LEGISLATIVE COUNCIL

Thursday 6 March 1986

The PRESIDENT (Hon. Anne Levy) took the Chair at 11.30 a.m. and read prayers.

PETITION: COUNTRY PETROL PRICING

A petition signed by 520 residents of South Australia praying that the Council direct the Government to make all possible efforts to remove the iniquitous position in relation to petrol pricing and ask it to strongly consider intervention to achieve realistic wholesale prices as a means of achieving equity for the country petrol consumer was presented by the Hon. M.J. Elliott.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner):

Pursuant to Statute—

Country Fire Services Board—Report, 1984-85.

Depatment of Correctional Services—Report, 1984-85.

Department of Labour—Report, 18 months ended 30 June, 1985.

Department of the Public Service Board—Report, 1984-85.

By the Minister of Corporate Affairs (Hon. C.J. Sumner):

Pursuant to Statute—

National Companies and Securities Commission—Report, 1984-85.

By the Minister of Health (Hon. J.R. Cornwall):

Pursuant to Statute—

Engineering and Water Supply Department—Report, 1984-85.

Planning Act 1982—Crown Development Report by S.A. Planning Commission on development of villa units by Department of Lands at Port Augusta.

South Australian Planning Commission—Report on the Adminstration of the Planning Act 1982, 1984-1985.

By the Minister of Tourism (Hon. Barbara Wiese):

Pursuant to Statute—

Advisory Council For Inter-government Relations—Report, year ended 31 August 1985.

MINISTERIAL STATEMENT: AIDS

The Hon. J.R. CORNWALL (Minister of Health): I seek leave to make a statement.

Leave granted.

The Hon. J.R. CORNWALL: Two women known to have worked as prostitutes in South Australia are AIDS related virus anti-body positive. One was sentenced to a long prison term shortly after being tested on drug related charges and is currently in prison. The other is under the guidance of the Drug Assessment Panel. Both women worked as prostitutes to finance drug habits. The woman apparently referred to by Mr Cameron, MLC, was admitted to the methadone program of the Drug and Alcohol Services Council when found to be ARV antibody positive, to remove her need to work as a prostitute to finance her habit. In addition, the South Australian Housing Trust has provided priority housing to the woman to ensure that she does not have a brothel as her only accommodation, as was previously the case.

The AIDS program and the Drug Assessment Panel have regularly jointly reviewed the progress of the woman: she has attended counselling sessions as instructed, and the Drug Assessment Panel has the power to send her back before the courts if she does not comply with these conditions. She has also attended the methadone program as instructed.

In Adelaide, some brothel owners have their employees regularly tested at the Sexually Transmitted Diseases Clinic and the AIDS program. Others strongly discourage their employees from attending. It cannot be guaranteed that there are no other prostitutes who are ARV antibody positive, but who have not come forward for testing. As Dr Michael Ross says, it is a case of *caveat emptor.*

Based on overseas evidence, there is roughly a 1 in 10 chance of an ARV antibody positive infected woman infecting a male sexual partner—not even money, as the Hon. Mr Cameron suggested yesterday. That is as against roughly a 1 in 5 chance of the male infecting his female sexual partner.

I am further informed by Dr Michael Ross, and I believe that this is extremely important in light of what I have been trying to get through this week as a message, that the chances of transmitting AIDS if a condom is used are virtually nil, provided the condom does not rupture.

QUESTIONS

HOSPITAL CORRESPONDENCE

The Hon. M.B. CAMERON: I seek leave to make a brief statement on hospital correspondence before directing a question to the Attorney-General.

Leave granted.

The Hon. M.B. CAMERON: I have received a document which sets out policy for some public hospitals in Adelaide relating to correspondence. It states:

> Mail addressed to hospitals, whether addressed to a person or not, is the property of the hospital and therefore will be opened unless marked 'confidential' and/or 'personal'. Mail will be sorted by the correspondence clerk, in the presence of another person. Mail that is obviously 'accounts payable' will be opened by the correspondence clerk, date stamped and forwarded to the accounting officer. Patients' mail will be forwarded directly to wards via the internal courier. All inwards mail, unless marked 'confidential' and/or 'personal' will be opened by the correspondence clerk in the presence of another person. Mail marked 'confidential/personal' will be forwarded, unopened, direct to the staff member. This mail, if relating to an official topic, should be returned to the correspondence section for the purpose of indexing and allocating to its appropriate file . . . All inwards correspondence will be stamped with a date stamp . . .

The letter then deals with some other details. It concludes:

> The correspondence will be photocopied and a copy will be kept in a 'daily letter' file. The daily letter file will be monitored by the chief clerk and the person responsible for actioning the correspondence will be reminded of any unnecessary time lapse in replying.

Some very serious concern has been expressed to me about the lack of confidentiality of details of patients' illnesses and treatment and what impact the lack of confidentiality of this system may have on the medical practitioner who may be treating the patient concerned. There is a fear that the medical practitioner may well be subject to legal action if such confidential material falls into the wrong hands and, when it becomes a public document, photocopied and placed on public record in a hospital. There certainly appears to be a potential problem. Many patients in public hospitals, of course, are private patients. The second point is that not all patient material is clearly marked as patient mail and on many occasions I would imagine the clerks opening the mail may not be aware of the names of all patients of that day. My questions are:

1. Does the Attorney-General agree that such a system could cut across the necessity for privacy of correspondence, both for patients and for medical practitioners who may be treating patients?

2. Does he agree that such a system in a large public hospital is fraught with the potential for information to fall into the wrong hands?

3. Does he agree that medical practitioners may well be placed in a position of facing potential legal problems if information on their patients becomes public property through the system?

4. Will he take steps to have these systems examined by his officers and corrective action taken to ensure the privacy both of medical practitioners and patients if that proves to be necessary?

The Hon. C.J. SUMNER: There does not seem to be anything in the honourable member's question requiring attention. I am not quite sure what is his complaint. It is that two people examined the correspondence or is he concerned that a system of correspondence records is being kept? Is he concerned that the correspondence was opened at all? It is hard to determine exactly what is the gravamen of the honourable member's complaint. In those circumstances it is hard to know quite what he wants me to do. I am not sure whether—

The Hon. Peter Dunn interjecting:

The Hon. C.J. SUMNER: I am not sure that there is any difficulty in what the honourable member has outlined. Honourable members opposite were yelling, parrot like, 'Good question' and I found it hard to determine exactly what is the difficulty. Presumably, a large public hospital gets an enormous amount of correspondence in a day and it is surely important—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I get about 100 letters in my office each day and I would certainly be in trouble if I opened every letter addressed to me, as I am sure the Hon. Dr Cornwall would be. The Hon. Mr Cameron has assistance in his office—I doubt that he would personally open every piece of correspondence that came to his office. Obviously, he does not do that.

Perhaps if the honourable member can identify the concern—is it because two people open the correspondence? Does he think it should be only one person? Is his concern that apparently a record is kept of the correspondence? Is his concern that it is addressed to individual people? That is usually overcome in most business or Government organisations by marking the letter 'Personal'. People write to me and, if they do not want the letter opened by my staff, they mark the letter 'Personal'. When people write to me, as many do, the letter is usually opened by the clerks in the department and that is a fact of life. I assume that this hospital has adopted a similar procedure.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I am not sure whether it is a direction from the hospital, the Health Commission or whoever. The honourable member gets himself into a bind because in one voice he comes in here and demands the autonomy of hospitals and in the next voice he comes in and demands that I investigate a practice apparently established by a hospital with respect to the opening of its correspondence. The honourable member cannot have it both ways.

I am not sure whether there are any privacy difficulties in the system outlined by the honourable member. Certainly I do not have any jurisdiction with respect to breaches of privacy. A committee exists and I am happy to allow the matter to be looked at by it but I would be surprised if it found any difficulty with the matter that the honourable member has outlined.

HOUSING INDUSTRY

The Hon. L.H. DAVIS: I seek leave to make a brief explanation prior to asking the Attorney-General, representing the Treasurer, a question on the housing industry in South Australia.

Leave granted.

The Hon. L.H. DAVIS: Statistics for housing approvals and commencements are vital indicators of the strength and direction of the housing industry in South Australia. In 1983-84 there were 12 200 commencements in South Australia; in 1984-85 14 210 commencements; and the current forecast for 1985-86 is 10 200 commencements. The Indicative Planning Council, which is the forecasting unit for the housing industry in South Australia, has recently predicted that the number of dwellings commenced in 1986-87 would slump to only 8 750—17 per cent below the 1985-86 estimate and 38.4 per cent below the 1984-85 figure.

Housing industry officials to whom I have spoken are concerned that this dramatic slump will have a serious impact on employment in the housing industry. The association claims that as a rule of thumb every new home creates employment for four people: one in the industry, one in whitegoods, one in furniture and one in building supplies. Therefore, the projected slump to only 8 750 commencements in 1986-87 will result in about 6 000 jobs being lost, the vast majority of them in South Australia.

Commencements cover dwellings in both the private and public sector. One further area of concern in the housing industry is that in the five months from September 1985 to January 1986 (inclusive) only 441 units were commenced by the South Australian Housing Trust, compared with 1 207 units for the same period one year earlier. Housing industry officials are concerned that the Housing Trust has accelerated its program of purchasing established houses, rather than calling tenders under its design and construct program.

It is suggested that a factor in this change of direction is that in the 3½ years to 31 December 1985 there has been a 49.9 per cent increase in the average cost of a unit built by the Housing Trust compared with only a 32.4 per cent increase in the private sector. A major contributor to increased costs in the construction of Housing Trust dwellings is the Labor Government's requirement that they must be built by union labour. Representatives of the housing industry have confirmed that the savage increase in interest rates, the introduction of capital gains tax and the abolition of negative gearing have severely eroded confidence of home builders, real estate investors and home buyers, and are responsible for this projected downturn. My questions to the Minister are:

1. Does the Government accept that the dramatic downturn projected for the housing industry in 1986-87 will lead to thousands of jobs being lost in South Australia over the next 12 months?

2. Will the State Government make urgent representations to the Federal Government about the adverse impact of its economic and taxation policies on the housing industry in South Australia and, if not, why not?

3. Will the Government urgently review the Housing Trust policy of purchasing established units at the expense of its design and construct program?

The Hon. C.J. SUMNER: The honourable member has asked a long question containing a number of figures that will need to be substantiated. It is certainly true that in the three years of Labor Government there was a dramatic

increase in activity in the housing industry in this State, in fact, the greatest number of commencements since the 1960s.

Also, in the general construction industry there has been a substantial amount of approvals for development activity all of which have added to the general buoyancy of the building industry during that period. In that period too it was reflected in the real estate market generally in Adelaide. It would be expected that that activity would plateau. It would be hard to imagine that the activity of the last three years could be maintained. There may have been some reduction in commencements. Members are very keen on coming in here as soon as they have some bad news to tell Parliament. They get a smile on their face; they get very gleeful and come in with their new set of statistics to explain to us all what the problems are.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I did not notice them giving any credit to the Government during the last three years for the sort of housing policies at federal and State level that led to a significant increase in building activity in South Australia.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: So, when the Opposition has some statistics that may put a slightly less rosy picture on the situation, it grabs them with enthusiasm and glee, and brings them into the Council and parades for us.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: No, you are gleeful: you come in—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: When you get some figures like this you look just like the cat that has just caught the canary. You come into the Council and look a mocked seriousness and make these sorts of allegations. You like to get these sorts of figures, as an Opposition—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am not making any comment on the figures. The question was lengthy, it contained a lot of assertions and dealt with the building industry. All I can say, and repeat by way of putting the matter in perspective, is that there was a dramatic increase in building activity in this State from 1982 onwards—both in home building and in the number of development proposals approved. The Hon. Mr Hill, who takes a close interest in development proposals of the non-home building kind, will know that that has occurred and is still occurring in the city of Adelaide. For instance, there is an enormous amount of activity still on the boards in the construction area in the city of Adelaide.

The honourable member can produce his figures. The overall economic situation is not as dramatic as he has made out. One would expect there to be some change in the rate of activity in the home building industry in the light of the level of activity over the past three years. Obviously, the interest rate situation would not have helped that position and, as the honourable member knows, that is a matter for Federal Government economic policy. I will examine the details of the honourable member's question, and if I feel that any further action is required I will take it.

WORKERS COMPENSATION

The Hon. K.T. GRIFFIN: I seek leave to make an explanation prior to asking the Attorney-General a question about workers compensation.

Leave granted.

The Hon. K.T. GRIFFIN: The Law Society has called for an open public inquiry, properly run, to give everyone with an interest in workers compensation and rehabilitation an opportunity to put submissions in public rather than behind closed doors. The Auditor-General indicated in his report tabled this week that it was not possible for him in the short time available to verify facts and check assumptions. Therefore, it was not possible to say with any reliability whether the Government's scheme was going to save 22 per cent or cost 10 per cent more than the present scheme, or have some other effect.

The Liberal Party has said that the Government should defer consideration of the Bill, redraft it and then bring it back. However, the Government persists with the consideration of the Bill, even in the face of the grave doubts cast on it by Auditor-General. I gather from press reports that the Law Society is calling for a truly independent inquiry with all submissions open to public scrutiny, and to allow each submission to be probed and tested in cross-examination, so that deficiencies can be highlighted and balanced reasonable assessments can be made.

If one reflects on the Byrne inquiry six to eight years ago, one will remember that the inquiry was not open to the public and that there was no opportunity to draw attention to any deficiencies or false statements in submissions. The Mules and Fedorovich study on which the Government now relies to justify the scheme in the Bill now before us was not open, and access to its information was expressly denied to interested parties. I understand, from what I have heard, that the Law Society's proposal is directed towards resolving the present impasse once and for all. My questions to the Attorney-General are:

1. In the light of the impasse over the Government's Bill and the concern about costings, will the Attorney indicate whether or not he is sympathetic to the Law Society's proposal and objective?

2. Would the Attorney-General support an open public and independent inquiry?

The Hon. C.J. SUMNER: There is no impasse. The Bill is listed for debate today, and the debate will proceed, as far as I am aware, as I have not heard anything to the contrary. I understand that the Australian Democrats will be present at 2.15 p.m. to resume debate on the Bill, and I assume that members opposite will participate in that debate. I suppose that it will be for the Council to decide when we conclude that debate.

Nevertheless, Committee debate will proceed with the support of the Australian Democrats. So, I am not quite sure what the honourable member meant when he referred to an impasse. I cannot see any point in the Law Society's suggestion, given that this matter has been the subject of inquiries and public debate in South Australia for the past seven years. An enormous number of inquiries, discussion papers and conferences have been forthcoming, and one would have thought that everyone who wished to say something about workers compensation reform would have had the opportunity to say it over the past seven years. The matter is now before the Parliament, and the Legislative Council is due to consider a Bill dealing with this matter this afternoon. I understand that the Democrats will agree that we should proceed, and that is the Government's intention.

CHURCH OF SCIENTOLOGY

The Hon. J.C. BURDETT: I seek leave to make a brief explanation prior to directing a question to the Attorney-General on the subject of scientology.

Leave granted.

The Hon. J.C. BURDETT: The *Advertiser* of 14 November 1985 carried a report that commenced:

The State Government does not at this stage intend to take any action on a parliamentary report into the activities of the Church of Scientology tabled last month. The church was told of the Government's attitude in a letter from the Attorney-General, Mr Sumner, last week.

The select committee of this Council on the church of scientology recommended in its report surveillance over scientology for 12 months by the Department of Public and Consumer Affairs and the Department of Labour relating to consumer and employment aspects. The committee also recommended certain consumer protection controls, in the absence of satisfactory observations. The report in the *Advertiser* to which I have referred further stated:

The Hon. Mr Sumner said that the Department of Public and Consumer Affairs would maintain contact with the church of scientology.

My questions in relation to this matter are:

1. Is the department aware that the church has opened a subsidiary office in Hindley Street, a few doors from Downtown, where ready contact can be made with young people going to Downtown?

2. If the department is aware of that, is it satisfied that young people are not being unduly influenced and, if not, will the department examine the situation?

The Hon. C.J. SUMNER: Following the report of the select committee on the Church of Scientology Incorporated (which I must admit was not a particularly impressive report), the Government determined that basically it would do what the select committee suggested, which was to take no action with respect to the church of scientology at present. The Government will monitor, through the Department of Public and Consumer Affairs and the Department of Labour, whether there are any complaints about harassment, invasion of privacy or the obtaining of moneys.

Alternatively, it will monitor whether there are any difficulties with respect to the employment of people. It will then review the matter if there is a level of complaints that is unsustainable. If there are no complaints and the problems that apparently existed previously do not resurface, the Government will do what the select committee suggested, and that is to take no further action in relation to the matter. The Department of Public and Consumer Affairs has said that an officer is available to discuss issues with the Church of Scientology if there are any complaints of the kind that received publicity prior to the setting up of the select committee, but until there is evidence of an unacceptable level of complaints, then the Government will take the action suggested by the select committee, and that is not to pursue the matter further.

The Hon. J.C. BURDETT: Will the department examine the situation which I outlined of a subsidiary office having recently been opened in Hindley Street close to Downtown where it would be possible to make easy contact with young people attending Downtown?

The Hon. C.J. SUMNER: I am not sure what authority the Department of Public and Consumer Affairs has to investigate the establishment by an organisation of an office in Hindley Street, whether it be the Church of Scientology or any other church, unless there are complaints about breaches of consumer laws or complaints of a kind that were outlined prior to the select committee being established. In a sense, the Department of Public and Consumer Affairs gets involved in this almost on a *de facto* basis because there is no other Government point of contact with respect to these complaints. The Department of Public and Consumer Affairs officers have acted as conciliators in cases where there have been complaints about money obtained by the Church of Scientology from people who come into contact with it. The department is happy to continue to do that (and I am happy for it to continue to do it), but the department certainly has no authority to investigate the establishment of an office by a legal organisation in Hindley Street, in the absence of any complaints of the kind that I have outlined.

PIPALYATJARA HOUSING

The Hon. PETER DUNN: I seek leave to make a brief explanation prior to asking the Minister representing the Minister of Education a question on housing.

Leave granted.

The Hon. PETER DUNN: While at Pipalyatpjara in early December, I was approached by the storekeeper whose wife is an assistant school teacher. I was taken to observe the school and the housing that was available for people in that area. Pipalyatjara is probably the farthest point from Adelaide in South Australia, right in the corner of South Australia, Western Australia and Northern Territory. There were no Aborigines there when I attended as there had been an unfortunate accident the day before when five were killed in a car. We were able to have a look at the school. I observed that a number of houses were being built on the area. All but one of the houses were for Aborigines but it had not been determined who would live in the remaining house. However, the teaching staff were living in conditions that were nothing less than spartan. At the time I did nothing about the problems because I was assured that something was being done to rectify them. However, quite obviously nothing is being done, because in the Teachers' Journal for Wednesday 19 February an article indicates that there is still a problem. It states:

Sadly, the history of teachers' accommodation in this most isolated school in the State is one of broken promises and unfulfilled commitments.

Pipalyatjara is 1 900 kilometres from Adelaide. A two-way radio is the only communication along with a mail plane that comes twice weekly. Only seven non-Aboriginal people live in the community. The three teachers live in mobile homes. The school has limited facilities. Two teachers currently share one transportable room along with the school office, preparation area and resource storage. The other teacher is allocated half an adjoining transportable.

The other half of that transportable did not get there, because it fell to bits on the road going up. The article continues:

Since then another classroom has been built. It took three years of red tape to get. It still can't be used because it has no furniture.

I can vouch for that. It went on:

While the history of housing in north-west schools has been a serious problem for over a decade—the past four years' history at Pipalyatjara has taken on a *Fawlty Towers* form of absurdity.

It was explained to me that other houses had been transported to the homelands areas up to 40 miles away from the main centres. Although there is no power in those areas, the houses are fitted with airconditioners and washing machines, yet it appears that funds are not available for teacher housing.

The Hon. J. R. Cornwall: Have you actually seen those houses with the air-conditioners?

The Hon. PETER DUNN: I have not been inside them, but I have been given very reliable evidence from the person who took me there: he had purchased an airconditioner from one of those homes and had installed it in the caravan in which he was living at the site. Will the Minister inves-

tigate the housing shortage for teachers and support staff at Pipalyatjara as soon as possible and correct the situation?

The Hon. J.R. CORNWALL: I might say that the accommodation for the Aborigines at Pipalyatjara is not too good either. By and large, they live in wiltjas. I might also say that the whole question of education in the Pitjantjatjara homelands is a matter that will be addressed quite soon by the human resources subcommittee of Cabinet. Mr Dunn is reflecting in his question, of course, the typical European attitude that has pervaded those areas for three generations. The question of community control, whether in education, welfare or community services as well as in health, is certainly one that needs to be grappled with. There is no doubt that the schools in each of those settlements, whether at Pipalyatjara, Calca, Minnipa, Ernabella, Mimilli or Fregon, is the biggest single resource in any one of the communities. It has always seemed foolish to us as a Government that that resource is open from 9 a.m. to 3.30 p.m. five days a week.

