so do not lecture us. As I said, the passage of this bill has obviously been a difficult decision for members of the Australian Labor Party, but it is one which we had to take in the best long-term interests of the workers of this state to ensure that they have a viable, long-term workers compensation scheme.

I can assure the public of South Australia that we will continue to monitor the scheme to ensure that it does provide the benefits to injured workers which they thoroughly deserve.

The council divided on the third reading:

AYES (14)

Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hunter, I.K.
Lawson, R.D.	Lucas, R.I.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

NOES (4)

Darley, J.A.	Hood, D.G.E.	Kanck, S.M.
Parnell, M. (teller)		

PAIRS (2)

Lensink, J.M.A.	Bressington, A.

Majority of 10 for the ayes.

Third reading thus carried.

Bill passed.

WORKCOVER CORPORATION (GOVERNANCE REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 June 2008. Page 3129.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (19:56): I thank the Hon. Robert Lawson for his comments during the second reading of this bill. The Hon. Mr Lawson asked me several questions. I have supplied him with an answer but I will put it on the record.

Mr Lawson asked why the minister's power to direct under section 14A(5)(d) provides that such a direction does not have to be published if it might detrimentally affect the performance of a statutory function. It is pointed out that this provision is a new provision applying to WorkCover. I am advised that the provision recognises the breadth and particular nature of the WorkCover Corporation's responsibilities which are not limited to financial performance. Particular emphasis is given in the act to the corporation's duties to provide effective rehabilitation; to set standards and policies to promote occupational health, safety and welfare; to promote injury prevention; and to provide compensation.

I am further advised that the clause referred to by the Hon. Robert Lawson is intended to provide a safeguard for the corporation where the publication of a ministerial direction in relation to one of these responsibilities could affect its capacity to discharge its other responsibilities. For example, the minister may give a direction to the corporation about the exercise of its powers to carry out investigations and prosecute under the Workers Rehabilitation and Compensation Act of 1986.

The publication of this policy might be detrimental to the corporation's ability to manage breaches of the act, for example, in relation to a policy as to whether to prosecute or give a warning. It would not be helpful to publicise the potential degree of tolerance that might be allowed to persons who commit technical breaches of the act. It needs to be emphasised that this provision

is limited only to those circumstances detrimentally affecting the performance of a statutory function and therefore does not pertain to the corporation's general operations.

Secondly, the Hon. Robert Lawson asked why sections 17A and 17B provide for the minister to prepare and review the corporation's charter and performance agreement in consultation with the corporation. In this sense the sections do not replicate exactly those measures in the Public Corporations Act that provide for both the minister and the Treasurer to participate in these processes. The government gave careful consideration to its preferred governance arrangements for the WorkCover Corporation. In respect of the matter raised by the Hon. Robert Lawson, I am advised that there were three choices. First, particular sections of the Public Corporations Act could be applied to WorkCover; secondly, the exact provisions of that act could be inserted into the WorkCover act; and, thirdly, the WorkCover act could be amended to take into account the particular circumstances of the corporation.

In the event, the government chose the third option, that is, amending the WorkCover Corporation act to reflect its special circumstances. The particular circumstances that the government had in mind were that, unlike other statutory authorities, WorkCover is not publicly funded and therefore is not a semi-government authority under the Government Financing Authority Act, the act which confers significant powers upon the Treasurer in relation to borrowing and investment by semi-government authorities.

The omission of the Treasurer from the preparation and review of WorkCover Corporation's charter and performance agreement recognises these realities and provides for a single, clear and transparent line of accountability with the minister. I commend the bill to the council.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.S.L. DAWKINS: I have a point of order, sir. The cameraman needs to focus only on members on their feet.

The ACTING CHAIRMAN (Hon. R.P. Wortley): The cameraman can do a wide-angled shot, but please be careful.

The Hon. M. PARNELL: I have been provided with a copy of a letter from Mr Geoff Davey, Acting Chief Executive Officer of WorkCover. It is an old letter which goes back to January 2004. The letter, which is addressed to Ms Rosemary McKenzie-Ferguson of the Work Injured Resource Connection, states:

> Dear Ms Rosemary McKenzie-Ferguson
>
> I refer to your letter dated 12 December 2003 in relation to the provision of WorkCover Board minutes. Bruce Carter has requested that I respond on his behalf. I advise that minutes from board meetings have never been made available to the public as they are commercially confidential.