It is even more of a question considering the homelands movement. Many of the people want to get out of those communities where petrol sniffing and other social problems are generated and back into the homelands. So the whole question of where the community controlled health services, community services and education services ought to be provided, by whom, and how, and who ought to have a say in curriculum are all matters under general, albeit early, consideration at this time. However, I will refer the specific questions asked by the Hon. Mr Dunn to the Minister of Education. In view of the fact that we may be very close to the end of a parliamentary session, if there is no opportunity to bring back those replies, I will ensure that the honourable member receives a reply by letter.

PRAYERS IN PETITIONS

The Hon. C.M. HILL: I direct a brief question to you, Madam President. As I listened with great interest to the reading of the petition which was presented today, I was pleased to hear that the traditional prayer remains in that petition. Are any plans in train to remove those particular words from petitions?

The PRESIDENT: The wording of a petition is set out in Standing Orders. Changing Standing Orders is a matter not for me but for this Council. There has been one meeting of the Standing Orders Committee so far this session, and at least one other meeting has been foreshadowed during the break. Any member of the Standing Orders Committee can raise any matter relating to Standing Orders at a meeting of that committee, but changes can be made only by the Council upon receipt of a report from the Standing Orders Committee.

AMALGAMATION OF DEPARTMENTS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation prior to directing a question to the Minister of Community Welfare on the subject of the timetable for amalgamation of the Department for Community Welfare and the Health Commission.

Leave granted.

The Hon. R.I. LUCAS: I have been informed this morning that a document being circulated among staff members in the Department for Community Welfare outlines the proposed timetable for amalgamation of that department and the Health Commission. First, can the Minister confirm whether such a document does exist and, if so, will he provide copies of the timetable to members? Secondly, is it correct that the proposed date for the eventual amalgamation of the department and the commission is somewhere around June 1987?

The Hon. J.R. CORNWALL: Lest there be any suggestion that the Hon. Mr Lucas has another leak, let me produce for the edification of all members of this Council an excellent newsletter called *Offset*, a newsletter 'for the staff of the Department for Community Welfare S.A.' This is the February 1986 edition. It is an excellent publication, and I commend it: in fact, I will send a copy over to the honourable member as soon as I have finished reading from it.

The Hon. R.I. Lucas: Is it a public document?

The Hon. J.R. CORNWALL: It is very much a public document, and I think there are something like 1 400 copies of it printed and circulated every year. It says some nice things about me on the front page, which reinforces my view that it is indeed an excellent publication.

Seeing that it is a public document, I think that it would be a very good idea if I were to read this substantially into *Hansard*. I am sure it would be a matter of great interest. I would stress at the outset, of course, that these matters have to be processed through the Human Services Committee of Cabinet, they have to be given Cabinet approval, and they have to go through all the legislative and administrative processes involved in amalgamation. However, subject to those restraints, the article is headed 'Coalescence'—a word that came to me as I was sitting on the beach at Batemans Bay contemplating the future of my great commission and my excellent department, and 'coalescence', which is mentioned at the beginning of the article as being at my suggestion, is defined in the *Oxford Dictionary* as meaning 'to unite or merge into a single body; to grow together'. Having set the tone of an excellent article, it goes on to say:

> By now you will all know of the firm intention of our Minister—

and that is said with affection, of course—

> John Cornwall, to bring together administratively the welfare and health services in this State for the purposes of improving coordination of our services to South Australian residents.
>
> We were all faced with the choice between a slow and possibly grinding amalgamation over a three year period, or a faster, complete amalgamation over a shorter period of time. We chose the latter as we believed it would be less confusing to the staff in each organisation.
>
> The timing of the amalgamation is:
>
> - a draft report on how it would look to the Human Services Sub-committee of Cabinet by June 1986 to be prepared by the Director-General, Department for Community Welfare and the Chairman of the Health Commission;
> - a final submission for approval by the Premier and Cabinet later in 1986;
> - amalgamation to commence in July 1987.

That may be an optimistic timetable. As I said, it is naturally subject to the processes of the Cabinet Committee, Cabinet, and so forth. However, that is the tentative timetable which has been set, and I hope that, as time goes by, it will firm up. The article further states:

> It is important to understand that the greatest potential areas of coalescence are between the many components of the Community Health Services (which comprise about 10 per cent of the health budget) and DCW. This part of the health machinery is about the size of DCW, and we go into the negotiations as equal partners.
>
> It is our plan that we first define what are clearly welfare functions and how best all of those resources can service the needs of people. We are not starting the discussion with debates about structures. To this end, I have asked the district officer of Woodville to help us clearly demonstrate what functions of welfare must be preserved and how we define the grey areas of overlap. The district officer has a brief to be totally open with all DCW people and to seek opinions. A draft paper will be circulated throughout DCW for comment. We intend to consult with staff throughout the amalgamation process.
>
> When we look on the positive side of coalescence, we can see advantages already for children/mothers; disabled people; people

in crisis; the elderly; adolescents; people suffering from mental illness and family stress. I look at it as a way of getting more resources for people who come to us for help.

We have already presented out estimates for 1986-87 in three parts: welfare; health; and health-welfare. It is interesting to note how often we were bidding for similar services.

Before 1987 we can expect increasing co-operation with health officials at all levels—from planning to service delivery.

At all times our concern will be to ensure that, while developing a structure which will be consumer oriented, we will ensure the interests of our staff, both industrially and for career opportunities. I am proud of the positive way—

these are not my words although, in a way, I wish they were—

DCW staff have approached the idea of amalgamation—both the Minister and the Executive have shown that there is no intention of DCW being swamped or overwhelmed by a large health machine, nor will we be an add-on division to an existing structure. We are discussing a careful integration of policy and service delivery of two great agencies which in many ways serve the same people but from different aspects and with different skills.

May I say that I endorse those sentiments; they are very much mine. We are in a unique position to show the rest of this nation how to do it, and indeed we will.

PIPALYATPJARA SCHOOL

The Hon. PETER DUNN: I seek leave to make a short explanation prior to asking the Minister of Health a question about fire fighting protection for the Pipalyatpjara school.

Leave granted.

The Hon. PETER DUNN: While visiting the school, my attention was drawn to the fact that the fire fighting equipment provided for the Pipalyatpjara school and for the area was indeed spartan. I am aware that in this location water is a problem, but I think that more modern equipment could be used than is currently being used. Let me again read from the institute's journal. The Teacher Housing Authority has made a recommendation, and the article states:

Back in the same year the Teacher Housing Authority also recommended to the Principal that, in the case of fire in a confined space, hatchets were being provided.

The idea was that the teacher could literally hack through the flaming walls to safety. Wool blankets were also recommended for fire protection but, when they arrived, they were synthetic.

It seems a rather unusual way of protecting children from fire. In view of these circumstances, can better fire equipment be provided to this area?

The Hon. J.R. CORNWALL: Pipalyatpjara-Calca is a very remote community—I have been there. It is a very depressed small community, with a high incidence of petrol sniffing and a myriad of social problems. I am a little disappointed, since the Hon. Mr Dunn obviously has taken the trouble to fly so far to look at conditions at Pipalyatpjara-Calca, that he has not taken a somewhat broader perspective. However, having said that, with respect to the specific question of fire fighting, hatchets hacking through walls or whatever, I will refer the matter to the Minister of Education and bring down a reply.

[Sitting suspended from 12.26 to 2.15 p.m.]

WORKERS REHABILITATION AND COMPENSATION BILL

In Committee.

(Continued from 4 March. Page 793.)

Clause 3—'Interpretation.'

The CHAIRPERSON: Before we start considering the Bill I indicate that the next indicated amendment is at page 5 and is to be moved by the Attorney-General.

The Hon. C.J. SUMNER: I move:

Page 5, after line 8—Insert ', but does not include any question of a worker's incapacity for work or of the extent of an incapacity for work:'.

Insertion of this amendment has been prompted by submissions in relation to the role of medical review panels. It is Government policy that medical review panels be restricted to deciding medical questions and are not to be able to decide questions of incapacity for work. This amendment makes that expressly clear by a simple amendment to the definition of 'medical question'.

The Hon. K.T. GRIFFIN: I have no difficulty with the amendment but, as I recall, paragraph *(b)* was deleted and other words were inserted by the Hon. Dr Ritson which sought to clarify that very question. Whilst I have no difficulty with the amendment, I wonder whether we can be reminded of the amendment of the Hon. Dr Ritson.

The CHAIRPERSON: There were no new words inserted.

The Hon. K.T. GRIFFIN: I presume that the words which the Attorney is moving to insert nevertheless are still relevant.

The Hon. C.J. SUMNER: Yes.

Amendment carried.

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

Page 6, lines 7 to 9—Leave out paragraph *(c)* of the definition of 'prescribed allowance' and insert paragraph as follows:

(c) by way of overtime;.

'Prescribed allowance' in relation to earnings of a worker means any amount received by worker from an employer in various categories: one category, in paragraph *(c)*, is by way of overtime other than amounts paid in respect of overtime worked in accordance with a regular and established pattern. My amendment is to delete that paragraph and to insert the words 'by way of overtime'. So, the reference to the regular and established pattern is removed and it would not be taken into consideration in dealing with prescribed allowances.

The Hon. I. GILFILLAN: We oppose the amendment. The wording of the Bill may not be perfect, but we believe that where a worker has been relying on a long-term established basis as a reliable form of income (something which may be by some definition described as overtime) that is part of what they can in equity expect to get in compensation for loss of wages for injury. So, we are opposed to the amendment.

The Hon. K.T. GRIFFIN: The real question is what is a regular and established pattern and also the question of overtime being added to normal weekly wages is one of some controversy. It may be that even though overtime is worked on a regular basis it is not part of the basic salary or wage which is being paid.

If overtime is considered, in a sense it will mean that the injured worker may well be encouraged to stay off work rather than return to work, as that person would probably be getting more than he or she would otherwise get if not working overtime. So, the Opposition strongly believes that the amendment ought to be carried.

The Hon. C.J. SUMNER: The Government opposes the amendment. The proposed definition seeks to ascertain the amount received regularly by a worker, and to that extent overtime, worked on a regular and established basis, is included. If paragraph *(c)* is amended as proposed by the honourable member, all overtime will be excluded, as is the situation in the present Act. It would seem reasonable to include in weekly compensation payments regular and established overtime to provide a fair rate. This was agreed

to by the employers in earlier discussions as being reasonable, although that might not be their view now in the light of changed circumstances. In their earlier policy on workers compensation the Liberals said that it should be included.

The Hon. L.H. DAVIS: The definition of 'prescribed allowance' must be read in conjunction with clause 4 (8), which provides:

For the purposes of determining the average weekly earnings of a worker, any prescribed allowance shall be disregarded.

The Hon. Trevor Griffin has raised a very critical and fundamental point. Was the decision to include overtime in the definition of 'average weekly earnings' made before or after the Mules and Fedorovich costings that are set down in the October 1985 paper, which has been scrutinised by the Auditor-General?

The Hon. C.J. SUMNER: I understand that Mules and Fedorovich updated their assessment of benefits after the white paper proposals were made. This is one of the white paper proposals that was included in the updated assessment.

The Hon. L.H. DAVIS: In other words, the Attorney-General has categorically told the Committee that overtime is included in the October 1985 costings that were looked at by the Auditor-General.

The Hon. C.J. SUMNER: That is my advice; I was not involved in it, but I am advised that the Mules and Fedorovich costings were based on the white paper which was updated by changes that were made to the white paper proposal.

The Hon. L.H. Davis: Including the proposal regarding overtime?

The Hon. C.J. SUMNER: The overtime proposal was in the white paper.

The Hon. G.L. BRUCE: I came from an industry which operated on a seven day week; people might have worked only five days out of seven but an overtime or penalty allowance was attached to working on Saturday or Sunday even though they worked for five days and they were locked into a regular situation of working 40 hours a week and possibly getting 44 or even 48 hours pay for that 40 hour week.

They earned wages and worked their living habits around that. It was a permanent and regular set up. This amendment, as sought by the Hon. Mr Griffin, would do away with that type of claim, thus disadvantaging those people who have been on a regular wage because they had worked a penalty day, having been locked into that situation for most of their working life. It would be most unfair and a disadvantage if they had to take a cut in their wages.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons G.L. Bruce, B.A. Chatterton, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. M.B. Cameron. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

The CHAIRPERSON: Identical amendments have been indicated by the Hon. Mr Burdett and the Hon. Mr Gilfillan to clause 3, page 7, line 27. That indicated by the Hon. Mr Burdett was first received.

The Hon. J.C. BURDETT: I move:

Page 70—
Line 27—Leave out '3' and insert '5'.
Line 29—Leave out '4' and insert '6'.
Line 31—Leave out '3' and insert '5'.

The clause introduces a definition of 'spouse'. Section 11 of the Family Relationships Act 1975, which is the basic Act dealing with *de facto* relationships and the responsibilities of persons in those relationships, provides for putative spouses, and the periods are five years or five out of the last six instead of three years or three out of the last four. I think that it is necessary to provide for these kinds of relationships because, when they are entered into, obligations follow. In the first place, I think the period of five or five out of the last six in the Family Relationships Act is correct, instead of three or three out of the last four, as in this Bill. The present Workers Compensation Act does not allow for *de facto* relationships at all, so this definition and what follows from it is an addition to the present situation, and I do not disagree with that.

I point out that the present Act does not allow for the *de facto* relationship at all. I feel that it should but, if it does, the situation as set out in the Family Relationships Act 1975 is correct. Not only do I rest on that, but I also say that it would be inconsistent if we have one Act of Parliament—namely the Workers Rehabilitation and Compensation Bill—setting out one period for the *de facto* relationship to have a legal position of three and four, and quite inconsistent with the Family Relationships Act (and the other block of Bills which were passed at the same time) which is based on five and six.

If the Government thinks that the period in the Family Relationships Act ought to be changed, I would suggest that it would be more appropriate to amend that Act first to make it consistent. It seems to me to be a backdoor method, if that is what the Government wants, to introduce one Bill like this which reduces the period, and then after that, perhaps, to say that the periods are inconsistent, therefore what is in fact in this area the major Act (the Family Relationships Act) has to be amended.

The basis on which I move the amendment standing in my name is two-fold: first, that the appropriate period to establish a *de facto* relationship which should be recognised in law as establishing legal obligations and benefits, as it does in this Bill, is three years or three out of the last four. If not, my second ground is that the basic Act ought to be the Family Relationships Act, and if the Government does want to amend the period it ought to look at that Act first. Certainly, in the present context of the Family Relationships Act of 1975, the period ought to be consistent with that Act, namely, five or five out of the last six.

The Hon. I. GILFILLAN: Since the Democrats have an identical amendment on file, and very substantially for the same arguments just outlined by the Hon. Mr Burdett, I obviously support the amendment. The issue of changing the years in the Family Relationships Act in regard to the *de facto* putative spouse situation is a different matter and my amendment should not in any way be interpreted as indicating an opinion of the Democrats regarding what is the more appropriate time. In our opinion, this is certainly not the appropriate situation in which to be debating that issue, or inserting a provision here, the detail of which is in conflict with the substantial Act dealing with the matter, namely, the Family Relationships Act.

The Hon. C.J. SUMNER: The Government considers these periods in the Bill to be reasonable and opposes the amendment but, as the Democrats support the Hon. Mr Burdett, I will not divide.

Amendment carried.

The Hon. R.J. RITSON: Rather than moving an amendment, I wish to make a comment relating to the word 'trauma' which appears at line 4 on page 8. The use of 'trauma' has been brought to my attention by a number of my medical colleagues who are concerned that it will cause confusion in the writing of medical reports. 'Trauma' has a

commonly understood and quite specific medical meaning. It specifically means physical injury or physical disruption of tissue from mechanical causes and is used to distinguish pathology caused in this way from degenerative infective and other sorts of disabilities, in other words, as understood by doctors, 'trauma' describes the specific type of mechanical injury.

In this clause the word means any sort of disability but, more than that, it seems to refer to the cause rather than the actual pathology, so that 'trauma' means an event or series of events out of which a compensable disability arises; in other words, the trauma would not be the broken leg but the events which caused the man to fall. As I read that line, those events would be trauma.

Similarly, under the Bill an infection would be a trauma whereas in medical terminology, as universally understood, 'trauma' is used to distinguish mechanical as opposed to other forms of pathology. So, I expect that, when writing reports, there would be occasions when a doctor would say in a report to the commission, 'There is no trauma' and he would not know that the Statute had completely reversed the meaning of this technical term and neither would the writer of the report sit down with the Bill and understand the Bill as he wrote the report.

I fear that there may be some communication and real practical difficulties because of the fact that the common technical meaning of the word has been completely overturned by the Bill. I am not moving an amendment, because it is quite beyond me to go through the Bill and see what consequential changes might need to be made. However, I point out to the Government that there will be misunderstanding on the part of people writing reports and that the Government may in due course need to clarify the matter by amendment.

The Hon. C.J. SUMNER: I move:

Page 8, line 11—Leave out paragraph *(a)* and insert new paragraph as follows:

(a) a person by whom work is done under a contract of service (whether or not as an employee);.

This amendment deals with the definition of 'worker' and is intended to assist in clarifying the fact that 'worker' means any person who works under a contract of service as defined for the purposes of the Act. The amendment has been prepared in response to a submission that reveals a possible argument to defeat the true purpose of the definition of 'contract of service'. The definition of 'contract of service' is an important reform to the cumbersome form of the present Act, especially in relation to people who work in prescribed classes of work. The present Act brings them in by separate subsection by deeming them to be workers. The Government's intention is to refer to such people in the definition of 'contract of service'. The Government's approach is simply an alternative but superior approach to what is presently in the Act.

It is not intended to go beyond what is currently contained in the Act. There are no proposals current to prescribe new groups, as I said last time we were sitting. Although the Government considers the definition to be quite satisfactory in its present form it does not wish to leave the possibility of later argument on what would be a most technical point: accordingly, this simple amendment to the definition of 'worker' should further prevent any convoluted misconstruction.

The Hon. K.T. GRIFFIN: I have already lost the debate on the question of contract of service where a person undertaking work under such a contract is not an employee. Accordingly, I will not raise any objection to this technical amendment to the definition.

Amendment carried.

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

Page 8, lines 19 to 28—Leave out subclause (2) and insert subclause as follows:

(2) The Crown is the presumptive employer of persons of a prescribed class who voluntarily perform work of benefit to the State.

I was intrigued why Ministers of the Crown, members of Parliament, the Judiciary and other officers of the Crown ought to be included in this legislation. Judges are appointed to be independent of the Executive and the Parliament. They are accountable in some way to the Parliament, but not to the Executive. The judges have a non-contributory superannuation scheme, are appointed until removed by Parliament on an address by both Houses and if they are injured in the course of performing their duties their salary continues. If they are invalided out of judicial service they recover a judicial pension.

Members of Parliament are in much the same category in the sense that their salary will continue if they have leave of absence, if they are absent from Parliament for more than (I think) 12 sitting days, and they have a superannuation scheme so that if they are invalided out of the parliamentary service they will continue to receive the pension. So far as members of Parliament are concerned, I recollect that there is a substantial personal accident insurance policy providing benefits in excess of $100 000 to cover each member of Parliament in the event of injury in the course of performing duties.

The same applies to Ministers of the Crown except that there is a possibility of a hiatus, but only in respect of a Minister who may not be a member of Parliament, but under the Constitution Act that only applies for a maximum of three months and it is rare, if ever, that that occurs. The difficulty in including Ministers of the Crown, members of Parliament and judges as employees for the purposes of this Act is that if they are injured it then makes them subject to the corporation, to all the rehabilitation processes, to the medical review tribunal, review officers and to the appeal tribunal. They then become subject to the jurisdiction of an administrative body—not a judicial body, but an administrative body. I would not be surprised if, at least among the judges, there has been some criticism of this made to the Attorney-General because that must surely impinge upon the principle of independence of the Judiciary.

Honourable members will remember that during the last Parliament we enacted a new Parliament (Joint Services) Act in which we to some extent addressed the issues raised by the present Workers Compensation Act and the Industrial Conciliation and Arbitration Act in so far as inspectors could enter, require answers to questions, produce documents and so on. The arguments have been addressed and considered and some recognition has been given to them in that legislation. The issue is a real one and I do not see any reason at all why we should be including those persons as employees for the purposes of this Act, thereby opening up all of the possible infringements of that independence which should characterise the Judiciary and the Parliament.

Has the Attorney-General received any communication from any judge about this matter and, if he has not, has any other member of the Government received any communication from a judge on this matter? Certainly, several of them have expressed concern to me about this. If the judges have made any observations to the Attorney-General, is he in a position to identify those observations?

The Hon. I. GILFILLAN: I endorse the honourable member's curiosity about this matter in relation to letters from judges. It would be helpful in our considerations of the amendment to share with the Attorney-General the contents of those letters. In relation to the amendment, I am not attracted by the fact that we are being asked to move into prescribed class—a generalised objection that we have

expressed before, and I think the Opposition has expressed objection frequently to having determination by regulation.

The Hon. K.T. GRIFFIN: While the Attorney is considering this matter I will respond to the Hon. Mr Gilfillan. I, too, have concern about classes being prescribed. I took the view in this instance that it was essentially to deal with volunteers and that it was really to be a decision by the Government of the day as to which group of volunteers who performed work of benefit to the State would, in fact, be given the cover of this Bill.

Already there is a separate insurance policy which the Government has taken out in respect of volunteers who perform work of benefit to the State. This proposal in the Bill would merely give an opportunity to deal in a different way with the cover of volunteers involved in voluntary work of benefit to the State.