My question of the minister is whether or not that is still the case and whether it is possible for minutes of decisions of the WorkCover Board to be made publicly available, even though it would be quite appropriate for any minutes that relate to detailed deliberations to be kept commercially confidential. I could see no reason why decisions reflected in minutes should not be made publicly available.

The Hon. P. HOLLOWAY: The minutes of WorkCover (as with other similar corporations) are indeed confidential—as they ought to be. It is important that members of boards are able to have a robust discussion in relation to the important issues facing them without their views becoming publicly available and their being lobbied in relation to them. Yes, the board minutes are confidential.

The Hon. M. PARNELL: I accept that details of deliberations are quite rightly kept confidential if the board is to have a frank and fearless debate, but certainly the decisions that they make ought to be publicly available. The minutes can be provided in a form that does not reflect who said what, or even who voted which way on an issue, but certainly I can see no reason why the outcomes of the meeting in terms of decisions could not be made publicly available.

The Hon. P. HOLLOWAY: In relation to the major decisions that have an impact on the operation of the scheme under the act, then obviously it is the act which prescribes which particular decisions will be made public. My understanding is board determinations are gazetted. We have discussed a number of situations where decisions are gazetted and where obviously they set up

guidelines or practices within the system during debate on the previous bill. In addition, I am advised that there are also quarterly reports on the scheme's performance. That public accountability is performed in a number of ways, but it is the act which is the appropriate place in which those things are prescribed and we have just had a long debate on that.

Clause passed.

Clauses 2 to 4 passed.

New Clause 4A.

The Hon. J.A. DARLEY: I move:

Page 2, after line 12—Insert:

4A—Amendment of section 5—Constitution of board of management

Section 5(2)—Delete subsection (2) and substitute:

(2) The board consists of nine members appointed by the Governor on the nomination of the minister, being the persons who collectively have, in the opinion of the minister, the knowledge, skills and experience necessary to enable the board to carry out its functions effectively.

(2a) Of those members:

(a) at least one must be a person experienced in rehabilitation; and

(b) at least one must be a person experienced in occupational health and safety; and

(c) at least one must be a person experienced in financial management, the management of capital through investments, and the area of insurance; and

(d) at least one must be an actuary; and

(e) at least one must be a person experienced in the self-insured employer sector; and

(f) at least one must be a legal practitioner experienced in the area of workers compensation

This amendment proposes to change the structure of WorkCover's management board from one of stakeholder representation to expert representation. It provides that the board shall consist of nine members appointed by the Governor on the nomination of the minister, being members who collectively have, in the opinion of the minister, the knowledge, skills and experience necessary to enable the board to carry out its functions effectively. Of those nine members, at least one member must be a person experienced in rehabilitation (as is currently the case); at least one must be a person experienced in occupational health and safety (as is also currently the case); at least one must be a person experienced in financial management, management of capital through investments and the area of insurance; at least one must be an actuary; at least one must be a person experienced in the self-insured employer sector; and at least one must be a legal practitioner experienced in the area of workers compensation.

I have previously stated that there are far more reaching problems with the WorkCover scheme that legislative reform alone will not address, and I believe the government needs to implement changes to address these underlying issues that will result in a change to the attitude and culture of all parties involved in the WorkCover scheme. The cultural issues go much further than those expressed by the government, which appear to be secondary to the financial deterioration of the scheme. I for one am not confident that the WorkCover Corporation has established the organisational capability and leadership required to tackle the scheme's challenges and I question the follow-up of the current board in this regard, given that it is a representative board made up of stakeholders who may or may not have their own agendas.

This amendment aims to begin this process of change within the WorkCover board. It is aimed at providing a board made up of individuals experienced in dealing with all the critical areas associated with workers compensation legislation. I strongly urge members to support this amendment.

The Hon. P. HOLLOWAY: The amendment moved by the Hon. Mr Darley deletes the current directions for the constitution of the board and replaces them with different ones. It is proposed that the minister nominates people who he believes are competent to carry out the role of board members: one will have to be experienced in rehabilitation; one in OHS; one in financial management and insurance; one an actuary; one experienced in self-insurance; and one a workers compensation legal practitioner.

The government opposes this amendment as we believe that the WorkCover Board is an appropriately selected and balanced board which represents the interests of both employee and employer stakeholders and which has experience in the areas of rehabilitation and occupational health and safety. In addition, there is nothing preventing the government from appointing people with the types of qualifications suggested by the Hon. Mr Darley. In fact, the board chair, Mr Bruce Carter, is clearly someone with financial management experience. Board member, Jane Tongs, has a background in insurance and risk management, and Barbara Rajkowska has extensive knowledge in the self-insured sector.