The Hon. I. Gilfillan: Are community service order people covered under anything?

The Hon. K.T. GRIFFIN: I am not sure of the detail now after three years, but it was the Liberal Government that arranged the policy of insurance to cover volunteers. I imagine that those who are voluntarily involved in the community service order scheme would be covered. If those who go down to the Royal Adelaide Hospital at the request of the board of management of the hospital as volunteers to do visiting work are injured in the course of that work, they are covered presently as I understand it by an insurance policy. But, subclause (2) presently in the Bill deals with persons of a prescribed class, anyway. I was really seeking to allow that to continue on the basis that it may be appropriate in relation to some classes of volunteers to give them the benefit of this legislation by its being prescribed. That is the reason for it.

The Hon. I. Gilfillan: You are aiming at voluntary firefighting personnel?

The Hon. K.T. GRIFFIN: It could cover voluntary firefighters too: they are a class of volunteers performing work of benefit to the State. It allows all that sort of consideration. It is difficult to identify them individually in the Bill. I am happy for there to be a provision which would allow them to be covered by regulation. It would come to Parliament in this circumstance and, because it is difficult to identify them all, it is probably the better way to do it.

The Hon. G.L. BRUCE: Do I take it that the amendment the Hon. Mr Griffin is moving takes members of Parliament out of the Bill?

The Hon. K.T. Griffin: Yes.

The Hon. G.L. BRUCE: Surely, there would be a case for them to be in it to the extent that one of its thrusts is rehabilitation. As I understand it, as time goes on rehabilitation will become more important than compensation. As a member of Parliament I expect that if I injure myself I would want the full thrust of whatever rehabilitation the State provided to try to get me back on my feet and going again.

If I have got my compensation, pensions and everything from Parliament, that does not say I get into rehabilitation without drawing on a separate fund from the Government somewhere to get into rehabilitation to deal with compensable cases. Surely, the other half of the program must be looked at, too.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Bruce, I do not agree with him. I agree with the concept of rehabilitation for members of Parliament, but if a member is injured now there is a very substantial insurance policy covering each member in addition to benefits that come from superannuation. The problem is that the Bill seeks to reduce salaries and to do a range of things which impinge upon the independence of members of Parliament and members of the judiciary. So, if one's salary still keeps going and if one is covered by a very large and separate insurance policy, it does not seem to be appropriate as a matter of principle that members of Parliament and judges, particularly, are included within the compass of this Bill, because there are then conflicts between the rights of the corporation in relation to members of Parliament. There is nothing to say that a member cannot participate in rehabilitation programs.

The Hon. G.L. Bruce: Set up by the corporation?

The Hon. K.T. GRIFFIN: There is not much in the Bill which indicates what is going to be set up anyway for rehabilitation. That is another problem which we will address at a later stage. If a member of Parliament is injured in this building there seems to be no reason at all why he or she should not take advantage of any rehabilitation scheme, along with other members of the public who might be injured as a result of accident. In a sense, members of Parliament are not employees of the Crown: they are elected as servants of the people. In those circumstances, there is an entirely different relationship between members of Parliament and the people and the Crown from the relationship between employer and employee.

The Hon. C.J. SUMNER: This question has always been subject to some doubt. My recollection is that there was an opinion a few years ago which indicated that Ministers of the Crown were employees or workers for the purposes of the Workers Compenation Act. Provisions in the Bill are designed to clarify that those people—Ministers of the Crown, members of Parliament, judicial and other officers—are covered, and other prescribed classes including volunteers—

An honourable member interjecting:

The Hon. C.J. SUMNER: I am not sure what the conflicts are. The honourable member asked whether judges had made any representations on this clause. I have just checked the correspondence I received from the Chief Justice. I do not see any formal statement from him or from any other members of the judiciary. Mr Wright advises me that he has some impression that the matter was discussed and that some concern was expressed but, as far as I am concerned, in the correspondence I have from the Chief Justice there is not anything which throws doubt on this provision.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: There is no letter that deals with the topic.

The Hon. I. Gilfillan: But it deals with the Bill.

The Hon. C.J. SUMNER: The honourable member can ask me when we get to the proper stage.

The Hon. K.T. GRIFFIN: With respect to the Attorney-General, I do not think that answers the question of principle. Take judges, for example. Judges are entitled to a continuing salary until they retire at age 70. There is nothing we can do if they decide that they are ill and they want to take time off: it has happened. We might criticise that sometimes, but it can happen and their salary is not to be reduced.

This Bill provides specifically that after a period of time their salary is to be reduced if they are employees. It also provides that review officers have an intrusive responsibility or an intrusive power. They can require judges to submit to medical examinations. All of that is very much in conflict with the Constitution Act and with the ordinary principle of independence of the judiciary and members of Parliament. There is parliamentary salaries legislation and a Parliamentary Superannuation Act. This Bill, notwithstanding the fact that members of Parliament can continue on when injured, in so far as that injury will enable them to do so, they then become subject to the intrusive powers of review officers, medical review tribunals and others with a possi-

bility that this Act (if it is regarded as overriding the provisions of the various remuneration Acts) would reduce the salary, notwithstanding that members of Parliament may be able to struggle into the Chamber and continue their other responsibilities.

So, the principle is whether by seeking to define an employer and employee relationship to make those officers of the State employees for the purpose of the Act, there is a severe and significant impingement upon the independence of those respective officers of the State and elected representatives. That is the point of principle. There may have been a Crown Solicitor's opinion two years ago.

The Hon. C.J. Sumner: No, I didn't say that.

The Hon. K.T. GRIFFIN: You did.

The Hon. C.J. Sumner: I said there was an opinion.

The Hon. K.T. GRIFFIN: Whether it was the Crown Solicitor's opinion or someone else's opinion, I think it was given more than two years ago. However, putting that to one side, we are dealing now with a totally new piece of legislation. I think it is important to get the principle right. I strongly urge members of the Committee to support the amendment to ensure that we do not directly or inadvertently compromise the traditional and recognised independence of those officers.

The Hon. I. GILFILLAN: I am not convinced that the concern expressed by the Hon. Trevor Griffin is significant enough to warrant support for his amendment. It seems to me that there would be no intrusion of any form from this legislation unless a claim was lodged; that would be a deliberate step taken by the person concerned. If that is not correct, I am prepared to listen to further argument. In any event, I do not feel that it is an issue of great significance, as far as I understand the implications of it and, unless I hear some other convincing argument, the Democrats will oppose the amendment.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Gilfillan, notices of accidents must be given by the employer. It is not just a matter of the employee making a claim; it is a matter of the employer being required under the Bill to give notice, with the provisions of the Act then coming into operation. This is a serious matter, and I am sorry that the Hon. Mr Gilfillan is treating it so lightly.

The Hon. I. Gilfillan: I'm not treating it lightly. I have listened carefully to an awful lot of words, but I am not convinced by the honourable member's argument.

The Hon. K.T. GRIFFIN: It may be that the Hon. Mr Gilfillan does not understand the question of judicial independence and the legal position of Ministers of the Crown and of members of Parliament. However, conditions under which disability can be compensable are provided in the Bill. An obligation is placed on the employer to give notice of an accident. Consequences flow if an employee is absent from work on the basis of a compensable disability. The Bill then stipulates that following an absence from work for a period of three years a person's salary will be reduced. It does not matter whether or not a formal claim has been made by a judge. If the judge is absent from work, notwithstanding any provisions of the Judges Pensions Act, the question is then raised whether the salary of that judge is thereby reduced by virtue of the operation of this Act. That is clearly an impingement on the rights and duties of judges. Whilst on occasion one might be critical of judges, the Constitution requires them to be independent of the Executive and Parliament, except to the extent that Parliament can dismiss them by a resolution of both Houses of Parliament.

Other consequences are involved: for example, a review officer or a medical review panel can become involved. What is the relationship between this and the Judges Pensions Act, for example, in relation to disability? If one makes the judges accountable to a medical review panel, one is saying that the judges have to answer to such a panel in respect of a disability that may arise. As I have said, we argued this out in the select committee on the administration of Parliament. Certain provisions were written into that Bill by agreement of both sides of the Chamber and, as a result, the delicate questions of the independence of Parliament and members of Parliament were addressed, although in some respects certain matters were sidestepped. However, this Bill does not do that. It simply makes those involved employees of the Crown, forgetting all the other issues that might arise about independence and accountability. That is what I object to. I think this is a very serious question.

The Hon. C.J. SUMNER: I think that some of the issues raised by the Hon. Mr Griffin require examination. Some consequential amendments may be required in relation to other legislation. Therefore, I suggest that we pass the clause on the basis that the principle would be established, and further examination of details can be undertaken later.

The Hon. I. GILFILLAN: It is obvious from the Attorney's remarks that I underestimated the significance of the Hon. Trevor Griffin's remarks—which is not surprising, and for which I do not apologise. But I recognise this, and quite obviously the matter has been noted. As the matter has been emphasised in *Hansard* one assumes that before the legislation is passed any necessary amendment will be made. Therefore, I indicate to the Committee that the Democrats will oppose the amendment and support the clause on that basis.

The Hon. K.T. GRIFFIN: I would prefer to have the amendment carried, which would mean that we would not lose control of it. Once the clause is passed we will be dependent on the Government looking at the matter later. In my view that is not satisfactory at all. At least if the amendment is carried we keep control of it in this Chamber. I regard this amendment as being very important and indicate that we will divide on it.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, and R.J. Ritson.

Noes (10)—The Hons G.L. Bruce, B.A. Chatterton, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. R.I. Lucas. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: I had an amendment on file that is consequential upon an earlier amendment, which I have discussed under the definition of 'contract of service' on page 2. Therefore, it is not appropriate to move to delete subclause (6), which relates to contractors in the prescribed industry or in prescribed circumstances. The Attorney has indicated that similar provision exists in the current Act, although I raised the question about the absence of the word 'personally' in the definition. There was no emphasis on the work being done personally. My point has been made adequately, and accordingly I will not move to delete subclause (6).

Clause as amended passed.

Clause 4—'Average weekly earnings.'

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

Page 9, lines 31 to 37—Leave out subclause (3).

I emphasise the words 'would have received' in subclause (3). This provision seems to open the way to a very generous provision for contractors who might be prescribed in the

provisions of the Act to be employees rather than contractors and relates average weekly earnings to an award, if there is one, regardless of whether or not that contractor was receiving weekly, monthly or annually the amount provided for in the award. If there is no award, the worker's average weekly earnings are to be determined by reference to a rate of pay, as if the worker had been working as an employee. All of that appears to be a particularly generous provision designed not to take into account the actual receipts of the contractor but rather some presumed receipts by way of earnings and attribute that to the contractor for the purposes of calculating compensation. This is one area in which there could be reductions in costs if the subclause was deleted.

The Hon. R.J. RITSON: I also support the deletion of this subclause. I see other difficulties, since in some ways it would be generous to a contractor and in other ways it would be a very harsh imposition for a contractor if he was to be seen as an employee under these circumstances. Will the Attorney comment on what happens to a contractor's rights to sue if he is grossly and negligently injured—and to sue for his real losses if his work was earning him a good deal more than the notional weekly wage? It would seem to me that that contractor would lose the right to recover his real damages so that in serious matters involving negligence he is losing rights relating to questions of justice that he previously had enjoyed, whereas at the other end of the scale, in relation to no fault injuries, he is admitted to the generosity of the scheme. Whether or not it would be generous depends on the profitability of the business, so in some cases it would be generous but in others it would not be generous. However, in terms of the costs of the whole scheme, there is indeed an additional expense.

The proposition appears to take away the contractor's rights to proceed at common law. Indeed the owners of most premises carry public liability insurance lest they be sued, whether under the law of negligence or under occupier's liability, by workmen who go to premises to carry out work. I believe that most workmen who act as contractors and undertake work in homes are well aware that they have protection in that regard. I wonder whether they realise that they are losing that protection in this case. If I am wrong, I am sure that the Attorney will tell me about it, because it seems to me that a contractor loses his right to recover real damages when he is gravely and seriously injured by negligence but, at the level of a no fault accident and minor disabilities, an extra cost is incurred by admitting those matters to the scheme.

The Hon. I. GILFILLAN: This clause is of some concern. In relation to subclause (3) a lawyer has told me:

> What is a 'contractor rather than an employee'? A contractor is not defined and under the current definition of 'contract of service' perhaps all contractors are employees, anyway.

That raises the question about which we are concerned, that is, that the legislation will extend the interpretation of what has previously been regarded as an employee, although I have no reason to doubt the sincerity of the Government when the Minister says that that is not the intention of the legislation. However, the drafting is not perfect and it has been amended enough to show that we cannot rely upon the Government's intention unless the drafting expresses that intention. I consider that there is cause for concern about the wording of this clause in that it may inadvertently extend the interpretation of 'contractor' so that it may be regarded as 'employee'.

The Hon. C.J. SUMNER: This provision is identical, I believe, to what is in the current law. In the current law where subcontractors are deemed to be employees to bring them under the Workers Compensation Act, then this is the method of calculating their average weekly earnings for the purpose of determining what weekly payment they should get, so there is not any difference in this proposal. Section 8 (1) *(a)* deals with those subcontractors who are deemed to be workers. It is not word for word, but this picks up the same principle. The question really is that which we argued yesterday: to what extent ought a Workers Compensation Act extend its ambit to people who might be characterised as subcontractors.

The Government has made a decision on that, based on the previous legislation. There was a vote on that yesterday or the day before, and I thought that principle had been resolved; that there would be some subcontractors covered by the legislation. Subclause (3) of clause 4 determines the method of ascertaining average weekly earnings. That is the same method as in the present law.

With respect to the Hon. Dr Ritson, he is quite right in saying that those subcontractors deemed to be employees under this Bill would lose their existing rights to sue at common law for damages arising out of an incident caused during that working relationship, but that is no different from an employee who also has his common law rights modified by this Bill.

The *quid pro quo* for a modification of common law rights in this Bill is income security by way of pension in the case of total and permanent disability or, indeed, in the case of any permanent disability. That has been the whole thrust of the attempts to change the workers compensation structure since the Byrne report. The trade-off was a modification of common law rights (the Byrne report in fact advocated the abolition of common law rights) in return for income security by way of a pension.

The Hon. R.J. RITSON: Could I ask the Attorney-General what security would be offered to a subcontractor who had fixed expenses—say, leases of vehicles or equipment, which he could not void—and had $1 000, for example, gross revenue a week, of which $500 a week was fixed expenses, and he was disabled. The provision of a pension, unless it also has a set of allowances for his overheads, means that he is not compensated at all.

If one says that the pension is some compensation for his losses, it is not the same as a workman simply losing his wage and gaining a pension. The subcontractor may have unavoidable fixed expenses in the course of his business—let us say, 50 per cent overheads—so the amount of notional average weekly wage he receives may not even cover his expenses.

He may have no income even with the pension, unless there would be some recognition of the expenses component of his business, so in the ordinary course of events a common law settlement would take those matters into account—his net loss or net income after expenses. So for the contractor who has fixed overheads in relation to his business which may even exceed the notional weekly wage, what does the Attorney-General consider that man's position to be under this Bill—a man who could otherwise have sued?

The Hon. C.J. SUMNER: The situation is no different from what I have explained. For the person who could otherwise have sued, there is a modification of his rights. The whole basis of the legislation is that the rights of those people be modified in return for much greater coverage and security for a greater number.

The Hon. R.J. Ritson: But there is no security for that person to be on a pension which is less than his fixed expenses.

The Hon. C.J. SUMNER: But what happens to that particular person's subcontractor who is injured as a result of no fault of anyone? He is completely void of any income security.

The Hon. R.J. Ritson: That is right.

The Hon. C.J. SUMNER: So the principle with respect to subcontractors is no different from the principle with respect to employees. There is a modification of common law rights in return for broader coverage of income security, because in the circumstances the honourable member is postulating, if the subcontractor was injured and there was no-one against whom the subcontractor could take action for negligence, then the subcontractor would be left completely bereft and his capital assets in the form of motor cars, tools, etc., would be absolutely no use to anyone.

So, the principle is the same whether we are dealing with an employee or a subcontractor. With the subcontractor we are saying that the legislation offers broader coverage for income maintenance irrespective of whether the injury results from negligence or not. Of course, it is worth while pointing out that the legislation does not completely abolish common law rights.

The Hon. R.J. RITSON: For the Attorney-General's information, I first state that I do some work for doctors (as the honourable member could discover by looking at the register of interests) and it is possible that I may be classified as an employee on the occasions when I am working in other doctors' practices, and I resent being conscripted into this system where I lose my common law rights to sue for negligence and recover my real losses. I would much prefer to keep the common law rights and to look after the rest with my private sickness and accident insurance policy, which I maintain.

There must be many other people as well as me who have seen themselves as independent contractors, who realise what they are losing. I have enough brains to insure myself against general illness, and I much prefer it that way, but perhaps my rights are taken away here; I do not know. I think there must be a lot of plumbers and lawnmower men who would similarly prefer to retain their common law rights and provide for their own general insurance instead of being taken into this welfare system.

The Hon. I. GILFILLAN: It appears that subclause (1) *(a)* has some similarity, at least, to clause 4 (3). It seems that it may be appropriate to consider deferring consideration of this clause until after a later clause. Could I ask the Chair: what procedures do we have, if we decide this is an appropriate course, to defer consideration of this clause until we have had a chance to look a bit more closely at the section which has been referred to in the Act? Can I have some suggestions as to the procedure that could be followed?

The Hon. C.J. Sumner: It is in the existing legislation.

The Hon. I. GILFILLAN: If the Attorney had been able to sit in his chair and listen, I had already ackowledged that it looks very similar, but I am certainly not capable of suddenly snap reading a section out of the current Act.

The Hon. C.J. Sumner: You have had the Bill for weeks.

The Hon. I. GILFILLAN: The issue has been raised today in the Parliament.

The CHAIRPERSON: It is possible to postpone consideration of the clause until we reach the end of the Bill and then we can come back to it.

The Hon. I. GILFILLAN: It is my intention to move that way, and I so move. I am prepared to listen to argument against it if the Attorney feels strongly that postponement is out of order.

The CHAIRPERSON: You are moving for deferral of consideration of the whole of clause 4?

The Hon. I. GILFILLAN: It has to be postponement of the whole clause.

The CHAIRPERSON: It has to be the whole clause. If we continue and other amendments are agreed to, then we will have to recommit the Bill, whereas if we leave consideration of the whole of clause 4, to which no amendments have yet been made, we can come back and consider clause 4 at that stage.

The Hon. I. GILFILLAN: That seems to me to be my preferred course.

Consideration of clause 4 deferred.

Clauses 5 and 6 passed.

Clause 7—'The Corporation.'

The Hon. K.T. GRIFFIN: I still oppose clause 7. We have had a division on an earlier definition of the corporation. I presume that the numbers will be against me on this clause, so I do not propose to divide on it, if that is the way in which the matter resolves itself, but clause 7 is one of the key provisions of the Bill in the sense that it establishes a corporation, a Government monopoly to be the only insurer in South Australia, with no competition being permitted.

The Hon. C.J. Sumner: We have had this debate before.

The Hon. K.T. GRIFFIN: I am just making a couple of comments. There is no competition and it is a sole insurer in South Australia. It will in fact be a law unto itself, with unlimited power to impose levies and supplementary levies on employers. There is no contol over those levies or the conduct of its operations in the area of payment of compensation, so whilst I oppose the clause, if it is indicated that the numbers are against me, I will not divide.

The Hon. M.J. ELLIOTT: Quite clearly, the Democrats have stated that we support the basic concepts behind the Bill, which this clause obviously is, so we would not support an amendment to remove the clause.

Clause passed.

Clause 8—'Constitution of the management board.'

The CHAIRPERSON: The first amendment to this clause is that which is indicated by the Hon. Mr Gilfillan, who is not here so, if you wish, we can defer the whole clause.

The Hon. M.J. ELLIOTT: This is not a particularly lengthy clause and we will get through it just as quickly if we deal with it later. I think we could postpone consideration of this clause until later.

Progress reported; Committee to sit again.

STATE GOVERNMENT INSURANCE COMMISSION ACT AMENDMENT BILL

Consideration in Committee of the House of Assembly's disagreement to the Legislative Council's amendment:

Page 2 (clause 6)—After line 34 insert new paragraph as follows:

(b) the Commission holds, at the end of a financial year, any shares in a body corporate which is a public company;

The Hon. C.J. SUMNER: I move:

That the Council do not further insist on its amendment to which the House of Assembly has disagreed.

The only point of difference in the State Government Insurance Commission Act Amendment Bill now is whether or not the commission in its annual report should report on any shares that the commission holds in a body corporate, which is a public company. I reiterate that I canvassed those arguments when the matter was before the Council on a previous occasion. I put the fact that the clause which requires the SGIC to do this was not necessary: it did not apply to its real estate holdings; it was not an obligation on other insurance companies or other companies that they list in their annual report every shareholding that they have in the other companies, and therefore there did not seem to be any rationale for imposing that obligation on the SGIC.

The Hon. L.H. DAVIS: I do not wish to detain the Council as we have had this argument before. I adhere to the logic and practicability of the argument I put forward last time that the Legislative Council considered this pro-

posal. I believe that the Council should stand by its earlier decision.