As someone who, as a minister, has to make appointments to a number of boards within their portfolio, it is often the case that the more prescriptive you might be with the types of suggestions made by the Hon. Mr Darley the more likely, in my view, you are to get a board that in the end cannot see the wood for the trees. By the time you try to balance up all the factors (including gender balance), and with people with these types of experiences, the one thing I have learned in my experience as a minister is that the most important thing above all is competence in running a board. That is the overwhelming criterion.

Of course, it is important that there be a range of skills and knowledge on the board, but to me it is much more important to have people with the skill and the talent and of a calibre to properly manage a board than to have a mixed board with particular skills, For that reason, I believe we should oppose the amendment.

The Hon. R.D. LAWSON: Whilst we have some sympathy for this well-intentioned amendment of the Hon. John Darley, we are not convinced that we as legislators should limit the capacity of any government to select a well-rounded board to fulfil particular functions. It seems to us that the designation of the required experience of individual board members is overly prescriptive. Whilst it is true that persons with the experience mentioned in the honourable member's amendment sound like good people with good experience to have on a board, in selecting a board a government ought to have sufficient flexibility to make judgments.

Incidentally, we believe that it is very easy for this government to sheet home responsibility for the current situation of WorkCover to the board; it has been very keen to do that, and it has been demonstrated in a number of ways. This governance bill will make this body subject to ministerial direction, as it should be and, indeed, as it has been.

This government has had its hands on the wheel of WorkCover since it came to office. This minister had his hands on the wheel, and his fingerprints are on the result—and never let that be forgotten. We simply do not believe that, by stipulating in a prescriptive manner the particular qualifications that are to be held by individual members, will necessarily yield a better board. So, not without some reluctance, I indicate that we will not be supporting this measure.

New clause negatived.

Clause 5 passed.

Clause 6.

The Hon. R.D. LAWSON: I move:

Page 3, lines 22 and 23—Delete paragraph (d).

I apologise to the committee that this amendment was placed on file only earlier this afternoon, and I will therefore explain its effect in some detail. When making my second reading contribution I had hoped that the government would provide information which convincingly showed that an amendment of this kind was unnecessary. However, the explanation ultimately provided by the minister—and I thank the minister for doing that—does not allay the fears which we have.

This is an amendment to proposed clause 14A. Proposed clause 14A, headed 'Direction of minister', specifically provides that the corporation will be subject to the control and direction of the minister. Clause 14A is based word for word upon section 6 of the Public Corporations Act. So, what the government is doing by this amendment is to make WorkCover subject to the same regime that applies to SA Water, the Land Management Corporation, the Lotteries Commission, TransAdelaide and other public corporations, except in one significant respect.

The clause, as I say, provides that the corporation is subject to the control and direction of the minister. It goes on with some important qualifications: the minister cannot direct the corporation in relation to a specific WorkCover matter; any ministerial direction that is given must be communicated to the corporation in writing, so it cannot be a secret call to the chairman: it has got to be written; it must be published in the next annual report of the corporation; and it must be

published in the government *Gazette* within seven days. So, it is an important element of accountability and transparency. It is very important that any directions be made public.

However, there is an appropriate form of protection in subclause (5): 'if the corporation is of the opinion that a direction should not be published' because (a) it 'might detrimentally affect' commercial interests, (b) it 'might constitute a breach of duty of confidence', or (c) 'might prejudice an investigation of misconduct or possible misconduct' are all reasons that we can accept as being appropriate to relieve the minister of the obligation to make the direction public, and they apply to all public corporations.

However, in this act, and without any explanation, the government has added another reason why the minister can avoid publicly revealing the contents of a direction, and that is a new clause (d) which is inserted, and my amendment seeks to delete this clause. The new way out for the minister is that the publication of the direction 'might detrimentally affect the performance of a statutory function'.

I cannot see any reason why this additional way out of publicly revealing a direction should be made available to the WorkCover Corporation, of all of the public corporations that we have. SA Water does not have this particular way out for the minister there: he has got to actually table it unless he can satisfy the earlier criteria. The minister, no doubt, will provide some explanation: he did in his answer. He suggested—and this might come up in debate—that there might be reasons of policy (in relation to prosecutions, for example) where they might not want to reveal the direction.

I am certainly not satisfied of that. If any direction is given it ought to be publicly available, excepting in the extraordinary cases which are already mentioned and which apply to other corporations. I seek support for the amendment which in this respect will put WorkCover in the same position as SA Water and other public corporations.

The Hon. P. HOLLOWAY: First, I would like to make the point that WorkCover is not quite in the same position as SA Water, which is really a commercial operation. WorkCover has a range of responsibilities in terms of rehabilitation; SA Water is simply about producing water at a price. I suppose it has a community service obligation, but that is satisfied by providing water to country areas at a lower price. I think it is quite different with WorkCover, which has these broader responsibilities.

An example I gave in my second reading contribution of a policy that might be detrimental to the corporation's ability to manage breaches of the act was, in relation to a policy, whether to prosecute or give a warning. My point was that it would not be helpful to publicise the potential degree of tolerance that might be allowed to persons who commit technical breaches of the act. If that is the sort of thing where there might be a direction—

The Hon. R.I. Lucas: Why is the minister giving directions?

The Hon. P. HOLLOWAY: Well, one does not know what the background might be; this is hypothetical—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It is simply to allow for the fact that there might be a case where—

The Hon. R.I. Lucas interjecting:

The ACTING CHAIRMAN (Hon. R.P. Wortley): Allow the minister to answer the question.

The Hon. P. HOLLOWAY: It is all very well for the Leader of the Opposition to try—

An honourable member interjecting:

The Hon. P. HOLLOWAY: How would it be helpful to publish the potential degree of intolerance? There have to be those sorts of directions. I can give one analogy; it does not really apply to the minister, but the Commissioner of Police determines the tolerance on speed cameras. That is not made public for a very good reason, and I think everyone would know what that was.

An honourable member interjecting:

The Hon. P. HOLLOWAY: It probably would be possible to give a direction, but why should the Commissioner have to make that public? That is an example of a very good reason why a policy that is uniform and not discriminatory in any way should not be made public. If you look at the other reasons (and the Hon. Robert Lawson is not challenging those), it says:

If the corporation is of the opinion that a direction should not be published for the reason that its publication—

(a) might detrimentally affect the corporation's commercial interests—

so he is happy with that—

or

(b) might constitute breach of a duty of confidence—

he is happy with that—

or

(c) might prejudice an investigation of misconduct or possible misconduct—

and he is happy with that, but apparently he is not happy with—

or

(d) might detrimentally affect the performance of a statutory function...

Now, if you put it in that context I would have thought it was the Hon. Robert Lawson who needed to explain why that is different to the other functions.

The Hon. R.D. LAWSON: The examples given by the minister as being reasons for the necessity for this provision are that perhaps the minister—and this is a political officer—might wish to issue a direction to the WorkCover board. Now, I presume you do not issue directions if the board is prepared to do whatever the minister is suggesting; these are fairly extraordinary circumstances where the board does not see the sense of a particular position and the minister has to give a political direction as to what to do. The two examples are given as a policy as to whether to prosecute or give a warning. That is what the minister said. If there is some policy in relation to prosecution that the minister at a political level wants to give a direction, that is the very sort of issue that ought to be publicly disclosed.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: Neither am I.

The Hon. P. Holloway interjecting:

The ACTING CHAIRMAN: Can members please go through the chair.

The Hon. R.D. LAWSON: The minister might want to say, 'We don't want you prosecuting SafeWork officers or union officials, who have a responsibility to pay, or giving warnings. We don't want you to do this and we do want you to do that.' These are fairly—

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: It is the minister who is suggesting the example is a policy as to whether to prosecute or give a warning.

The Hon. P. Holloway interjecting:

The ACTING CHAIRMAN: Order!

The Hon. R.D. LAWSON: I am reading from the minister's second reading response. The fact is, the minister is suggesting that there might want to be a policy that the minister might want to impose, the board does not want to do it, and the minister wants to keep it secret. We do not believe that a government that claims to be committed to transparency and accountability should be promoting a special provision for WorkCover, not applicable to any other public corporation but to this one; that we can have a minister give a direction that is kept secret. There is simply no justification for it.