The Committee divided on the motion:

Ayes (8)—The Hons G.L. Bruce, B.A. Chatterton, M.S. Feleppa, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Noes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis (teller), Peter Dunn, M.J. Elliott, I. Gilfillan, C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. J.R. Cornwall. No—The Hon. K.T. Griffin.

Majority of 3 for the Noes.

Motion thus negatived.

CRIMES (CONFISCATION OF PROFITS) BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 3, page 1—After line 31 insert new definition as follows:

'prescribed offence' means—

(a) any indictable offence other than one excluded by regulation; or

(b) an offence against—

(i) section 34 (1) or (2) or 44 (1) or (2) of the Fisheries Act 1982

(ii) section 63 (1) *(a)* of the Lottery and Gaming Act 1936;

(iii) section 51 (1) or (1a), 55 (1) or 56 (2) of the National Parks and Wildlife Act 1972;

(iv) section 117 (1) of the Racing Act 1976; or

(v) section 28 (1) *(a)*, 37 or 38 of the Summary Offences Act 1953:.

No. 2. Clause 4, page 2, lines 26 and 27—Leave out 'an indictable' and insert 'a prescribed'.

No. 3. Clause 4, page 2, line 28—Leave out 'an indictable' and insert 'a prescribed'.

No. 4. Clause 4, page 2, line 29—Leave out 'an indictable' and insert 'a prescribed'.

No. 5. Clause 4, page 2, lines 31 and 32—Leave out 'an indictable' twice occurring and insert 'a prescribed' in each case.

No. 6. Clause 4, page 2, line 36—Leave out 'an indictable' and insert 'a prescribed'.

No. 7. Clause 5, page 3, line 2—Leave out 'an indictable' and insert 'a prescribed'.

No. 8. Clause 6, page 3, line 34—Leave out 'an indictable' and insert 'a prescribed'.

No. 9. Clause 6, page 4, line 23—Leave out 'an indictable' and insert 'a prescribed'.

No. 10. New Clause—Page 6, after line 40—Insert new clause as follows:

10. *Payment into Criminal Injuries Compensation Fund*—(1) Subject to subsection (2), any money that is forfeited to the Crown under this Act or any money that is obtained from the sale of property that is forfeited to the Crown under this Act shall be paid into the Criminal Injuries Compensation Fund.

(2) Money derived from the forfeiture of property under this Act in consequence of the commission of an offence against section 32 of the Controlled Substances Act 1984 shall be applied, as the Attorney-General thinks fit, to assist in the treatment and rehabilitation of persons who are dependent on drugs.

(Continued from 5 March. Page 891.)

The Hon. C.J. SUMNER: We canvassed this matter in Committee last evening and I think that we can now seek to resolve it. We have a schedule of amendments from the House of Assembly which I explained last evening. There is then a schedule of amendments produced by me to the amendments moved in the House of Assembly. There are two such amendments. I move:

That the amendments made by the House of Assembly be agreed to, with the following amendment:

As to amendment No. 1:

Leave out from subparagraph (iii) of paragraph *(b)* of the definition of 'prescribed offence' the passage 'or 56 (2)' and insert ', 56 (2) or 60'.

That paragraph *(a)* of the definition of prescribed offence be amended by striking out 'other than one excluded by regulation'.

The Hon. K.T. GRIFFIN: I have no difficulty in dealing with the matter in that way. It is not as though we are going to oppose any of the amendments individually. We do not need to take them clause by clause. I am satisfied that the amendments to amendment No. 1 are appropriate. I have already raised questions about amendment No. 1. My questions and comments are on the record and I do not think I can pursue it much further. I did have one telephone call from the Legal Services Commission about the Bill itself.

The Hon. C.J. Sumner: They're a bit late.

The Hon. K.T. GRIFFIN: It demonstrates a lack of consultation by the Government with interested parties.

The Hon. C.J. Sumner: The Bill was introduced in October.

The Hon. K.T. GRIFFIN: Some of them got it from me, rather than from the Government.

The Hon. C.J. Sumner: What nonsense.

The Hon. K.T. GRIFFIN: That is a digression.

The Hon. C.J. Sumner: Four months it has been in Parliament.

The Hon. K.T. GRIFFIN: The comment made by the Legal Services Commission was that if the assets are to be frozen under a sequestration order it may have the effect of forcing those charged with criminal offences arising out of organised criminal activity on to the Legal Servicies Commission for legal aid, which will be fairly costly. I put that on the record as a concern which has been expressed to me although it is not directly relevant to the amendments which are being proposed to the schedule of amendments from the House of Assembly.

The Hon. C.J. SUMNER: I explained my motion fully yesterday. That is why I am now formally moving the motion without reiterating the explanation. I refer members to yesterday's *Hansard* in which I stated what we are doing. As to the comments of the Hon. Mr Griffin about the Legal Services Commission's concern, I do not think that they are of concern. In any event, I am not sure that if assets had been obtained illegally they should necessarily be used to support an accused person's legal aid defence.

If a court on an application for freezing of assets felt it was reasonable that they should be used for that purpose rather than the Legal Services Commission's being involved in providing defence, the court (when freezing the assets) could make that order conditional on sufficient assets being freed up to enable the defendant (the accused) to conduct his case. I do not see that there is a problem in the matter raised by the honourable member.

As he says, it is somewhat irrelevant to the present discussion. This Bill was introduced in October, as honourable members know. I understand that it was a page 1 lead story in the *Advertiser* when it was introduced, so we have now had on my calculations some four months in which the Bills has been in the public arena. Therefore, I do not see that there is any excuse for not being able to peruse the Bill.

Motion carried.

The Hon. C.J. SUMNER: I have a consequential amendment to the schedule. I move:

The schedule, page 8—After the amendment to section 4, insert the following:

Section 43—Strike out this section and substitute the following section:

43. (1) Subject to this section—

(a) offences against this Act that are punishable by imprisonment are indictable offences and those punishable by imprisonment for a maximum of less than five years are minor indictable offences.

(b) offences against this Act that are not punishable by imprisonment are summary offences.

(2) The offence of producing, or taking part in the production of, cannabis may be prosecuted either as a summary or an indictable offence but, if prosecuted as a summary offence, the court shall, if it is proved that the defendant produced or took part in the production of cannabis, presume that the cannabis was produced solely for the defendant's own smoking or consumption.

(3) Where a person produces, or takes part in the production of cannabis for his or her own smoking or consumption, the offence is, for the purposes of the Crimes (Confiscation of Profits) Act 1986, a summary offence.

The schedule deals with amendments to the Controlled Substances Act. I fully explained the effect of this yesterday. It ensures that the situation regarding cultivation of marijuana for personal possession remains the same (as far as confiscation of assets is concerned) with the passage of this Bill as it was following the passage of the Controlled Substances Bill, with some amendments to procedures that can be adopted when procedures are used for bringing accused persons before the court.

The Hon. K.T. GRIFFIN: When the matter came on yesterday I indicated that I had some initial concern about proposed new section 43, particularly in relation to subsections (2) and (3). In consequence of that, the Attorney-General agreed to adjourn further consideration until today. I had an opportunity to check the Controlled Substances Act. Proposed section 43 (1) is essentially the same as the present section 43 and proposed subsections (2) and (3) are very much in line with the provisions of section 32 of the Controlled Substances Act, an issue which was put to the vote during the debate on that Bill two years ago and which I lost. On that occasion, I was not supporting—in fact I was vigorously opposing—the Government's proposal to weaken the law and penalties with respect to possession and consumption of cannabis for a person's own use.

So, that division having been lost two years ago and recognising that proposed new subsections (2) and (3) do not further weaken the law, I cannot logically resist the amendment. There is only one other aspect of the proposed new section which is somewhat different procedurally, namely, the provision allowing for charges for the production or taking part in the production of *cannibis* to be prosecuted either as a summary or indictable offence. I understand that that will facilitate prosecutions rather than hinder them and will not cause any weakening of the provisions of the controlled substances Act. On that basis I will not resist the new subsection as proposed by this amendment. However, I indicate my considerable concern about the low penalties imposed under the principal Act, the Controlled Substances Act, for the possession and use of *cannabis* in certain circumstances.

Motion carried.

PRIVATE PARKING AREAS BILL

Adjourned debate on second reading.

(Continued from 4 March. Page 763.)

The Hon. K.T. GRIFFIN: I understand that the Minister does not want to proceed with this Bill in this session. However, I have indicated to the Minister that I think several matters need further consideration. I want to have reference to those matters on the record. They relate essentially to the definitions of 'private access road', 'private parking area', and 'private walkway'. The difficulty with the definitions is that they deal with roads or areas or thoroughfares which are on land of the owner. For example, the definition of a private access road is given as:

... a road provided on land by the owner for access by vehicles or pedestrians (or both) to premises on that land.

However, some private access roads are not located on land owned by the owner of the premises in relation to which access is sought. A private access road may be located on adjoining land, with an arrangement having been made, or perhaps an easement or right of way granted, with the owner of that adjoining land in order to facilitate access. If those arrangements are to be protected, the definition of 'private access road' must be further considered. The same applies to the definition of 'private walkway', presently defined as:

... a pedestrian thoroughfare provided on land by the owner for use by pedestrians for access to premises of the owner.

However, a number of private walkways are located on land which is owned by someone other than the owner of the land over which the walkway is provided. The protections of this Bill would not be afforded to that private thoroughfare. The definition given for 'private parking area' is:

... an area provided on land by the owner for the parking of vehicles used by persons frequenting premises of the owner.

Again, there are circumstances where parking areas are provided on land different from that owned by the person who owns the facility in relation to which the parking area is provided. That definition also needs some consideration.

The other difficulty in the matter of private parking areas is that there are frequently islands and gardens within the boundaries of a private parking area but not specifically provided for the parking of vehicles in those circumstances. Obviously one must question whether such areas will also be subject to the provisions of this Bill. A number of legal questions need to be considered before this Bill is further dealt with. I have not had an opportunity to send it out to lawyers practising in the field of rights of way and real property conveyancing, but I would like to do that over the break, as other questions about private rights of way might arise.

It is probable that the provision in clause 12 of the Bill deals adequately with those other private rights of way that may not come within the definition and be marked by a notice in accordance with the relevant definition. However, I certainly want to have this matter checked. I would appreciate it if the Minister could consider those matters before the Bill is further debated. If other matters are brought to my attention as a result of the consultation I will have with those in the legal profession who are equipped to properly assess the implications of this Bill. I will raise them when the Bill is next before us.

The Hon. B.A. CHATTERTON secured the adjournment of the debate.

WORKERS REHABILITATION AND COMPENSATION BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 975.)

Clause 8—'Constitution of the management board.'

The Hon. I. GILFILLAN: I move:

Page 12, line 1—Leave out '11' and insert '12'.

This amendment leads into the subsequent amendments that quite substantially change the composition of the board of the corporation. It will increase the membership from 11 to 12. I intend to speak to the consequential amendments so that I am addressing the whole issue. I intend, as near as possible, to keep a so-called even balance, and with that in mind the numbers have been adjusted. In addition, we are convinced that there should be direct representation from the United Farmers and Stockowners on the cor-

poration. That is certainly justified on many fronts, and I canvassed that matter at the second reading stage.

There is a similar but not identical interest on the part of the Australian Small Business Association. So often the people involved in both these areas are, in the main, single people principals with very little cohesive strength and bargaining power. Apart from that, they have unique employment situations, which deserve a direct voice on the corporation. Although I recognise that there are individual and unique requirements, the other point that I emphasise in general regarding the board is that any appointees from any source should regard themselves as being members of a board with a common goal, that is, to run the most efficient, compassionate and economically efficient workers rehabilitation and compensation system in Australia.

Although the amendments will provide for specific representation from the United Farmers and Stockowners and the Australian Small Business Association, I expect that those nominees will be objective in the way they approach their responsibility and conscious of a State-wide, multifaceted responsibility that they carry as members of the corporation, and thus they will act similarly to appointees from any other source. The second proposed amendment will provide:

Page 12, lines 3 and 4—Leave out paragraph *(a)* and insert new paragraph as follows:

(a) one shall be a person nominated by the Minister after consultation with the United Trades and Labor Council and associations that represent the interests of employers, who shall be the presiding officer of the board;.

We hope that this amendment will result in the nomination of a presiding officer who will be acceptable to what have traditionally been regarded as perhaps antagonistic groups in the workers compensation area. The third proposed amendment will provide:

Page 12, line 5—Leave out 'four' and insert 'five'.

It will provide as near as possible an equal balance. The next proposed amendments provide:

Page 12—

Line 7—Leave out 'three' and insert 'two'.

Lines 8 to 10—Leave out '(and of these one shall be a suitable person to represent the interests of small business)'.

After line 10—Insert new paragraphs as follow:

(ca) one shall be nominated by the Minister, after consultation with the United Farmers and Stockowners of South Australia Incorporated;

(cb) one shall be nominated by the Minister, after consultation with the Australian Small Business Association Limited;.

Under paragraph *(e)* one member of the board will have experience in the field of rehabilitation, and that will emphasise the importance of rehabilitation in the whole system. The proposed amendment provides:

Page 12, line 15—After 'rehabilitation' insert 'nominated by the Minister after consultation with the United Trades and Labor Council and associations that represent the interests of employers;'.

Specifically, with our amendment we want to attempt to prevent any accusation that the board is being loaded by the Minister of a particular Party in government. Further, partly because of the numbers but principally because we do not believe that the General Manager should be a voting member of the corporation, we will seek to delete paragraph *(f)*, which provides that the General Manager will be a member of the board. Thus we propose to move the following amendment:

Page 12, lines 16 and 17—Leave out all words in these lines.

All these amendments hang together.

The Hon. R.J. RITSON: Regarding the composition of the board, it is a very sad business indeed that the board is being conceived and perhaps born as a creature of class conflict, with members appointed to it to represent their political stances rather than appointments being made for particular skills. You, Mr Acting Chairperson, are a man of some knowledge of substantial business affairs and I am sure that, if you were appointing a board to manage a large amount of money, to decide disputes, to make medical policies and to undertake the other specialist functions listed as functions of the board, you would look to appointing people with the proper skills.

A board such as this ought to contain people with experience in managing large amounts of investment funds in corporate business. The board should have judicial or quasi judicial skills, medical skills, legal skills and social skills. Instead of selecting a board on the basis of the type of skills appropriate to carry out the functions of the board, what is happening is that class conflict is being perpetrated and appointments are being made, as it were, to be fair to different groups in conflict, and I think there is a great danger that it will become a board of idiots who fight all the time.

The question of representative committees is an area that has its place, and where there are conflicts between vested interest groups it is quite common for consultative committees to be formed to advise the people exercising the power, so that the interests of various sections of the community are brought to the notice of the people exercising the power. In the end, the people exercising the power and forming the policy should be the best possible persons in terms of the skills appropriate to the functions of the board.

I know that my protest will be of no avail because the whole conception of this matter, from the very beginnings of the Byrne committee, was that it was dealt with in terms of representation of conflicting class interests, and that is reflecting itself right up to the board which, as I say, will be in danger of being a board of incompetents.

I would much rather see a board appointed to have people with the appropriate range of professional skills, and then the conflicting vested interests could have a consultative committee which gave input to the board. As I say, I do not expect that I can do anything to alter this situation because of the momentum that this philosophical approach has gained since the report of the Byrne committee, but I would like it to be on record because, as the years roll by, I may be proved to be right.

The Hon. C.J. SUMNER: We support the amendment.

The Hon. K.T. GRIFFIN: I do not think that the general manager ought to be a member of the corporation as such, and I will be moving at the appropriate time for that person to be a non-voting member. That will mean that instead of supporting this amendment immediately—that is to increase the numbers from 11 to 12—I would want to keep the numbers at 11. That would allow the amendments of the Hon. Mr Gilfillan to be accepted.

I would then want to move my amendment in a slightly different form: it is incorrectly stated on the amendments which have been circulated. I would want to make the member appointed under subclause (1) *(f)* a non-voting member of the board. That reduces the possibility of a Labor Administration being in the position where it can more effectively control the deliberations of the corporation.

If the General Manager remains as a voting member, there would be, under the Hon. Mr Gilfillan's proposal, five nominated by the Minister after consultation with the United Trades and Labor Council; a presiding officer of the board; the person experienced in the field of rehabilitation, plus the General Manager. Quite obviously, in those circumstances, the prospect is for a union-dominated corporation on which the employers would have very little, if any, influence.

In summary, we would wish to retain the number of members of the board at 11 and not increase them to 12.

We would support the amendments of the Hon. Mr Gilfillan but would then seek to move a further amendment which would make the General Manager of the corporation a non-voting member. That is how we get to the figure of 11 rather than 12.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, lines 3 and 4—Leave out paragraph *(a)* and insert new paragraph as follows:

(a) one shall be a person nominated by the Minister after consultation with the United Trades and Labor Council and associations that represent the interests of employers, who shall be the presiding officer of the board.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, line 4—Leave out 'four' and insert 'five'.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, line 7—Leave out 'three' and insert 'two'.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, lines 8 to 10—Leave out '(and of these one shall be a suitable person to represent the interests of small business)'.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, after line 10—Insert new paragraphs as follow:

(ca) one shall be nominated by the Minister, after consultation with the United Farmers and Stockowners of South Australia Incorporated;

(cb) one shall be nominated by the Minister, after consultation with the Australian Small Business Association Limited;.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, line 15—After 'rehabilitation' insert 'nominated by the Minister after consultation with the United Trades and Labor Council and associations that represent the interests of employers;'.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, lines 16 and 17—Leave out all words in these lines.

Amendment carried.

The Hon. M.S. FELEPPA: I move:

Page 12, after line 17—Insert new subclause as follows:

(2) In making nominations under subsection (1), the Minister shall have regard to—

(a) the need for the board to be sensitive to cultural diversity in the population of the State; and

(b) the Corporation's obligation to take into account, in the provision of rehabilitation and compensation under this Act, racial, ethnic and linguistic diversity in the population of the State.

The reason for my suggesting this new subclause to be considered in this Act is because historically workers from non-Anglo-Saxon backgrounds have suffered much from job-related injuries, and the compensation in a number of cases has been less than generous with them compared with workers generally.

To this point I agree with the Minister responsible for this legislation when he said in his second reading explanation:

It has long been recognised that the current system seriously under-compensates some and, in some other cases, over-compensates others. The Government's proposals are therefore geared to removing those inequities to providing a fair level of long-term income security to injured workers.

Also, I wish to bring to members' attention some revealing information from a survey which was carried out by Annette Rubenstein of the Western Region Health Centre in Victoria. The survey was carried out in 1982-83 and it involved a number of patients who visited the centre between July 1982 and February 1983 with a new injury or episode of illness for which workers compensation claims had been made. Of the 685 patients who were surveyed, 122 (or 17.8 per cent) had their claims rejected. It was noted that rejection rates varied widely according to the sex and ethnicity of patients.

I would like to give some statistics relating to this survey. Statistics were prepared under the headings of birth place/sex, total claims, number of claims rejected and the percentage of claims rejected. Under the side heading of Australian/UK born males there were 249 claims, of which 17 were rejected (or 6.8 per cent). Under the side heading of Australian/UK born females there were 85 claims, of which 15 were rejected (or 17.6 per cent). Overseas non-English speaking people made 223 claims, 44 of which were rejected (or 19.7 per cent) and in the female category for overseas non-English speaking countries there was a total of 128 claims, 46 of which were rejected (or 35.4 per cent).

The discrepancy was clear in the year 1982-83 and it is also clear now. There is no doubt about that. In my view, in order to endeavour to redress this situation and to ensure that it does not continue, it is essential that, within the corporation, there are people who are not only well disposed towards injured workers with a non Anglo-Saxon background but who also understand and have experienced the condition. For those reasons I express my concern about this matter and I commend the amendment to honourable members and hope that they will support it.

Amendment carried.

The Hon. K.T. GRIFFIN: I do not intend to move the next amendment that I foreshadowed earlier. It is no longer relevant, because the General Manager is no longer to be a member of the board.

Clause as amended passed.

Clause 9—'Terms and conditions of office.'

The Hon. J.C. BURDETT: An amendment in my name provides:

Page 12, lines 18 to 20—Leave out subclause (1) and insert new subclauses as follow:

(1) Subject to this section, a member of the board shall be appointed for a term of office of five years.

(1a) Of the first members of the board to be appointed, the following shall be appointed for a term of three years:

(a) two of the members appointed after consultation with the United Trades and Labor Council;

(b) two of the members appointed after consultation with associations that represent the interests of employers;

and

(c) the member appointed on account of experience in the field of rehabilitation.

(1b) A member of the board shall be appointed on such conditions as the Governor may determine and on the expiration of a term of office shall be eligible for reappointment.

For some time, when the Government has appointed boards and committees and so on, it has appointed them for a period not exceeding X number of years (in this case five). The attitude of my Party and me in particular has been that this is not appropriate, that persons ought to be appointed for a fixed period. It would be possible to take the matter to an extreme in the Bill as it stands and to appoint a person, who is to be appointed for a term not exceeding five years, for a term of one month, one year or two years. That would leave that person too much in the pocket of the Minister, which is not what is intended because, if he was appointed for a very short period of time, he would be concerned to fall into line with what the Minister wanted in order to assure his reappointment.