An example given of the Commissioner of Police, as the Hon. Rob Lucas pointed out in an interjection, is absolutely inappropriate, the very sort of case where a direction by a minister to the Commissioner of Police is the sort of thing that ought to be public. It should not be made in the first place—

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: We are talking about the minister. The other distinction that the minister seeks to make, as he said, is that SA Water is purely a commercial operation and, therefore, you would not want to give a direction of this kind. SA Water is not purely a commercial operation. It is a public corporation. It has particular functions, many of which are to do with the

public interest, just as the WorkCover board has public obligations. I do not believe that the government has made a clear case as to why a special exemption should be made for WorkCover Corporation, and I seek the committee's support, in the absence of any satisfactory explanation, for the removal of this offensive provision.

The Hon. P. HOLLOWAY: The Hon. Rob Lawson has been a bit disingenuous in misinterpreting the point that I made in my second reading response. I said, 'in relation to a policy as to whether to prosecute or give a warning', and the member is suggesting that, somehow or other, the minister would say, 'Don't prosecute X or prosecute Y.' If such a direction were ever to be given—and I do not believe it would be—how would that detrimentally affect the performance of a statutory function? Obviously, it would be quite inappropriate.

Clearly, the point that was being made in relation to that is that, if there was some direction in relation to a class of actions there might be minor transgressions, and that is why I gave the example of the Police Commissioner. The Commissioner makes a determination about at what point people will be picked up under speed cameras; what the speed figure is.

That is the sort of general broad determination that has to be made and it is a type of instruction like that, by analogy, that would cover a class of actions where its publication might detrimentally affect the performance, because people would immediately shift their behaviour to the very margin of the act, as they would in the speed camera analogy. To try and suggest, as the Hon. Robert Lawson does, that the minister would somehow or other direct not to prosecute particular individuals, I think, is really being quite disingenuous.

Clearly, there are cases where, if a direction were to be given in relation to a class of behaviour to set the limit, if that degree of tolerance became known it could clearly detrimentally affect the performance of a statutory function. However, it would be quite proper for such a direction to be made.

The Hon. R.I. LUCAS: I support the comments of my colleague the Hon. Mr Lawson and will not repeat them, but the other point I make is that the whole area of ministerial directions of statutory corporations is complex and difficult. The summary of the Hon. Mr Lawson's case is that there are provisions under the Public Corporations Act and, if it is to be different, the government needs to make the case. I agree with the Hon. Mr Lawson's argument that the government has not done so in this regard.

Evidence has come to light in regard to the WorkCover Corporation relating to the general issue of a commonly held view that a direction had been issued by minister Wright to the board in relation to the policy of redemptions. I will not go into the detail, but the minister had a particularly strong view on redemptions. It was a commonly held view, but it transpired that the chairman of the WorkCover Corporation conceded in the end that there had not been a direction to the board. However there had been a philosophical letter from the minister to the chairman of the board and to the board expressing the very strong views of the minister in relation to this critical policy issue.

It raises the general issue of a philosophical letter, as it was so described by the chair of WorkCover on a critical issue like redemptions, and a mechanism through that course where the minister did not issue a direction and therefore it did not have to be made public. That will not be resolved by this debate, but it is a complex area and ministers like to get their way if they can, and sometimes they like to get their way without it necessarily being revealed publicly through an annual report, a revelation or a tabling in the parliament.

So, in respect of this issue of whether or not a further mechanism can be constructed for a minister to give a political direction to what is supposed to be an independent board running WorkCover on complicated issues, such as the example the minister used of prosecutions or any range of a number of other areas, it is really the responsibility of the minister and the government to make a case for it. I agree with the Hon. Mr Lawson that the government and the minister have not made that case.

The Hon. R.D. LAWSON: The minister also in his response to me said, 'It would not be helpful to publicise the potential degree of tolerance that might be allowed to persons who commit technical breaches of the act.' To take an example, WorkCover takes a position that employers will receive no extra time in which to make a payment and, if they are one day late, they must pay interest immediately from that time or from seven days after the due date, and that is WorkCover's policy. However, a business friendly minister may come along and say, 'That's a bit harsh, seven days; I want you to give them 30 days—that would be more reasonable.' WorkCover says, 'No, we think seven days is reasonable.' The minister says, 'I'm going to give you a direction; I'm going to

tell you that everybody—employers, self-insured or whoever—can have 30 days to make the payment.'

If a minister were so unwise as to make a direction of that kind (I could not imagine that would ever happen), he would be able to do so under this provision and then say, 'Well, I don't actually have to reveal that because it might detrimentally affect the performance of the statutory functions.' That is a hypothetical example, but one can see the case where ministers might give directions. The Hon. Mr Lucas gave a more direct example where a formal direction was not given but a philosophical letter was, which raises other issues again. There is the possibility of inappropriate directions being given. If you make sure the directions have to be tabled, you will not get inappropriate directions. I seek support for my amendment.

The Hon. P. HOLLOWAY: Subsection (5) provides:

If the corporation—

not the minister—

is of the opinion that a direction should not be published for the reason that its publication—

and then there are these grounds—

the corporation may advise the minister of that opinion giving the reason for the opinion.

That is all that happens in the first instance: the corporation 'may' advise the minister of that opinion. If there is some direction and if the corporation thinks that it might detrimentally affect its performance, the corporation may advise the minister of that opinion giving the reason for that opinion. New subsection (6) provides:

If the minister is satisfied that a direction should not be published for a reason referred to in subsection (5), the direction need not be published by the minister or the corporation as required by subsection (4), but—

and it is a pretty big but—

(a) the minister must cause a copy of the direction to be presented to the Economic and Finance Committee of the parliament within 14 days after the direction was given; and

(b) the corporation must cause a statement of the fact that the direction was given to be published in its next annual report.

How on earth is that hiding the decision?

The Hon. R.D. LAWSON: In conclusion, I say I am not satisfied, on the minister's explanation, that there is any reason why WorkCover should be treated any differently from SA Water or any other public corporation.

The committee divided on the amendment:

AYES (11)

Darley, J.A.	Dawkins, J.S.L.	Hood, D.G.E.
Kanck, S.M.	Lawson, R.D. (teller)	Lensink, J.M.A.
Lucas, R.I.	Parnell, M.	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	

NOES (6)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hunter, I.K.	Wortley, R.P.

PAIRS (2)

Schaefer, C.V. Zollo, C.

Majority of 5 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 7 passed.

Clause 8.

The Hon. R.D. LAWSON: I move:

Page 4—

Line 7—

After 'minister' insert:

and the Treasurer

Line 22—

After 'minister' insert:

and the Treasurer

Page 5—

Line 1—

After 'minister' insert:

and the Treasurer

Line 3—

After 'minister' insert:

and the Treasurer

Line 20—

After 'minister' insert:

and the Treasurer

The amendments I move are in identical terms, and I will make one explanation for them. These provisions follow sections 12 and 13 of the Public Corporations Act. They require a charter and performance statements to be prepared. In the Public Corporations Act the charter and all the obligations are to be undertaken by the minister and the Treasurer. In the amendment that the government has presented, the Treasurer is removed from these obligations, whereas in SA Water and other public operations it is both the minister and the Treasurer who are responsible in consultation with the corporation to undertake these functions in relation to the charter.

As I stated in the second reading debate, the Auditor-General has indicated that there is an implied public guarantee by the state of WorkCover Corporation's debts. Although there is not an explicit guarantee, there is an implied guarantee; therefore, the financial results and the performance of WorkCover are of great interest and moment to the Treasurer. Why, one might ask, in relation to this particular public corporation, has the Treasurer been written out? I can quite understand why the Treasurer might want to say, 'Don't involve me in this; leave that to the minister. We have seen what a terrible mess it can get into. I don't want to be involved. I want to wash my hands of the performance statements and the charter of the WorkCover Corporation.'

We do not believe the Treasurer should be able to wipe his hands in that way. We believe that, as in other public corporations, these responsibilities should be shared by the minister and the Treasurer, because, as we now know, if WorkCover encounters financial difficulties, as it has, it is a matter of vital interest to and responsibility of the Treasurer. He ought to be there, he ought to be responsible, and he ought to accept his responsibility. It is for that reason that we seek to have these provisions match the provisions of the Public Corporations Act, and ensure that the Treasurer is accountable.

The Hon. P. HOLLOWAY: I assume the missing Independents will vote with the opposition as they did last time even if they do not hear the arguments.

The Hon. R.D. Lawson: Some of them do.

The Hon. P. HOLLOWAY: Yes, I should acknowledge that the Hon. Mr Darley and the Hon. Mr Hood have sat and listened to the debate all the way through, as they generally do. I think it is a bit rich when we are told by some people that WorkCover is the most important piece of legislation this state has ever seen, but when it comes to this part it is apparently not: governance questions are not quite as important. I think that says something.