I therefore believe that there ought to be a fixed term and, when it has been raised before, it has usually been acceded to by the Government. The fixed term, I suggest, ought to be the period of five years as mentioned in the Bill. This creates a problem: we would not want everyone

retiring at the same time, so we need some sort of staggering in order that that does not happen so that the continuation of experienced people on the board is assured. To assure a staggering, the amendment I proposed provided:

(1a) Of the first members of the board to be appointed, the following shall be appointed for a term of three years:

(a) two of the members appointed after consultation with the United Trades and Labor Council;

(b) two of the members appointed after consultation with associations that represent the interests of employers; and

(c) the member appointed on account of experience in the field of rehabilitation.

I must confess that the amendment which I had prepared has, to a certain extent, been thrown out of gear by the amendment to clause 8 which was moved by the Hon. Mr Gilfillan and which has been passed, because that then changed the number of people on the board.

Looking at it quickly, it appears that the only way that it is thrown out of kilter is in regard to the persons who shall be appointed for a term of three years in order to procure a staggering but, because of the amendment to clause 8 which was moved by the Hon. Mr Gilfillan and carried, subclause (1a) *(b)* causes a problem because there are no longer three members. If Mr Gilfillan's amendment creates a problem with this amendment, then mine could be postponed and taken into consideration after the other clauses, but we are only talking about procuring some staggering. I now move the amendment standing in my name except that in regard to subclause (1a) *(b)* strike out 'two' and insert 'one', so for persons appointed for three years, new subclause (1a) would then provide:

(a) two of the members appointed after consultation with the United Trades and Labor Council;

(b) one of the members appointed after consultation with associations that represent the interests of employers; and

(c) the member appointed on account of experience in the field of rehabilitation.

If any further rearrangement of those people who are appointed initially for the shorter period is desirable, that could be postponed, but it seems to me, looking at it quickly, and after brief consultation with the Hon. Ian Gilfillan and some colleagues from my Party, that this would fix the matter.

The Hon. I. GILFILLAN: I support the amendment. I am not able to quickly assess whether the change in those numbers provides what is important, that is, a staggered appointment. We support the principle of a fixed term, recognising that the staggering, in the first instance, should be achieved. If the Government feels uneasy with current wording I am happy for the matter to be postponed, or for the clause to be passed and resubmitted if investigations prove it to be unsatisfactory.

The Hon. C.J. SUMNER: The Government's proposition in clause 9, in any event, provides for the staggering of appointments. The motion of a fixed term of five years is quite ridiculous—it is just ludicrous! Honourable members know that having fixed terms such as this creates problems. There are people who may be able to serve for one year and not for five and are prepared to serve for that one year. One might want to continue their appointment for one year after the five years expire, but would be unable to do so as the only option is a five-year period. There is no real reason in this situation why members of the board should be appointed for a fixed term of five years—there is no basis at all for doing that. All that does is create difficulties and inconvenience for the people trying to administer the Act. I oppose the amendment.

The Hon. I. GILFILLAN: I have no sympathy with the Attorney-General's argument. I think that there is every reason for a five-year fixed term. It is a responsible job and the people appointed need reliability of the term that they are to be there. It is not a matter of trying somebody out for a while and then saying that they have not performed properly.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: The Attorney said that they would be appointed for only one year.

The Hon. C.J. Sumner: I did not say that. I said a person could be appointed for five years and then continue on for a year; that is what I said. Listen to what I am saying!

The Hon. I. GILFILLAN: If I can pick up my momentum after that barrage of noise, I feel that the amendment proposed by the Hon. John Burdett does have the ingredients of what we would like to see in the Bill, that is, continuity of service from board members and a fixed five-year term achieves that. The other matter of a staggered appointment is only required in the first instance. I am prepared to accept the Hon. John Burdett's amended wording in relation to that.

The Hon. C.J. SUMNER: The point I made earlier was that there could be a person appointed for five years whom we might wish to continue in that appointment for a year. Perhaps they are close to retiring or do not want to stay for another five years.

The Hon. J.C. Burdett: They can resign.

The Hon. C.J. SUMNER: The honourable member always interjects with a smart comment. He says that they can resign, but it may well be at the initial stage that it is desirable to reach some kind of agreement as to how long a person can be appointed by actually appointing him for the period that he is prepared to serve. In any event, when there is a staggered board there is probably nothing wrong with having people appointed for less than five years whether or not they have already done five years. Certainly, in the case where you have people who have done five years and who do not want to serve another five years it is convenient to appoint them for less than five years. All the honourable member is doing is making the Bill less workable than it otherwise would be.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 12, after line 36—Insert new paragraph as follows:

(ca) is found guilty of an offence against section 13 (1);.

This amendment provides for a member of the board who offends in the way outlined in future clause 13 (1), which states:

A member of the board—

(a) who is directly or indirectly interested in a contract, or proposed contract, made by, or in contemplation of, the Corporation;

or

(b) who is directly or indirectly interested in any matter that is before the board for determination,

shall, as soon as practicable after becoming aware of the interest, disclose the nature of the interest to the board and shall not take part in any deliberations or decisions of the board on the contract or matter to which the interest relates.

We believe that anybody found guilty of not complying with that clause has obviously avoided the responsibilities that should be concomitant with being a member of the board and, therefore, their position should become vacant—they ought to be automatically removed from the board. It may be argued that there are degrees of offences against clause 13 (1), but we believe that, if it is taken to the point of actually being deliberated and decided upon and the person is found guilty, he then has committed a substantial enough transgression to remove him from the board.

Amendment carried.

The Hon. J.C. BURDETT: I move:

Page 12, line 41—After 'office' insert '(but a person who is to fill a casual vacancy in the office of a member shall be appointed only for the balance of the term of the person's predecessor)'.

This amendment is consequential on one I moved previously and relates that matter to the question of a casual vacancy.

The Hon. C.J. SUMNER: The Government opposes this amendment on similar grounds to those I outlined previously.

The Hon. M.J. ELLIOTT: We will be supporting the proposed amendment.

The Hon. C.J. SUMNER: In light of the Democrats' attitude to this amendment I will not call for a division. The Government's opposition to the amendment is on similar grounds to its opposition to a previous amendment moved by the Hon. Mr Burdett.

The amendment the honourable member has now moved ties the apppointment of a casual vacancy on the board to the balance of the remaining term of a former member. The Government's provision provides much greater flexibility and is to be preferred. One really cannot see what the basis for this amendment is.

The Hon. J.C. BURDETT: As I said, this is a consequential amendment to the amendment which I moved before and which has been carried. It is simply to apply the notion of a casual vacancy to the principle which has already been accepted of fixed terms with staggered terms in the first instance. That principle has already been established in the Council by the motion which was previously put and which has been carried. As the Attorney opposed the previous amendment I can understand how he opposes this one. But if we accept the previous principle, what I now move is entirely consequential upon that.

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11 —'Proceedings, etc., of the board.'

The Hon. K.T. GRIFFIN: I do not propose to move my amendment, because it was dependent upon the numbers of the board being reduced from 11 to 10. As the numbers on the board have been increased from 11 to 12 it is inappropriate, therefore, to reduce the number in the quorum.

The Hon. I. GILFILLAN: I move:

Page 13, line 15—Leave out 'Six' and insert 'Seven'.

This amendment is consequential upon the increase in the number on the board, so that there should be a proper quorum.

Amendment carried.

The CHAIRPERSON: The Hon. Mr Griffin has an amendment to line 14 on file.

The Hon. K.T. GRIFFIN: Again, this was dependent upon early amendments which I did not move. It related to non voting members. As there are no non voting members of the board, it is not appropriate to move my amendment.

Clause as amended passed.

Clause 12 passed.

Clause 13—'Disclosure of interest.'

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

Page 13, line 34—Leave out 'is directly or indirectly interested' and insert 'has a direct or indirect personal or pecuniary interest'.

This clause deals with the requirement for a member of the board to disclose an interest. A member of the board who is directly or indirectly interested in a contract or proposed contract made by or in contemplation of the corporation has to disclose the nature of the interest.

Likewise, a member of the board who is directly or indirectly interested in any matter before the board for determination must disclose that interest. My amendment seeks to clarify the position of the board so that in that second instance, where a member of the board has a direct or indirect personal or pecuniary interest in any matter that is before the board for determination, that must be disclosed.

The problem which I had was that obviously if this Bill comes into effect the board will be making decisions which will have an effect on employees of the corporation. Technically, it may be possible to argue that the clause in its present form would require members of the board to disclose that indirect interest and thereafter to take no part in proceedings of the board which is again a senseless consequence. So, my amendment will clarify the position so that it is only where there is a direct or indirect personal or pecuniary interest that is related to the affairs of the member of the board that the interest has to be disclosed.

The Hon. I. GILFILLAN: My immediate reaction is to oppose the amendment because of what may be an unnecessary restriction on what could be an interest for some concern. But, in looking at the clause and considering it there is what could appear to be an unfortunate compulsion that, regardless of how insignificant that interest may be, that member of the board shall not take part in any decision of the board on the contact or matter to which the industry relates.

It is most important that we protect the corporation from members who may have some interest from exercising that and therefore we have already arranged by amendment earlier that anyone who is guilty of an offence will automatically be removed from the board. But whether the actual clause tends to be as draconian as it is and whether the Attorney can explain it so that his interpretation is not as draconian as I am making it out to be, I would like the Committee to consider.

While the Attorney, understandably, is pondering the amendment, in relation to the wording of the clause, which is so inflexible, perhaps, for example, the wording of line 37 could be amended to provide that the board could exercise some discretion in relation to a member of the board who has an interest in a particular matter. The board itself might be able to determine whether that member can continue to take part in discussions.

The Hon. C.J. SUMNER: I understand that the Hon. Mr Griffin's amendment is designed to narrow the circumstances in which a person must declare his interest. One interpretation of the honourable member's amendment could be that it is narrowing the circumstances in which a declaration relating to interest must be made. I am not quite sure whether that was the intention or not.

The Hon. K.T. GRIFFIN: There was no sinister connotation in the point that I made. It was directed towards clarifying the position of members of the board in relation to employees of the corporation. If the employees of the corporation have a claim for workers compensation, I would say that it is open to interpretation that members of the board then have an indirect interest, because those employees are employees of the corporation for which the board has responsibility. All I want to do is put the position beyond doubt. An employee of the corporation might have a claim and the board has to make a decision on that or an aspect of it. Members of the board who feel that they must disclose an interest, as directors of the board, would therefore no longer be able to participate in the decision to be made.

In a different context, in relation to the Local Government Act, representations have been made to me by people who had sought election to local government on the basis of a specific interest in having an area made the subject of a differential rate, but council was advised that those people could not vote because they had an interest. We could argue about whether or not that advice was correct, but it meant that the people who had an interest could not vote in those circumstances. I am simply saying that, in the circumstances where a matter relating to an employee of the corporation is before the board, the situation is at least open to inter-

pretation. That is an interest which must be disclosed, and in so doing that member of the board would be excluded from acting. I think that that is crazy, if that is an interpretation to which the provision is open. I simply wanted to ensure that that situation does not arise at any time in the future.

The Hon. I. GILFILLAN: I suggest to the Attorney that he deliberate on this matter. It may be an appropriate time to report progress.

The Hon. C.J. SUMNER: I do not oppose this amendment.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

WORKERS REHABILITATION AND COMPENSATION BILL COSTINGS REPORT

The Hon. I. GILFILLAN: Madam President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. I. GILFILLAN: I move:

That Standing Orders be so far suspended as to enable me to move a motion without notice.

The Hon. C.J. SUMNER (Attorney-General): I think that the honourable member ought to indicate to the Council why he is so moving. In the middle of the afternoon he has moved to suspend Standing Orders without giving any reason for it.

The Hon. I. GILFILLAN: I apologise for that deficiency. The motion that I hope to move relates to a specific request to the Auditor-General to continue with the examination on the matter on which he reported recently, namely, the costings relative to the Workers Rehabilitation and Compensation Bill. I ask that the Council favourably consider my request.

The Hon. C.J. SUMNER: I will not oppose the suspension of Standing Orders, although this seems to be a rather extraordinary way to go about things. We will have something to say about the substantive motion when it is before the Council.

The Hon. I. GILFILLAN: I am sorry that the Attorney felt that it was obligatory on him to comment on the inappropriateness of my bringing forward this motion. Many things which happen in this Council appear to be inappropriate, and I would like to think that this matter will be treated on its merits, as the provisions of the Bill are critical to this State, and this Council has recognised that. I am pleased to note how diligently the Council is working on the Bill. The point of the motion is emphasised significantly by correspondence that has apparently been circulated by your authority, I assume, Ms President, from the Auditor-General. Before speaking to the motion, I seek leave to table three pieces of correspondence.

The PRESIDENT: Order! We are debating a motion for suspension of Standing Orders, and that is the only matter that may be debated. The honourable member is closing the debate.

The Hon. I. GILFILLAN: I understand that the issue of Standing Orders—

The PRESIDENT: We are discussing the question that Standing Orders be suspended, and the honourable member in replying is closing the debate.

The Hon. I. GILFILLAN: Thank you for that direction, Ms President. I will not speak further in that regard, and I hope that the Council recognises the justification for the motion.

Motion carried.

The Hon. I. GILFILLAN: I move:

1. That this Council requests the Auditor-General to commission an actuarial report by two actuaries as nominated below of the costings of the proposed Workers Rehabilitation and Compensation Act, to extend the work already reported by the Auditor-General in his report on 4 March 1986 to the Minister of Labour.
2. That the Council requests the Auditor-General to invite the United Trades and Labor Council on the one hand and the South Australian Employers Federation and the Chamber of Commerce and Industry on the other to each nominate an actuary.
3. That the Council requests the Auditor-General to invite the United Trades and Labor Council on the one hand and the South Australian Employers Federation and the Chamber of Commerce and Industry to each propose questions that they desire addressed.
4. That the Council requests the Auditor-General to invite representatives from the Department of Labour, the insurance industry, the Law Society and any other appropriate area to act as consultants as required.
5. That the Council requests the Auditor-General to arrange for the completion of the joint actuarial report as early as possible but without curtailing any line of inquiry he deems important to the examination.

This motion has been circulated to members. I wish to continue the remarks that I was somewhat inappropriately leading into earlier and I wish to make a correction. Three items of correspondence are important in considering the motion. The first is a letter from me to the Auditor-General dated 5 March 1986 (that is, yesterday) as follows:

Dear Mr Sheridan,

Parliament, and the Democrats in particular, have considered your report and as a result of considerable discussion, I have decided to write to you with the following request:

In the light of your report and its identification of short-falls in all data bases used for costings to date, would you undertake further investigation necessary to provide adequate information with whatever resources you need and allow time to do the job properly.

I have received an undertaking from the Insurance Council that data relating to 80 per cent of workers compensation business in South Australia over the past seven years could be made available within four weeks. I suggest that you invite two actuaries, possibly Mr J.C. Gould of Palmer Gould Evans Pty Ltd and Mr J. Cumpston, to join you to assess the data.

I believe it would be appropriate to involve a legal consultant and an insurance consultant to help in the assessment on an advisory basis. I have included a tentative list of questions which deserve attention in my opinion. It is our sincere wish to cooperate with the Government and the Liberal Opposition in this request. Therefore, I await your response to this request prior to consultation with the Government and the Liberal Opposition, but it is important the process go ahead without delay.

In reply, I received a letter dated 6 March (that is, today) addressed to me from the Auditor-General, as follows:

Dear Mr Gilfillan,

Thank you for your letter of 5 March 1986 concerning the proposed Workers Rehabilitation and Compensation Act 1986. I note the form of action you now suggest in order to provide adequate information with respect to workers compensation business in South Australia.

I do not believe it would be appropriate for me to be involved further in this matter and any involvement would need the unqualified approval of both Houses of the Parliament. In this regard, I would draw your attention to the final paragraph of my letter of 4 March to the Minister of Labour. A copy of that letter is enclosed.

The final paragraph of the letter addressed to the Hon. F.T. Blevins from the Auditor-General (to which the Auditor-General referred in that letter) states:

There is one further comment I would like to make. While an Auditor-General is subject to direction by the Parliament, it is pointed out that the proposed legislation provides for the Auditor-General to audit the operations of a corporation to be established under that legislation. In these circumstances, it may be more appropriate for another person (or persons) to be involved if further investigation of this matter is required.

Ms President, is it appropriate for me to table the letters?

The PRESIDENT: The honourable member has read into *Hansard* the relevant parts of those letters, and they have been circulated to all members. I doubt that they need to be tabled.

The Hon. I. GILFILLAN: The motion asks the Auditor-General to undertake a further examination. I have pursued

this issue with reasonably widespread support, because I believe there have been misgivings about whether the Auditor-General himself should have been involved, but there seems to be far less dispute as to the desirability or otherwise of a further examination. Everyone agrees that there has been a dearth of information from the insurance industry in South Australia upon which one could base any attempts at estimates of costings or current premium disbursement.

The Auditor-General's report, in spite of his misgivings outlined in correspondence, was delivered in response to an earlier request, and I commend him for that. I am sorry that he has misgivings about continuing this good work, but I respect his judgment in this matter. I have moved this motion because we believe that the Bill will be better and much more uniformly supported with confidence if for the first time the Parliament and the people of South Australia have before them reliable data and assessments of that data in relation to the costings and the current system of workers compensation insurance.

There will be an unavoidable and regrettable delay. The Democrats have never at any time deliberately delayed the progress of this legislation and we do not intend to do so in the future. We have said without qualification that we will be available in this Parliament at any time to continue deliberation on the Bill or in fact wherever outside the Parliament anything can be done to facilitate its eventual success.

I have confidence in moving this motion, because the people to whom I have spoken right across the range of those who are interested in this area, perhaps with one or two exceptions in this Parliament, have been prepared to support such a motion: most of them have said with varying degrees of enthusiasm that this work should be undertaken. That advice has come not only from employer groups or vested interest groups but also from people who are involved in the employer/employee situation.

Some unfortunate inferences have been made that our so-called delay of the Bill will unduly penalise industry in South Australia and cause some sort of economic chaos. I feel that the Government has been very short-sighted if it has not realised that the consequences of raised premiums and so-called disadvantages resulting from some delay at this stage would have happened in any case, because I think the insurance industry is now resigned to the fact—because of the Democrats' determination to support the Government in this legislation—that it will not have an ongoing role to play in workers compensation in South Australia.

So, by the very nature of the business and the industry, the insurance industry will be seeking to lift premiums. If the Government were able to and had a mind to control that movement of premiums, we would view that very sympathetically; but, to suddenly accuse us of being responsible for it, is illogical and quite unfair. I can guarantee that if we were to pass this Bill now the impact on the premiums, as far as the insurance industry is concerned, would be just as bad.

Our appeal should be to the Insurance Industry Council and to the individual companies to show some integrity and some consideration for their clients whom, no doubt, they would still like to have as clients in the future, and not to be irresponsible in the way in which they deal with premiums in this situation. I am confident that the practicality of the request can be complied with. There may prove to be a deficiency in data. I have an undertaking (which I have no reason to doubt) that the Insurance Council will make every effort to get the data, and it believes that it can do so in a matter of four weeks. If the data are not there, this Parliament and the people of South Australia should know that. It is no good having assertions put in front of us on the basis of data (unless the information is reliable).

If there are no data, we have to make our judgment on that situation. But, if the data—extricated and analysed under the motion that I have before the Council—proves certain situations to be right or wrong, we have the confidence that they are facts upon which we can make judgments as far as they affect the Bill. I consider it quite irresponsible for the Parliament now—with the previous report of the Auditor-General before us—not to pursue the request which I consider was implied in the earlier Auditor-General's report—that further examination should be done. I consider that we are obliged to heed that and to make every effort to get that extra examination under way as soon as possible, to be facilitated with as much speed and cooperation as possible from all sectors involved: from all political Parties which show an interest and responsibility to the State, to employers and to employees.

I have no reason to doubt that both employers and employees in this situation would like this examination to be done. I urge the Council to accept my motion. Of course, bearing in mind what the Auditor-General said, it is important that the Assembly consider the motion as well; and in the proper form and at the proper time I hope to transfer my successful passage of this motion as a message to the Assembly for its consideration, if that is necessary. It may not be necessary as there may be a promoter of the motion in the House itself, but it is certainly our intention that the Assembly have every chance to consider the motion. I therefore urge the Council to support my motion.

The Hon. K.T. GRIFFIN: The Opposition has given some consideration—albeit brief in light of the limited time available—to the motions which have been moved by the Hon. Mr Gilfillan. The Opposition will be moving amendments—I regret that they are not yet tyepwritten, but there are several handwritten copies available to members. The Opposition has been concerned, as I indicated on Tuesday-when we embarked upon the Committee consideration to the Bill, about the deficiencies in the studies with have been the basis upon which the Government has brought in the Workers Rehabilitation and Compensation Bill.

That concern was heightened when on Tuesday the Auditor-General's report was tabled in Parliament. He indicated that in view of the limited time available he had not been able to verify the statistical information provided by members of the Insurance Council of Australia, and nor had he been able to check the assumptions in the Mules and Fedorovich study. He was able to make some comparison between the two studies but, again because of the time, it was not an extensive survey of the information in those studies. He did conclude on the basis of information which he had—and without verifying information or checking assumptions—that it could be said that the Government's study could show premiums reduced by 22 per cent rather than the 44 per cent which was promoted in the original work cover prior to the State election, and that there could in fact be a 10 per cent increase in costs (relying upon the Employers Federation study).

He also indicated that, if the figures were to be verified and the assumptions checked, he would need very much more time—a matter of months rather than the limited time which he has had available up to the present time. That is no criticism of the Auditor-General: I think that in the limited time available he has made every effort to come to grips with a particularly complex problem. He has used his resources to the fullest to present a frank report to Parliament. The difficulty is that there is still controversy about costings. There is still very grave doubt as to whether the proposal in the Bill is going to cost money or save money, and there is also considerable debate as to whether the Mules and Fedorovich study, updated as a result of

submissions which were accepted by the Government after the white paper was released in August, in fact costs all of the benefits which are included in this Bill.

The only way to put this thing to rest once and for all is to have all the cards on the table. Last night and this morning, the Law Society has been promoting an independent inquiry where all submissions are open; where there is an opportunity for interested parties to test and probe submissions with have been made, so that the decision making process can be open to such public scrutiny as interested parties may deem appropriate.

I have some sympathy with that position. The Attorney-General made the point earlier today that the Byrne report was the result of submissions and consultation and that the Mules and Fedorovich study was the result of consultation. However, what has been overlooked is that really there has been no opportunity during the consideration of the events leading up to the Byrne report being tabled or to the tabling of the Mules and Fedorovich study for interested parties to probe and test the assertions which have been made. That means that there is a deficiency in the information which is available and the proper interpretation of that information.

If, for example, the Byrne committee had made available the submissions which it had received (which it had probed and tested), and had allowed probing and testing of those submissions so that all possible perspectives could be examined, one may not have had the same degree of misgivings about the recommendations of that committee. Quite clearly, the basis upon which the Mules and Fedorovich study was undertaken was not made available to interested parties for testing; in fact, it was denied to those who sought access to the information upon which Mules and Fedorovich assessed the Government's proposals.

I have some concern about again referring the matter to the Auditor-General, but at the moment it seems that that is our only avenue to obtain further consideration of the matter on the basis of the Auditor-General's own conclusions. If the Auditor-General is to be requested to undertake some further studies, I would want to move some additional clauses: namely, that the Council requests the Auditor-General to allow interested parties to make such comments on the submissions to the Auditor-General as they deem necessary within such time as the Auditor-General fixes (so, the Auditor-General would set the time limits within which further comments may be made on submissions). That opens it up and means that the Auditor-General is not required to merely accept at face value the submissions which are made, but is able to receive the benefit of criticism, of assertions and of comment on submissions which he might receive.

I also would want the Auditor-General to be requested to seek from relevant Canadian provinces and New Zealand information with respect to the impact of common law claims, indexed pensions and other benefits on the unfunded liabilities of similar schemes, bearing in mind that the proposal in the Bill which we have been considering in the Committee stage is for an essentially unfunded scheme which will have some premium savings in early years, but ultimately the cost of the accrued liabilities will have to be met; they will have to be met by future generations of South Australian employers (and ultimately consumers), as unfunded liabilities have to be reduced.

I also would want to move that the Council request the Government to reconvene Parliament within 21 days after the receipt of the Auditor-General's report, with a view to considering a redrafted Bill amending workers compensation provisions. That time limit is fairly tight, but it is designed to demonstrate that we believe that, as soon as the Auditor-General's report has been received, if it is agreed by both Houses that the Auditor-General should be requested to provide it, we ought to reconvene to deal with the matter and to consider amendments to workers compensation provisions. We do not think that it ought to be allowed to drift and we do not believe that there ought to be unnecessary delay. We think that the question of costings particularly ought to be analysed so that the conclusions about the costs of this scheme proposed by the Government can be beyond question and that all of the questioning about those costs is on the public record.

We support the spirit of the Hon. Ian Gilfillan's motion. We believe that there needs to be further detailed and open study as to the cost implications of the Government's legislation, both to current employers and employers in the future. We believe that there ought to be some urgency expressed if resolutions of this Council are to be carried. Then, having considered this matter, if the resolutions gain the support of the Council, I believe that they ought then be transmitted to the House of Assembly for further consideration (and hopefully support) so that the Auditor-General will effectively have a resolution of both Houses upon which he may then act. At this stage, if it helps, I will move the three amendments, but I defer to your advice, Madam President, as to the way in which we ultimately put them—I would hope separately so that each one can be taken appropriately according to its merits. I therefore move:

1. That the motion moved by the Hon. I. Gilfillan, be amended by inserting after clause 4 the following new clause:

4A. The House requests any inquiry to allow interested parties to make such comments on the submissions to it as they deem necessary within such time as the Auditor-General fixes.

2. That the motion moved by the Hon. I. Gilfillan be amended by inserting before clause 5 the following new clause:

4B. The House requests any inquiry to seek from relevant Canadian Provinces and New Zealand information with respect to the impact of common law claims, indexed pensions and other benefits on the unfunded liabilities of similar schemes.

3. That the motion moved by the Hon. I. Gilfillan, be amended by inserting after clause 5 the following clause:

6. This House requests the Government to reconvene Parliament within 21 days after the receipt of the inquiry's report with a view to considering a redrafted Bill amending Workers Compensation proceedings.

The Hon. C.J. SUMNER: The Government opposes the proposition moved by the Hon. Mr Gilfillan. In a nutshell, the reasons for it are that the Auditor-General has made it quite clear that he does not believe that it is appropriate for him to be involved further in this exercise. I believe that the Auditor-General felt obliged to do the first analysis (which we received on Tuesday), because a request was made by members of Parliament. I think that the Hon. Mr Gilfillan decided that the Auditor-General would be an appropriate person and made that statement; the Employers Federation also mentioned the Auditor-General; and I think that the Liberal Party then decided that the Auditor-General might be an appropriate person to examine the costings. As a result of that the Government referred the matter to the Auditor-General and the Auditor-General felt obliged, as the matter had been referred to him by members of Parliament, to conduct the inquiry.

It is quite clear that the Auditor-General does not consider it is now appropriate for him to be involved. I find it a trifle extraordinary that, in the light of the clear indication from the Auditor-General that he does not want to be involved any more in this matter, honourable members are moving these motions and supporting them to attempt to impose the obligation on him. I refer honourable members to a letter which accompanied the report of the Auditor-General. It is a letter from the Auditor-General to the Hon.

F.T. Blevins, Minister of Labour, of 4 March. The final paragraph reads:

There is one further comment I would like to make. While an Auditor-General is subject to direction by the Parliament, it is pointed out that the proposed legislation provides for the Auditor-General to audit the operations of a Corporation to be established under that legislation. In these circumstances, it may be more appropriate for another person (or persons) to be involved if further investigation of this matter is required.

That was the view of the Auditor-General on Tuesday of this week. The Auditor-General was then advised of the motion now moved by the Hon. Mr Gilfillan and in response to that has written to you, Madam President, and you have been good enough to circulate that letter, which states:

With respect, I can only reiterate that I believe it to be inappropriate for the Auditor-General to be involved further in this matter, either directly or indirectly. Your attention is drawn to a letter I forwarded to Mr Gilfillan today with respect to this matter. A copy of that letter is attached.

A letter dated 6 March, as was the one to you Madam President, to Mr Gilfillan states:

Thank you for your letter of 5 March 1986 concerning the proposed Workers Rehabilitation and Compensation Act 1986. I note the form of action you now suggest in order to provide adequate information with respect to worker compensation business in South Australia.

I do not believe it would be appropriate for me to be involved further in this matter and any involvement would need the unqualified approval of both Houses of the Parliament. In this regard, I would draw your attention to the final paragraph of my letter of 4 March to the Minister of Labour. A copy of that letter is enclosed.

That is the letter to which I have already referred. There is no equivocation about it on the part of the Auditor-General. He said in his first letter that 'it may be inappropriate', but says in today's letter that it is inappropriate for him to be involved. Despite those indications from the Auditor-General that he believes he should not be further involved in this matter, honourable members in this Council wish to impose the obligation on the Auditor-General to conduct this inquiry.

I find that a somewhat extraordinary action for the Hon. Mr Gilfillan to take. He seems to have an obsession with the Auditor-General. He seems to think that the Auditor-General can wave a magic wand and produce all the answers that he wants. The Auditor-General certainly did not do that on the last occasion and he does not apparently believe that he can do it on this occasion. The other question that needs to be asked is whether in any event the Auditor-General was the appropriate person to refer the matter to in the first place. I do not think that the Auditor-General felt that it was appropriate even initially, but felt obliged to do it because requests were made. The other question is whether he has the expertise to do it. He is not an actuary: he is the Auditor-General, sure, and (as I understand) an economist, but he is not an actuary. I understand that this is a reasonably specialist field, so one might well ask what qualifications has the Auditor-General to adjudicate on this matter when compared to the Hon. Mr Lucas.

The Hon. R.I. Lucas: Or the Hon. Mr Sumner.

The Hon. C.J. SUMNER: Yes, or the Hon. Mr Hill. The Auditor-General considers it inappropriate. It is a question of whether the Parliament ought to consider, in any event, whether he is the appropriate person with the necessary expertise. I do not think that he necessarily believes that he has the necessary expertise and, in those circumstances, given clear indications from the Auditor-General, it seems to me surprising that honourable members would wish to pass a motion to impose this obligation on him.

Having said that, as far as the Government is concerned it is prepared to do anything that the Hon. Mr Gilfillan wants it to do. It is the Hon. Mr Gilfillan who has control of this Bill in the Legislative Council in the light of the implacable Opposition from Liberal members opposite. The Government is prepared to say to the Hon. Mr Gilfillan, 'You put up a proposition and you get whatever additional actuarial costings you require.' The Government will provide the funds to enable that to be done, if that is what the Hon. Mr Gilfillan wants.

However, it seems extraordinary that the honourable member should wish to impose an obligation on the Auditor-General that he has made quite clear he does not wish to accept. Indeed, I think that there are grounds to suggest that if the motion is passed, in any event, by the Legislative Council that the Auditor-General will respond and say that it is not a matter that he has responsibility for statutorily and that, therefore, it is not a matter in which he can be involved. On that basis, I oppose the amendments and the motion and suggest to the Hon. Mr Gilfillan that he comes up with a proposition that is workable and not try to impose on the Auditor-General something that he has indicated he is, in effect, not prepared to do.

The Hon. L.H. DAVIS: The motion before us highlights the dilemma that both the Government and the Democrats have been in about this vexed matter of workers compensation. The Opposition's position has been consistent throughout the debate, and in the weeks and months preceding the debate. We have expressed grave doubts about the accuracy of the costings and the credibility of the documents submitted to the Auditor-General recently, at least from the Government's point of view.

In the past few days and weeks the Democrats have taken more turns than the roads in the French Pyrenees. At one stage they were on public record as saying that they would not proceed with the Bill unless it had the support of both employers and unions. It quite clearly does not have the support of employers and yet here we are ploughing through the Committee stage of the Bill. They then went on public record and said that they would not debate the Bill's financial clauses and that they should be left until a later date.

The latest thing two days ago was that they would deal with all the clauses except the last clause in the Committee stage and not support the third reading and require costings. We now have a further position, which has been put down in the motion we are now debating. We have consistently stated that we believe that this workers compensation legislation is gravely deficient in many areas. It is the most generous scheme in the world. The benefits are the best in the world, which means that the costs will be the highest in the world: it will have clear economic disadvantages for the South Australian economy now and into the future.

We put that position here and in another place and, as this sad drama unfolds, our position and its accuracy have been more than justified. The Hon. Trevor Griffin has been anxious to solidify his position by supporting at least some inquiry into the cost of the workers compensation scheme as proposed in South Australia. The Hon. Trevor Griffin, having carried the debate in this Council this afternoon, was literally landed with this proposal made by the Hon. Ian Gifillan on very short notice—it came on sooner than he expected. Indeed, he only sighted the Auditor-General's letter dated 6 March as he rose to his feet. Quite clearly, in those circumstances he did not have a chance to make an assessment of that penultimate paragraph, which said that the Auditor-General indicated that he was reluctant to be directly or indirectly involved in any further assessment of the Workers Rehabilitation and Compensation Act costings.

Where are we now? I believe that the situation is totally confused, although, as I have said, the situation does justify the Liberal Party's consistent stand on this matter. I suggest to the Attorney-General that as we are close to the adjournment we should take it on this motion to give interested

parties time over the dinner break to consider the matter and to ascertain whether or not some positive measure can come out of the suggestion made by the Hon. Ian Gilfillan.

I see, however, that there is some softening in the Attorney-General's attitude. Both the Minister of Labour and the Attorney-General have consistently been on the record saying, 'We will ram this legislation through, come hell or high water.' The Attorney-General has now indicated that if actuarial costings are required he is prepared to go ahead and have actuarial costings.

The Hon. C.J. Sumner: That's what Gilfillan said.

The Hon. L.H. DAVIS: I am sorry: I got the impression that the Attorney-General was happy with it and that he was lending the Government's support to it.

The Hon. C.J. Sumner: We did not have any alternative to it.

The Hon. L.H. DAVIS: It is pleasing to see that the Attorney-General concedes the validity of the view that has been put forward by this side. The whole of this workers compensation legislation is based on an academic study of 1984. There are no actuarial costings whatsoever to substantiate it. I have just ascertained that Dr Trevor Mules who was the so-called author of the October 1985 document which was presented to the Auditor-General as one of the two critical documents for costing by the Auditor-General had nothing to do with that documentation.

He denies being a co-author of it; he denies implicitly having had anything to do with that costing. I have spoken to him personally this afternoon. In fact, I put out a press release demanding that the Government should publicly apologise to Dr Mules for the embarrassment caused.

The Hon. C.J. Sumner: His name has been in the paper for weeks.

The Hon. L.H. DAVIS: The last time he had anything to do directly with the costing of the Workers Rehabilitation and Compensation Bill was back in the June 1984 'New Directions' paper which, of course, has received wide coverage. The October 1985 12-page report is an update and takes into account submissions to the Government from trade union and employer groups which are interested in this matter.

The Hon. C.J. Sumner: Are you saying he was not involved in it?

The Hon. L.H. DAVIS: He denies implicitly that he had anything to do with the authorship of it. I read him sections of that: he knew nothing about it. He is deeply hurt and most embarrassed about the matter. So, that is where the credibility of the Government is at the moment in this matter—it is in the gutter. I suggest that the Attorney-General take stock of the situation over the dinner break in consultation with his colleague, the Minister of Labour from another place, and see whether the Government can get its act together in this very sad and sordid affair.

[Sitting suspended from 5.59 to 8.55 p.m.]

The Hon. R.I. LUCAS: In speaking to the motion I say at the outset that there is a need for some form of comprehensive, independent inquiry into the Government's workers compensation proposals. The major argument that we have had from the Government, the Minister of Labour and other representatives of Government in relation to this Bill over the past year or two has been, quite simply, that there needs to be a major cut in premiums for South Australian employers. It has not been an argument with respect to the requirement or need for increased benefits for South Australian workers; it has been solely an argument with respect to the need to cut premiums for South Australian workers. Clearly, if we as a Parliament are to be able to judge the merits or otherwise of this Bill we need to know whether the Bill will achieve the fundamental aim of the Government—that is, a cut in premiums.

Quite frankly, as a member of this Chamber at the moment I find it impossible to say what will be the ultimate effect of this Bill with respect to the level of premiums for South Australian employers. We have had a handful of inquiries so far dating back to 1984: there was Mules and Fedorovich in June 1984; Cumpston, phase 1 (as I indicated in my second reading speech) in 1984, arguing that there would be a 4 per cent increase in premiums; and Mules and Fedorovich again in October 1985 (although I understand that their is some debate whether it is Mules and Fedorovich, or Fedorovich alone, who in 1985 supported the Government's claim that costs would drop by some 33 per cent.

We then had Cumpston phase 2, he having changed sides, or switched horses in mid stream—having argued that there was an increase of 4 per cent in premiums under the Government's proposed scheme in 1984 he is now arguing in phase 2 that there will be a 20 per cent cut in premiums in 1986. The fifth costing was done by Mr Gould, who argued that there would be an increase in premiums under the Government's proposals. The final, and supposedly definitive inquiry into the costings was done by the Auditor-General. I will not cover the ground again that I covered in the second reading debate, but make the point again that since the Auditor-General's report on Government costings was released it has been the subject of misrepresentation in the worst possible way by the Minister of Labour, the Attorney-General, and other representatives of the Government; and through clever manipulation by the Minister of Labour and the Attorney-General, various representatives of the media—certainly the television stations—were quite deceived as to the findings of the Auditor-General.

The Hon. M.B. Cameron: The *Advertiser* wasn't.

The Hon. R.I. LUCAS: The *Advertiser,* that reputable journal, certainly saw through the manipulative skills of the Government's advisers. Certainly, the television stations in particular, and radio stations, were running stories along the lines that the Auditor-General had in broad terms supported the Government's costings and that there would be a cut in premiums of some 22 per cent instead of 33 per cent. That is the fanciful line that the Attorney-General, with his limited understanding of the Bill and economics, tried to push to this Chamber Tuesdayday evening.

Quite simply, the Auditor-General said that there would be a 5 per cent increase in premiums, based on an admittedly limited data base of seven firms (however, covering 58 per cent of premiums in the workers compensation market), rather than the one used by Mules and Fedorovich, and if the Auditor-General had used the same assumptions as Mules and Fedorovich used in their costings in October 1985.

As I said, because of the manipulative skills of the Minister and the Government, the waters have really been muddied so much that no-one really believes any more that that is what the Auditor-General found. No-one really believes that the Auditor-General, looking at the data base of seven firms and using the Government's assumptions used by Mules and Fedorovich, has said that there will be a 5 per cent increase in premiums. To be fair to the Auditor-General, he said that there were some problems even with his costing.

The Hon. C.J. Sumner: Unreliable.

The Hon. R.I. LUCAS: The Attorney-General repeated this allegation in relation to the Auditor-General on Tuesday evening. Nothing in the report said anything about unreliable. The words used by the Auditor-General were: 'Beware: treat it with caution.' 'Unreliable' is not the word used by the Auditor-General in his analysis. All the Auditor-

General is saying is that, given the limited time that he had—

The Hon. C.J. Sumner: Utmost caution.

The Hon. R.I. LUCAS: Exactly—that is the word I said—'caution'.

The Hon. C.J. Sumner: Utmost caution.

The Hon. R.I. LUCAS: Not 'unreliable'. This is a further indication of the gross examples of distortion that the Attorney-General and the Minister have been seeking to put on the Auditor-General's report. That is the reason we are now in the position where the waters have been muddied so much that no-one believes what the Auditor-General has found and we are in the position of looking further for an independent comprehensive inquiry. I believe that this independent comprehensive inquiry sought by the Democrats and the Liberal Party must take up the offer that was made some two or three weeks ago by the Insurance Council of Australia, which was to open the books of all the 37 firms operating in the workers compensation area in South Australia. The comprehensive inquiry ought not just look at seven firms (as did the Auditor-General), or one firm (as did Mules and Fedorovich), but I believe that any future inquiry ought to look at all 37 firms operating in the workers compensation market in South Australia. I understand that during the last week or two one firm has dropped out, so there may not be 37 firms in total. I hope that, whatever actual form the independent comprehensive inquiry takes, it will take up the offer of the Insurance Council of Australia and that, rather than using a limited data base of seven firms or one firm, it will look at the books of all the firms. I think that, if the future inquiry takes up that offer and looks at all the 37 firms, we would then be in a position of having some confidence as to the results of the inquiry rather than, as soon as an inquiry comes out which may not give the results desired by the Government, having to suffer a deliberate program of misinformation by the press secretaries and the assistants of the Government.

The Hon. C.J. Sumner: I am right, by the way.

The Hon. R.I. LUCAS: The Attorney is generally right, but on this matter he is not. I understand that all members now have a copy of my amendment to the motion of the Hon. Mr Gilfillan. My amendment consists of two substantive parts. First, I move:

1. That before clause 1 a new clause 1A be inserted as follows:
   1A. This House requests the Government to establish a full independent inquiry into the costings of proposals for change to workers compensation as contained in the Workers Rehabilitation and Compensation Bill 1986, introduced into the Legislative Council on 25 February 1986.

Quite simply, all that says is that we have a Bill before us and the argument for it is that it will cut premiums, but with a comprehensive independent inquiry we need to establish that that is in fact what the Bill does. If the comprehensive inquiry looks at all the 37 firms' books and says to us that premiums will increase, then quite clearly my argument, and I believe the argument of all members of the Liberal Party, will be that there is no justification for the Government proceeding with the Workers Rehabilitation and Compensation Bill 1986. If the independent inquiry backs the Government's claim of 20, 30 or 40 per cent savings, or whatever the latest figure is, then clearly members in this Chamber will need to take that matter into consideration when they consider the legislation.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Hold on! Let me put my point of view. The only rationale that the Attorney-General and the Government have for the Bill is that it will cut premiums. That is the Attorney-General's argument, so the Government will be judged on his rationale. We oppose it on a number of grounds. First, we do not believe the costings and we do not believe the Mules and Fedorovich claims of 20 to 40 per cent cuts in premiums. We also oppose it for a number of other reasons. We object to the single monopoly Government insurer aspect of the Bill, the fact that it removes private insurers and a whole range of other things.