With this particular provision, I have outlined the government's position. There were three choices that the government could have had in relation to arrangements for WorkCover. The particular section of the Public Corporations Act could be applied to WorkCover; secondly, the exact provisions of the act could be inserted into the WorkCover Act; or, thirdly, WorkCover Act could be amended to take into account the particular circumstances of the corporation.

That was the choice that the government took. The particular circumstance that the government had in mind was that, unlike other statutory authorities, WorkCover is not publicly

funded and, therefore, is not a semi-government authority under the Government Financing Authority Act, the act which confers significant powers upon the Treasurer in relation to borrowing and investment by semi-government authorities.

It is different but, obviously, WorkCover also has a special position, as the Hon. Robert Lawson pointed out, because of implied liabilities or implied responsibilities. However, it is still different to those other authorities. The omission of the Treasurer from the preparation and review of the WorkCover Corporation's charter and performance agreement recognises these realities and provides for a single, clear and transparent line of accountability with the minister. However, as I say, if it remains as it is, so be it.

The Hon. R.I. LUCAS: I rise to speak to this and support my colleague, the Hon. Mr Lawson. Given what we have heard that the current leaders of the government (both the Premier and the Treasurer) have said to various fora within the Labor Party and other circles that the problems confronting WorkCover were of State Bank proportions and spoke about the implied liability issue that the Hon. Mr Lawson has talked about of unfunded liabilities of $1 billion, as a former treasurer for the life of me I cannot understand how, in terms of governance, the government would have gone down the path of not having a continuing role for the Treasurer of the state in relation to this corporation when he (or she; but he at the moment) has a role in relation to other pubic corporations in South Australia.

I think, with the greatest of respect, that the Leader of the Government's heart was not in his response there. His words say the numbers are not going to be there and so be it, sort of thing—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: We do not know; we have not heard yet. However, let me say, having observed the Leader of the Government, that his heart is not in this, because I think he realises that there is no argument for the government's position on this. For the life of me I cannot work out why the Hon. Mr Kevin Foley would be wanting to wash his hands of the whole WorkCover issue. Maybe he does want to, as an individual treasurer, but future treasurers (whoever they might be) should have shared responsibilities in relation to something as important as the WorkCover Corporation. I do not intend to repeat the arguments that the Hon. Mr Lawson has made. They are persuasive, and I trust that the majority of the committee, if not all the committee, will support his amendment.

The committee divided on the amendment:

AYES (11)

Darley, J.A.	Dawkins, J.S.L.	Hood, D.G.E.
Kanck, S.M.	Lawson, R.D. (teller)	Lensink, J.M.A.
Lucas, R.I.	Parnell, M.	Ridgway, D.W.
Schaefer, C.V.	Stephens, T.J.	

NOES (6)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hunter, I.K.	Wortley, R.P.

PAIRS (2)

Wade, S.G. Zollo, C.

Majority of 5 for the ayes.

Amendments carried; clause as amended passed.

Remaining clauses (9 and 10) and title passed.

Bill reported with amendments.

Bill read a third time and passed.

FIREARMS (FIREARMS PROHIBITION ORDERS) AMENDMENT BILL

Consideration in committee of the House of Assembly's message.

The Hon. P. HOLLOWAY: I move:

That the House of Assembly's amendment No. 1 be agreed to.

This is a technical amendment. It was moved by the government in another place. Clause 27 of the bill inserts new 26C into the Firearms Act. As passed by the council, 26C(1)(a) provided that a person aggrieved by the decision of the Firearms Review Committee to affirm a decision of the Registrar with a right of appeal against the committee's decision. In reality, the aggrieved person is appealing against the decision of the Registrar who makes the substantive decision about the licence and not the committee. That merely affirms the Registrar's substantive decision. The Registrar should be a party to any proceedings before the District Court. Amendment No. 1 amends proposed section 1A to reflect this, so it is a technical amendment correcting a drafting error that was picked up in the House of Assembly.

The Hon. D.W. RIDGWAY: I indicate that the opposition supports the amendment that we have received from the House of Assembly. I have looked at the information provided and it is a technical amendment that corrects an anomaly, and we are happy to support it.

Motion carried.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (21:05): I move:

That standing orders be so far suspended as to enable the Clerk to deliver the message on the Firearms (Firearms Prohibition Orders) Amendment Bill to the Speaker of the House of Assembly notwithstanding the fact that the House of Assembly is not sitting.

Motion carried.

At 21:05 the council adjourned until Tuesday 17 June 2008 at 14:15.