The Hon. C.J. Sumner: What about Stephen Baker?

The Hon. R.I. LUCAS: This is an independent Council of review. Members in this Council are entitled to their own views. We oppose this Bill for a whole range of reasons and it is not only because we happen to disbelieve the costings that the Government, through Mules and Fedorovich, and whoever else they can get to try and back their claim—

The Hon. C.J. Sumner: Ask Stephen Baker what his view is of a single insurer.

The Hon. R.I. LUCAS: The second substantive amendment that I move to the motion of the Hon. Mr Gilfillan relates to a new clause 1B. I move:

2. That before clause 1 a new clause 1B be inserted as follows:
   1B. The House requests the Government to appoint an independent person to conduct the inquiry, that person being acceptable to the Government, the United Trades and Labor Council, the S.A. Employers Federation, the Chamber of Commerce and Industry and the Insurance Council of Australia (S.A. Division) and, in default of agreement, to be appointed by the Auditor-General.

The reason for this second substantive part of the amendment to the motion of the Hon. Mr Gilfillan is the letter that we received in this Chamber late this afternoon from the Auditor-General. At lunchtime today, when first advised of the motion of the Hon. Mr Gilfillan, we were then advised that the attitude of the Auditor-General was as summarised in his first letter to the Hon. Mr Gilfillan of 6 March 1986 and the important part of that letter reads:

I do not believe that it would be appropriate for me to be involved further in this matter: any involvement would need the unqualified approval of both Houses of Parliament.

So, the Auditor-General was saying to us as of today (this morning or at lunchtime) that he preferred not to be involved in this whole further costing argument. However, if there was to be involvement it would have to be on the terms of an unqualified approval of both Houses of Parliament. It was on that basis that members of this Chamber approached the motion of the Hon. Ian Gilfillan; it was on that basis that the Hon. Trevor Griffin moved amendments to the motion of the Hon. Ian Gilfillan prior to the dinner adjournment.

It was only, as I indicated, late in the afternoon that we became aware of the second letter of 6 March 1986 from the Auditor-General which read:

With respect, I can only reiterate that I believe it to be inappropriate for the Auditor-General to be involved further in this matter either directly or indirectly.

So, through the passage of today, for whatever reason one can speculate, but for whatever reason, the Auditor-General's attitude has hardened towards any involvement. So, the second letter that was received indicated that he did not want to have a bar of it—basically, the inference was irrespective of whether there was unqualified approval of both Houses of Parliament. That was new matter to us.

The Hon. M.B. Cameron: He has always been very sensitive to political imputation on the office.

The Hon. R.I. LUCAS: As the Hon. Mr Cameron said, the Auditor-General has always been sensitive to policital ramifications that might be inflicted on his independent office. I agree with that. That was a new matter brought into debate late this afternoon. We needed, as members of the Liberal Party, to consider the new attitude of the Auditor-General over the dinner break.

The Hon. C.J. Sumner: New attitude—you had it all wrong.

The Hon. R.I. LUCAS: The Attorney-General strolls in and out of the debate and misses the substantive parts of the arguments. He missed the first letter of 6 March.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: You were not given all three letters obviously; you have read the fourth one.

The Hon. C.J. Sumner: The 6 March letter says the same thing.

The Hon. R.I. LUCAS: It does not say the same thing: I have just read it to the Chamber. It says involvement would need the unqualified approval of both Houses of Parliament. Why did he put that in his letter?

The Hon. C.J. Sumner: He says it is not appropriate.

The Hon. R.I. LUCAS: He believes it is not appropriate, but he left the 'out' that any involvement would need the unqualified approval of both Houses of Parliament.

The Hon. C.J. Sumner: I read that in my speech. There is nothing new in what you are saying.

The Hon. R.I. LUCAS: It is quite new to the debate. That was the letter as of lunchtime. Late this afternoon we received the latter letter of 6 March from the Auditor-General. As I said, we needed to consider that matter and we have done so over the dinner break. As a result of those discussions, I am moving the amendment that we have before us. To try to remove the Auditor-General from this whole debate I suggest in this amendment that all the interested parties get together—the Government, the Insurance Council, the UTLC, the Employers Federation and the Chamber of Commerce—and agree on one suitable person to conduct the inquiry. That is the closest that we can get to an independent inquiry, so that all parties agree on someone to head up this inquiry and then that person—

The Hon. C.J. Sumner: What if they don't agree?

The Hon. R.I. LUCAS: In default of that, there is the let out clause. I hope that the good sense of the Government and those bodies would lead to a decision. But, clearly in the unlikely event that agreement could not be reached, there has to be someone who makes the decision at this stage to appoint someone to chair the inquiry or set it up.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: That would be the extent of any limited involvement of the Auditor-General. As originally envisaged, the Auditor-General would have been involved all the way through.

The Hon. M.B. Cameron interjecting:

The Hon. R.I. LUCAS: Tell him to shut up. As originally envisaged, the Auditor-General would have been involved in the program all the way through. Under the proposed amendment that is being moved the only limited involvement there might be of the Auditor-General would be if all those groups could not agree on an independent person to head up a particular inquiry that we require. Given that these groups can agree on an independent person, the rest of my amendment is largely of a technical nature to the motion of the Hon. Ian Gilfillan in that the Auditor-General is generally replaced: his involvement is removed from the continuing program for an independent inquiry that is being suggested. So, that is the rationale and the background for the amendment I move this evening. I urge not only the Democrats but also members of the Government to see the wisdom in the rationale for this amendment and support it when the vote is taken.

The PRESIDENT: The Hon. Mr Lucas, have you moved two amendments or seven different amendments?

The Hon. R.I. LUCAS: I have moved a package of seven amendments. I have spoken substantially to the first two; the rest I believe to be consequential. I move a package of seven amendments, if that is permissible. I now formally move the five amendments not yet moved:

3. That clause 1 be amended by deleting the words 'Auditor-General' first appearing and inserting 'Government, as part of any inquiry,'.
4. That clause 2 be amended by deleting the words 'Auditor-General' and inserting 'Government'.
5. That clause 3 be amended—
   (a) by deleting the words 'Auditor-General' and inserting 'any inquiry'; and
   (b) by inserting after the word 'questions' the words 'and issues'.
6. That clause 4 be amended—
   (a) by deleting 'Auditor-General' and inserting 'any inquiry'; and
   (b) by inserting after the word 'consultants' the words 'to the inquiry'.
7. That clause 5 be amended—
   (a) by deleting 'Auditor-General' and inserting 'any inquiry';
   (b) by deleting 'the joint acturial' and inserting 'its'; and
   (c) by deleting 'he' and inserting 'it'.

The Hon. R.J. RITSON: I state a personal position: I have never believed that the Auditor-General was the appropriate person to cost this Bill, but the tide of events has been such that we have arrived at this position now. I give my reasons for that belief. The so-called costings which have taken place so far have been costings of one aspect of the issue only. People have looked at the existing system and they have said, if legal fees can be largely eliminated, if stamp duty is removed and a number of 'ifs' occur, there should be some savings.

Let us find out what those savings are. The difficulties encountered are involved in the data base. The question of insurance company profits is clouded by the fact that the role of investment income off premiums is confusing amidst allegations of that form of insurance running at a loss. The insurance industry itself has not, by and large, collected statistics which are capable of accurate analysis.

In some cases some companies will statistically class cases when a claim is made and in other cases when a claim is settled. As one of my collegues said, 'To look at that data base is confusing, because I was trying to compare oranges with apples.' The various people who looked as a matter of theory at the main pillars of the Byrne report came up with various estimates of savings or non-savings depending on their points of view and on the data available or, in many cases, the lack of data available.

The sad thing is that this was then put to the public by the Labor Government and represented as a costing of the Bill, not as a costing of a hypothetical situation in which everything remains the same—benefits and patient behaviour remain the same. The only thing that happens is that one perfectly eliminates legal fees, one perfectly establishes a corporation that is not adminstratively more expensive than the administrative costs of the insurers, and so on.

Unfortunately, this was put to the public as a costing of the Bill. My heart goes out a little to Dr Trevor Mules. As I mentioned previously, I visited him and found him to be friendly, informative and professional. He explained to me he had never seen the draft Bill, and that the paper which the Government had allowed to be seen and publicised as being a costing of the Bill was an occasional paper presented at a seminar based on a very basic view of the consequences of the Byrne report. He explained that he thought his conclusions would be reasonably valid if everything else remained the same, but he had not seen the Bill.

Something else needs to be done, because it is quite clear that many things will not remain the same. We find this provision of a legal presumption of causation in relation to cardiovascular disease has been in and out of the drafts prepared, it now being back in a modified form in the second schedule. The implications of that sort of provision can be gauged by realising that in Adelaide about 1 000 coronary artery bypass operations are performed each year

and that many of those patients satisfactorily return to the work force. Under this Bill we would have a situation in which a recurrence of cardiovascular disease would be presumed to be work caused. Who on earth would employ such people? If nothing is done about this those 1 000 people would be thrown on the scrap heap because by this Bill they would be rendered unemployable. There is no provision, for example, to idemnify the employer.

The Hon. C.J. SUMNER: On a point of order, Madam President. This is not a second reading debate about the Bill. The motion is narrow and deals with whether or not an independent study of costings should be permitted, and it seems to me that the honourable member is straying from relevance to the motion before the Council.

The PRESIDENT: I uphold the point of order. Debate must be limited to the matter before the Council.

The Hon. R.J. RITSON: Thank you, Madam President. I will confine my remarks accordingly, but I considered that example to be relevant because the original costing was based on such a limited document, which did not contemplate what actually appears in the Bill. Any future costing must include some very fundamental research. Any future costing must involve gathering knowledge as to the profile of the new class of claimants who will be granted a pension for the rest of their potential working lives, who formerly were limited to $50 000 for total incapacity. That is something that is not yet known, and details of it cannot be discovered without undertaking demographic surveys and without access to morbidity and mortality studies as well as actuarial projections.

As I am in sympathy with the Attorney's point of view, I will not revel in the dozens of examples of other unknowns that are raised by the Bill, if not by the Byrne committee, except to say that I would be astounded if the Auditor-General had on his staff people with training and ability to conduct that sort of research. I do not believe that the Auditor-General has actuaries on his staff. For those technical reasons, the proposal needs much more than a theoretical costing of the main pillars of the Byrne report. These other sort of demographic, medical and statistical studies must be undertaken. The Auditor-General was not the appropriately qualified person to cost the Bill, with its changes and provisions that may alter the behaviour of claimants.

Furthermore, the Auditor-General is charged with the responsibility of auditing the accounts of the proposed corporation. If he undertakes research, costings and recommendations as to the construction of the corporation, what is his position if, when auditing, he finds it necessary to become critical of the structure which he helped to create? I understand his position there, and it is a pity that he was ever put in this situation. However, the Opposition is faced with this motion: we would rather not be faced with it and would have preferred that progress be reported at clause 2, but the Hon. Mr Gilfillan, after refusing to co-operate—

The Hon. I. GILFILLAN: On a point of order.

The PRESIDENT: The honourable member need not raise a point of order. The Hon. Dr Ritson's remarks are not relevant to the matter before the Council, and I ask him to confine his remarks to the Hon. Mr Gilfillan's motion and the amendments to it moved by the Hons Mr Griffin and Mr Lucas.

The Hon. R.J. RITSON: Madam President, the reason why the Auditor-General is not the appropriate authority to deal with this matter is surely extremely relevant to the matter before us, because the amendments seek to relieve him of that obligation.

I support the amendments, but I think it is terribly important that whoever attempts to deal with this matter (although there is no ideal authority in South Australia to make this inquiry) must not be confined merely to the theoretical pillars of the Byrne committee report but must actually attempt to study and project the future changes in the behaviour of claimants, and matters related to all the other changes and benefits involved in the Bill. While I support the amendments, I want the Government to give us some assurances that it will not saddle us with an inquiry with very restricted terms of reference, as was the case with some of the earlier inconclusive reports.

Having said that, I support the amendment, but I am a little anxious that we might just get more of the same because the Government might not really have its heart in actually costing the effect of the Bill in every respect, including future changes in claimant behaviour that will occur as a result of the Bill. I support the amendment.

The Hon. M.J. ELLIOTT: One could, by selectively quoting statistics from the Auditor-General's report, build a case for or against the Government's Bill. However, it is what the Auditor-General says that is just as important as the figures themselves. He said that the data had to be treated with the utmost caution. We all claim to want what is best for South Australia, and I am willing to believe that the Government is heading in the right direction with this Bill. However, I am not convinced at this time by the costings. An important part of the savings would be savings on stamp duty, and I hope that the Government will do something about abolishing the stamp duty at once while we are considering what inquiries will proceed. I ask why that matter has not been considered seriously before now.

The Auditor-General has said that he would need the unqualified approval of both Houses of Parliament, and I can say unequivocally that he has always had such approval from the Democrats. I cannot see why the other two Parties cannot give the same unequivocal approval. I am sure that his major concern is the independence of the office and all Parties should give him that trust. We believe that further work is necessary on an expanded data base before we can confidently pass the Bill at the third reading. If the Government believes that time is of the essence, it is the Auditor-General who should be doing or at least coordinating the work that will be necessary. The time that he has already spent to this stage means that he understands the broad scope of what has to be covered. An inquiry headed by anyone else would probably not be able to report back to this Council nearly as quickly, and without an adequate and responsible inquiry into costings the Democrats could not pass the Bill. It is important that it is adequate. I am sure that we are heading towards an adequate inquiry, but I am not yet sure in what form it will be.

I believe (and I stress this) that the Auditor-General is the best person for the job if he is obtaining sound actuarial advice, and we have suggested that actuaries from both the employers' side and the UTLC advise him. We believe that a very good report would result. I support the motion.

The Hon. T.G. ROBERTS: I oppose both the motion and the amendments, and I do so for a number of reasons. The Democrats and the Opposition have based their opposition to the Bill on the costings put forward in a number of reports. A lot of contradictory statements have been made as to the benefits and some of the disadvantages of the provisions but, if we consider the benefits in relation to commercial cost and the impact on the workers' health and safety, I observe that the projected actuarial costings, if we could commission as many as we liked, would all be different. The reason for that would be that it is very difficult to obtain figures in relation not only to the costings of the existing Act but also to the projected cost of the new measure.

The Hon. R.J. Ritson: Then it's a giant leap into the dark, isn't it?

The Hon. T.G. ROBERTS: It should then be up to the Government to take the responsibility for the costings. Costings have already been done by people whom the Government believes are responsible. After all, the Government has been elected: the Opposition and the Democrats combined could not get the numbers to take the responsibility for amending the Act. The Government should be given the responsibility for the passage of the Bill and the costings that it sees as relevant.

The Hon. R.J. Ritson: But it was too scared to let the Bill escape before the election.

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: A few interjections indicate that there are problems in letting the Bill go through before the Council rises. One of the problems with workers compensation is outlined in a number of statements of employers, insurance companies and unions. According to the second reading explanation, over the years between 1980 and 1984, workers compensation premiums in Australia increased by about 160 per cent. To make matters worse, these increases occurred when industry could least afford it.

The Hon. R.J. RITSON: I rise on a point of order. A review of past cost changes under the old Act is no more relevant to the motion before the Council than were my remarks on which the Attorney-General took a point of order, and I ask you, Madam President, to rule consistently on that subject.

The PRESIDENT: I certainly ask that the honourable member's remarks be related to the motion and the amendments before the Council.

The Hon. T.G. ROBERTS: I think it is important to reflect on the difficulties of costing the existing workers compensation legislation and the projected system. The point I was making is that it is the Government's responsibility to—

The Hon. R.J. RITSON: I rise on a further point of order. Your ruling, Madam President, appears to have been of no effect.

The PRESIDENT: I am sorry: I was engaged in conversation with the Clerk. I just repeat that comments must be related to the motion and the amendments before the Council.

The Hon. T.G. ROBERTS: The position still remains the same. Our efforts to have the Bill passed with the agreement of the Democrats and the Opposition are being frustrated by members' lack of understanding of the costings that have already been done and the need of insurance companies to recoup underwriting losses is reflected in the cost of insurance premiums at this stage. A telex in relation to workers compensation insurance states:

> We are alarmed at the prospect of the huge increase in workers compensation insurance premiums suggested in the press. It is essential that legislation proceed as a matter of urgency but in the absence of new legislation that contains premium reductions there is a critical need for a mechanism to ensure that our 1986-87 financial year premiums don't escalate more than the CPI rate over our current year.
>
> Our own insurer, the Royal, has opted out of the business altogether from 30 June. Our competitors in Victoria already enjoy premium rates 50 per cent below ours and this is affecting our competitive position. What help can we expect in this regard?

It is highly irresponsible of the Opposition and the Democrats to combine to use the figures put forward in the costings in a way that is frustrating the passage of the Bill. The responsibility is on the Government to pass the Bill. If amendments are required in relation to some of the rats and mice in the Bill, that is quite all right. However, the actions of members opposite are holding up the passage of the Bill to the detriment of all those concerned.

The Hon. M.B. Cameron: We're allowed our point of view.

The Hon. T.G. ROBERTS: Yes. Members opposite have emphasised the Mules and Fedorovich report. A press statement by the Hon. Frank Blevins, Minister of Labour, about his understanding of the matter states:

> . . . comments made in Parliament today by Steven Baker, MP, and the Hon. Legh Davis, MLC—

and subsequently supported by the Hon. Bob Ritson, MLC—

> concerning a lack of involvement by Dr Trevor Mules of the University of Adelaide in the Government's costing study of its workers compensation legislation were incorrect. Discussions that have since taken place between Dr Mules and Mr Fedorovich on this matter had established to the Minister's satisfaction that Dr Mules was involved and consulted in relation to the final costing study.
>
> Dr Mules had agreed that Mr Fedorovich undertake the costing of the amendments to the Government's white paper and to having his, Dr Mules', name on the final document. Dr Mules states tonight that he does agree with the conclusions of the October 1985 costing paper. The Minister said: 'It is possible the confusion arose—

and this is possibly where the honourable member's confusion arose—

> because Dr Mules stated that he understood the Hon. Legh Davis was discussing the Government's white paper, not the costings paper.'

So some confusion has arisen because there was a communication gap between the Opposition members' understanding of what happened and what actually took place. I think honourable members opposite should take note of that statement and think carefully before they frustrate the Bill to a point where it is delayed for a time and places South Australian industry at a disadvantage of, according to one employer's costings, around 50 per cent of interstate premium. If members opposite want to take the responsibility for that—

The Hon. R.J. RITSON: I rise on a point of order, Madam President. I have been terribly patient: we have amendments before us relating to specific inquiries. We have had this situation of what the Hon. Mr Blevins said in another place, which also contravenes the Standing Order of quoting debates from another place—

The Hon. T.G. ROBERTS: If the honourable member had not interrupted, I would had finished by now.

The PRESIDENT: I am sorry: there is quite a confusion in terms of procedure with the vast number of amendments and amendments to amendments, and I am trying to work out how the Council will proceed to vote on these matters. I have not heard everything that the honourable members have been saying.

The Hon. T.G. ROBERTS: To wind up, while we are indulging ourselves in a debate on the semantics of costing, I refer to a fatality at Whyalla—another worker set out to complete a day's toil and did not return. If the passage of the Bill is held up for any length of time, those sorts of problems will not be covered adequately and the cost to employers will build up. I urge both the Democrats and the Opposition not to frustrate the Bill any longer and allow it to be put into effect immediately, and allow the responsibility of the costings to be carried by the elected government of the day with any adjustments to the mechanics of the Bill worked out in consultations between the Government, the unions, the employers, the medical profession and the commission.

The Hon. G.L. BRUCE: I rise to oppose the amendments, especially that of the Hon. Mr Gilfillan, because I think he has put entirely the wrong slant on the Auditor-General. If

we look at the letter of 4 March from the Auditor-General to the Hon. Frank Blevins, the last paragraph reads:

> There is one further comment I would like to make. While an Auditor-General is subject to direction by the Parliament—

and this is the point they all miss, including the Hon. Mr Gilfillan—

> it is pointed out that the proposed legislation provides for the Auditor-General to audit the operations of a corporation to be established under the legislation.

The Hon. Mr Gilfillan is asking the Auditor-General to prepare figures and costings, and then at a later date he will compromise the position of the Auditor-General by asking him to audit the books and the whole situation of the corporation. That means that he is going to try and have—

An honouralble member interjecting:

The Hon. G.L. BRUCE: He is not; he would be too honest to do it. He will have to try and justify his original figures on which the corporation is to be set up and founded. I believe the honourable member is placing the Auditor-General in an impossible situation. I do not believe that he should be asked to do the costings. At least the Hon. Mr Lucas has grasped it with his amendments (although I do not believe that they should be carried, either). I think that the Government is put here to govern. On this occasion it has introduced new workers compensation legislation in an attempt to bring down costs. Of course, there will be pitfalls, becasue we are marching into the unknown.

I take up the point of the Hon. Dr Ritson, that it cannot be costed exactly because of the unknown future, and costings could be held against things about which we do not even know at this stage. So there is no firm costing, and I do not believe that the Auditor-General should be put in the invidious position of being asked to report on this Bill. I do not believe that anybody—independent or otherwise—can provide proper and firm costing.

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: I rise to sum up the debate and thank honourable members for their contributions to discussion on the motion. Although there were possibly some who strayed slightly over the boundaries of pertinent remarks to the motion, I respect their sincerity and concern for the legislation. I hope that the result of the inquiry which I hope will come to pass consequent upon my motion will result in very much improved workers compensation legislation.

I recognise the Auditor-General's somewhat invidious position and I have taken some notes of the correspondence. I suppose no-one wants to be involved in this inquiry. It is not a particularly easy task, and I do not blame the Auditor-General one bit for being reluctant to take it on. However, he does have the independence, he has the integrity and he has the ability to commission other people to be involved in such an inquiry. As far as we are concerned, he remains the most appropriate person to ask to commission this inquiry.

The correspondence has been quoted in varying degrees of accuracy and emphasis and the Auditor-General wrote in the first instance to the Hon. Frank Blevins, then to me, then last (but not least, of course) to you, Ms President. The Auditor-General's first comment is in the last sentence of the letter to the Hon. Frank Blevins which states:

> In these circumstances, it may be more appropriate for another person to be involved.

He does not say it is not appropriate for him: 'more appropriate' is the point. Therefore, he has not discounted in his letter of 4 March—which is not so long ago—that he is still an appropriate person, but that there may be someone more appropriate. I ask the Council to take note of that. The Auditor-General knows the language well enough to be relied on to be speaking his mind.

Two days later the Auditor-General replied to me in a letter which I received today as a result of a letter which I have already read to the Council. He says:

> I do not believe it would be appropriate for me to be involved further in this matter—

He has certainly shown a reduction in the measure of appropriateness for him to be involved further in this matter—

> and any involvement would need the unqualified approval of both Houses of Parliament.

This means, in my interpretation, that he would be involved on the resolution of approval of both Houses of Parliament. He has not refused to do it, nor has he argued strenuously that under no circumstances should he be involved. That is today—unless I am mistaken. Later in the same day a letter was sent to you, Ms President, and I am not sure whether you had actually been engaged in some form of correspondence with the Auditor-General. If you have, perhaps you could disclose it to the Council.

I am assuming, rightly or wrongly, that you have not, Ms President. However, for some extraordinary reason the Auditor-General is prompted to write you a letter—not only a letter, but a letter that contains the latest amended draft of my motion, which I had not discussed personally with the Auditor-General at all. I had discussed the draft of an earlier motion which was similar but not exactly the same. Somehow, in his letter to you, Ms President, he included the exact draft of the motion in its final form, and that would only have been available somewhat late in the morning. He then says in relation to this motion:

> With respect, I can only reiterate that I believe it to be inappropriate for the Auditor-General to be involved further in this matter, either directly or indirectly.

As everyone in the Council has lamented, this correspondence came to hand very late, indeed.

The Hon. C.J. Sumner: He said on Tuesday he didn't want to be involved in it.

The Hon. I. GILFILLAN: If the Attorney had been listening, he would have taken note of the varying change in the way he has described his position in the letter. If it was inappropriate, why did he accept the invitation in the first instance? If it is completely beyond the bounds of the Auditor-General's role, why did he do it, and do it well? Why did he not say then, 'No, I am sorry, I cannot do it. It is not appropriate for me to do it. I should not be involved.' The point is that the motion before the Chamber from the Democrats is based on a very sound assessment of what the Auditor-General's role could be. He, for reasons which I respect, has changed his attitude. Anyone who refers to *Hansard* will see the change.

The Hon. C.J Sumner: Read the letter that came on 4 March.

The Hon. I. GILFILLAN: I have just read it.

The Hon. C.J. Sumner: Read it again.

The Hon. I. GILFILLAN: I have it in front of me and it says that 'in these circumstances it may be more appropriate for another person.' Saying that it may be more appropriate has nothing to do with saying, 'I am not appropriate.' I am not going to labour this point. I think that honourable members have spent too much time quoting the Auditor-General and saying that this is inappropriate; if they look at the correspondence, they will realise that the motion is properly and sincerely based and is not drawn from what is obviously an extreme point of view as presented in the final letter to you, Ms President. The motion was put forward in all good faith with our conviction that the Auditor-General was the right person to at least initiate or be the commissioner of this inquiry—and we still believe

that. Of course, it is his right to decline the request. In that situation I have moved an amendment to my own motion, which I will come to in a moment.

The Hon. C.J. Sumner: You cant move an amendment to your own motion.

The Hon. I. GILFILLAN: I will find the right wording and get advice in a moment. I will refer quickly to the remarks made by the Hon. Legh Davis, who took us sorely to task about the suddenness with which this material appeared before the Chamber and before the Opposition. I do not know where he was, but I can assure him that by at least 12.45 p.m. today the Hon. Rob Lucas and the Hon. Martin Cameron had the letters and the motion in hand and I had detailed discussions with them.

The Hon. L.H. Davis: The Hon. Mr Griffin had not seen the Auditor-General's letter.

The Hon. I. GILFILLAN: Who had? That letter came from the President. Before the honourable member turns so readily on the Democrats as if it is our fault, he should find out where the letter came from. The significant letters that we had had been given to the honourable member's Leader and the Hon. Rob Lucas by 12.45 p.m. I ask the honourable member to ponder that before laying too much blame in our lap about the timing of things. My amendment has been circulated, but there is apparently some doubt as to the appropriateness of my moving it. However, I would like to speak to the point. Can I be advised on this matter?

The PRESIDENT: I can certainly advise that it is not possible under Standing Orders to move an amendment to one's own motion. The honourable member can seek leave to move his motion in an amended form and, if the Council grants leave he can do that, but he cannot move an amendment to his own motion.

The Hon. I. GILFILLAN: Thank you, Ms President, that sounds reaonsble. The form in which I seek to move my motion will have an extra point—point 6—which is before honourable members, as follows:

6. In the event the Auditor-General does not accede to this request, then this House requests the Government to commission the actuarial report as outlined in the motion.

Although there are worthy efforts at amendment to the motion on file from the Hon. Rob Lucas and the Hon. Trevor Griffin, we do not intend supporting them en bloc as we feel that is certainly changing track from our original intention and, therefore, they do not have our support. However, the amended form in which I seek leave to move my motion does, to the best of my ability, embrace the offer that I understood the Attorney-General to be making on behalf of the Government in his earlier remarks to the motion.

I have had assurances from the Minister responsible (Hon. Frank Blevins) that anything necessary for an inquiry or further examination to satisfy what we feel is necessary will be forthcoming. I report to the Council that I have had an opportunity to clarify this matter with the Minister and it is my intention to outline, as I understand it, his attitude and offer to me. Before I do that, I make it crystal clear that I point out that I want to move my motion in an amended form to embrace what I believe to be a reasonable offer by the Government, that is, in the light of the correspondence before us, the Auditor-General is most likely not to accede to the request and therefore it is appropriate that this Council asks the Government to take responsibility for the inquiry and examination which so many of us feel is important.

However, I have been advised by the Minister that he does not intend providing funds for any inquiry that results from a request from the Government or any other source. That imposes on the Democrats the quite awesome responsibility of requesting from him the right procedure for an inquiry to go ahead. That is something that we will confront and do to the best of our ability. We are grateful for the cooperation that the Minister has offered. It appears to me from the Minister of Labour's undertaking that the inquiry will need to be at the instigation of myself on behalf of the Democrats.

Under those circumstances it appears that the Government will not support my motion even in the amended form. I regret that because I believe that it would be far more appropriate if the request were to come from the Government. However, it is essential that the examination be carried out for the satisfaction of the many people who have misgivings about it. However, if it is done properly, then the past is the past, and let us try to use that information to get the best Bill possible. I still persist in asking leave to move my motion in an amended form by adding new point 6. I formally so move:

After point 5 add new point 6 as follows:

In the event that the Auditor-General does not accede to this request, then this House requests the Government to Commission the actuarial report as outlined in the motion.

Leave granted.

The Hon. C.J. Sumner: So formally move what?

The Hon. I. GILFILLAN: The motion in the amended form.

The Hon. C.J Sumner: You've already done that.

The Hon. I. GILFILLAN: I have just sought leave to do that.

The PRESIDENT: Leave has been granted. We now come to the vote on the motion. There is a whole series of amendments that I propose be voted on in the order in which they occur in the motion, so the first amendment to be voted on relates to new clause 1a and 1b being inserted as moved by the Hon. Mr Lucas. I put the question that the amendment be agreed to.

The Council divided on the Hon. R.I. Lucas's amendment No. 1:

Ayes (9)—The Hons. J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas (teller), and R.J. Ritson.

Noes (10)—The Hons. G.L. Bruce, B.A. Chatterton, J.R.Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The PRESIDENT: I will now put the second amendment moved by the Hon. Mr Lucas that a new clause 1B be inserted.

The Hon. R.I. LUCAS: I have taken the vote on the previous amendment as a test vote on most of my amendments.

The PRESIDENT: These amendments have been moved and have not been withdrawn.

The Hon. R.I. LUCAS: I wanted to see whether, other than the first amendment, I could withdraw the others.

The PRESIDENT: I think, having been moved, that at this stage the simplest way to deal with it would be to vote on them and, if you do not wish them to proceed, honourable members can vote against them. Do you wish to seek leave to withdraw the other amendments?

The Hon. R.I. LUCAS: I saw most of them bar one as a package and, having lost the first part of the package, I felt that it would save the time of honourable members if I sought leave to withdraw all the amendments bar one. If that is not permissible within your interpretation of Standing Orders, then I will not do so, but I seek your guidance.

The PRESIDENT: Do you seek leave to withdraw?

The Hon. R.I. LUCAS: If it is permitted, I seek leave to withdraw all amendments bar 5 *(b)*.

Leave granted; amendments withdrawn.

The PRESIDENT: The next amendment moved by the Hon. Mr Lucas is that clause 3 be amended by inserting after the word 'questions' the words 'and issues'.

Amendment carried.

The PRESIDENT: The next amendment is moved by the Hon. Mr Griffin: after clause 4, insert a new clause 4a.

The Council divided on the Hon. K.T. Griffin's amendment No. 1:

Ayes (9)—The Hons. J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons. G.L. Bruce, B.A. Chatterton, J.R.Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The PRESIDENT: The next amendment on which we have to vote is amendment No. 2 from the Hon. Mr Griffin to insert a new clause 4b.

Amendment negatived.

The PRESIDENT: The next amendment is moved by the Hon. Mr Griffin to the motion of the Hon. Mr Gilfillan. As that is now in an amended form, I suggest changing it to refer to clause 6 instead of clause 5 and to insert a new clause 7.

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

The PRESIDENT: Seeing that the Hon. Mr Gilfillan moved his motion in an amended form, I now put the question that the amendment moved by the Hon. Mr Griffin be agreed to.

The Council divided on the Hon. K.T. Griffin's amendment No. 3:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

Pair—Aye—The Hon. M.B. Cameron. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The PRESIDENT: I now put the motion moved by the Hon. Mr Gilfillan. The motion as amended in one amendment was agreed to by the Council. I now put the motion moved by the Hon. Mr Gilfillan as amended.

The Council divided on the motion as amended:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan (teller), K.T. Griffin, C.M. Hill, J.C. Irwin, R.I. Lucas, and R.J. Ritson.

Noes (8)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill.

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. Barbara Wiese.

Majority of 3 for the Ayes.

Motion as amended thus carried.

The PRESIDENT: During the course of the summing up made by the Hon. Mr Gilfillan, he posed certain questions to which I did not have an opportunity to reply as to do so would have been taking part in the debate after the mover had closed it. In consequence, I take this opportunity now of indicating to the House that I had not communicated directly to the Auditor-General. His letter reached me 10 minutes before it was circulated to all members of the Council this afternoon. I presume the Auditor-General communicated with me because as a servant of the Parliament he in general communicates with both President and Speaker, and has done so on previous occasions.

The Hon. I. GILFILLAN: In consequence of the success of my motion, I move:

That a message be sent to the House of Assembly requesting its concurrence thereto.

Motion carried.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

ACTS INTERPRETATION ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

STATE GOVERNMENT INSURANCE COMMISSION ACT AMENDMENT BILL

The House of Assembly intimated that it did not insist on its disagreement to amendment No. 2 made by the Legislative Council.

CRIMES (CONFISCATION OF PROFITS) BILL

The House of Assembly intimated that it had agreed to amendments made by the Legislative Council to the House of Assembly's amendment No. 1 and had agreed to the consequential amendment made by the Legislative Council.

STATUTE LAW REVISION BILL

Returned from the House of Assembly without amendment.

WORKERS REHABILITATION AND COMPENSATION BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 993.)

Clause 14—'Functions and powers of the corporation.'

The Hon. J.C. BURDETT: I move:

Page 14, line 8—After 'subject to the' insert 'general'.

The amendment is to make the operation of the corporation subject to the 'general direction of the Minister' rather than its simply being subject to 'the direction of the Minister'. This is in line with a similar provision in the South Australian Health Commission Act, for example, and I think it is more appropriate.

The Hon. C.J. SUMNER: This formulation is in a number of Acts. I do not think that the amendment makes any practical difference to the powers that the Minister can exercise with respect to control and direction of the corporation. Opinions that have been obtained on this topic indicate that the formulation 'general control and direction

of the Minister' is sufficient to ensure adequate ministerial control.

Amendment carried; clause as amended passed.

New clause 14a—'Government Financing Authority Act not to apply to Corporation.'

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

Page 15, after line 3—Insert new clause as follows:

14a. The corporation shall not be a semi-government authority for the purposes of the Government Financing Authority Act 1982.

This is an important provision. It seeks to provide that if this corporation is established all its funds are not subject to the Government Financing Authority Act 1982. The problem is that if it is subject to the Government Financing Authority Act all its funds can be the subject of direction by that authority in terms of investment and may be applied by direction of the Government Financing Authority in investments which will not necessarily provide the best return for the corporation. If the corporation is to keep its levies to the lowest possible amount, it is important that the highest possible return be obtained on the aggregate levies which the corporation has collected and which it holds to set off against pending or future claims.

The investment policy of the corporation is set out in a later clause, and I have an amendment to that to ensure that it does obtain the best possible return. If the Government Financing Authority is permitted to give directions to the corporation as to investment of its funds, it may be that because of lower interest rates the levies would be higher. My amendment excludes the operation of the Government Financing Authority Act and makes the provisions in the Bill with respect to investment the paramount direction for the corporation and the paramount charter for its investment policy. In those circumstances, that is in the best interests of all those who are ultimately likely to be required to make contributions through the levying powers of the Bill. It is a very important provision.

The Hon. I. GILFILLAN: The Democrats have formulated amendments in relation to the investing policy of the corporation, conscious of the fact that it should be independent and able to make its own choice for the best possible return. That is certainly our understanding of the intention of the Bill. If there is any likely compromise affecting the corporation's freedom to invest its funds at its own discretion, and the Hon. Trevor Griffin has raised a valid point about it, I rely on the Government to accept the amendment or to explain this matter further.

The Hon. C.J. SUMNER: I am not prepared to accept the amendment, but as I do not have the numbers I will not divide on it. I do not think there is any need for the amendment, and in any event it may not be inappropriate for the corporation to invest through the South Australian Financing Authority in certain circumstances. It seems a pity to preclude that option but, if that is the will of the Committee, obviously I must accept it.

The Hon. K.T. GRIFFIN: The principal aspect of this amendment is to prevent the Government Financing Authority commandeering the funds of the corporation and directing them into projects sponsored by the Government that will not provide the same sort of return as will investments into which the corporation might put money independent of the Government Financing Authority. This adds a safeguard to the corporation's investment powers, and I think having this provision in the Bill puts beyond doubt its independence of investment policy, which ultimately can only be to the advantage of employers.

New clause inserted.

Clause 15—'Corporation to have proper regard to differences in ethnic background, etc.'

The Hon. M.S. FELEPPA: I move:

Page 15, lines 4 and 5—Leave out all words in these lines and insert:

The corporation shall seek to ensure that in the provision of rehabilitation and compensation under this Act racial, ethnic and linguistic diversity in the population of the State is taken into account and.

The first part of the clause uses the positive statement, namely that the corporation 'shall have due regard to racial, ethnic and linguistic differences in the population . . .', but I think this is a little bit too unspecific. My amendment attempts to strengthen this provision in providing that the corporation 'shall seek to ensure that in the provision of . . .'. Further, as it stands the provision uses the terminology in the negative in referring to people being 'not disadvantaged by their racial, ethnic or linguistic origins or background'. In my opinion this is limited in scope and I think that it is necessary to phrase this in a direct and positive way, as my amendment seeks to do. For those reasons I ask members to support my amendment.

Amendment carried; clause as amended passed.

Clause 16—'Delegation.'

The Hon. C.J. SUMNER: I move:

Page 15, after line 12—Insert new paragraph as follows:

(aa) may be made—

(i) to a member of the board;

(ii) to a committee established by the corporation;

(iii) to a particular officer of the corporation, or to any officer of the corporation occupying (or acting in) a particular office or position; or

(iv) to a public authority or public instrumentality.

Clause 16 deals with the delegation of the corporation's powers and functions, and on reflection the Government has decided to specify the various persons or bodies to which a delegation may be made. The amendment therefore provides that a delegation may be made to a member of the board, a committee, an officer of the corporation or a public authority or public instrumentality such as Australia Post or SGIC. It is thought that this should provide sufficient flexibility without giving the corporation an unlimited power of delegation.

The Hon. K.T. GRIFFIN: I also have an amendment on file to this clause. I was concerned about the breadth of the power to delegate under clause 16. It was quite obvious that the corporation could delegate to whoever it wished, and I did not believe that that provided any safeguards as to the use of the powers granted by delegation. In those circumstances, I wished to ensure that the power of delegation was limited to persons over whom the corporation had some authority, and my proposal was to allow delegation to a member of the board, a particular officer of the corporation, or a prescribed person, authority or instrumentality.

The Attorney-General's amendment is similar to my proposed amendment, but there are two differences. First, the Attorney also wishes to delegate to a committee established by the corporation, and the second is in relation to delegation of a public authority or public instrumentality. I have difficulty in accepting delegation to a committee established by the corporation, because it seems to me that that committee can comprise persons who are not necessarily officers or employees of the corporation, so there can still be delegation to persons who have no direct relationship to the corporation or over whom the corporation has any authority. I prefer my amendment, so I oppose this amendment.

The Hon. I. GILFILLAN: I really feel that we are caught between the battle of the goliaths. It is really an issue about which the humble layman cannot make a decision. I believe the Government, unless it has been persuaded by what the Hon. Trevor Griffin had to say, has been deliberating on the matter and I support the Government's position. It is a matter of preference and loyalty rather than actual knowledge of the issue.

The Hon. K.T. GRIFFIN: In the light of the Hon. Mr Gilfillan's indication that he will support the Government's amendment, if I am not succesful on the voices, I will not call for a division.

The Hon. C.J. Sumner: I will oppose the Hon. Mr Griffin's amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: I do not intend to pursue my amendment.

Clause as amended passed.

Clause 17—'Accounts.'

The Hon. I. GILFILLAN: I move:

Page 15, after line 36—Insert new subsection as follows:

(3) The corporation shall, in complying with subsection (2), take into account any relevant recommendation made by an auditor in reporting on the accounts of the corporation.

This amendment is aimed to ensure the corporation's response to an auditor's report. It emphasises a theme that we have tried to establish through our amendments to the Bill, that is, that the corporation will, as nearly as possible, be able to act as an independent and efficiency oriented competitive entity and, therefore, if the auditor makes recommendations, there must be some encouragement (if I may use that word) for corporations to take note of that and not just blithely let it slide by without any consequent action. I hope that the Committee supports my amendment.

The Hon. C.J. Sumner: You should speak to clause 18 as well.

The Hon. I. GILFILLAN: This amendment would stand regardless of clause 18, which refers to independent auditors. This amendment is purely an encouragement or a direction to comply with the recommendations of the auditor's report.

The Hon. K.T. GRIFFIN: I am happy to support the amendment. I perceive an argument that it is related to clause 18, but I would expect the corporation to take into account any recommendation of an auditor in any case, whether it is the Auditor-General or some other auditor. I have no objection to the amendment.

Amendment carried; clause as amended passed.

Clause 18—'Audit.'

The Hon. I. GILFILLAN: I move:

Page 15, line 38—Leave out ', by the Auditor-General'.

This amendment alters the auditing entity so that it is not the Auditor-General but a private auditor. The first listed amendment merely deletes the words 'by the Auditor-General', but it will enable the further amendments to which I referred in the second reading stage regarding the auditing detail that applies to the State Bank.

It allows for the appointment of two registered auditors and that, in our opinion, will lead to a better performance from the corporation. The auditing will then compare with other entities in the private field, and we consider it to be an advantage for the corporation to be subject to that form of audit from people in the commercial field.

The Hon. K.T. GRIFFIN: We believe that this is a useful initiative, to involve some private sector auditing in this corporation, which is going to have a very heavy involvement with private sector employers. I hasten to add that it must not be construed as any reflection on the Auditor-General and, after the debate earlier this evening, some might seek to gather that inference from our support of it.

We have the highest regard for the office of the Auditor-General and the incumbents of that office. However, as a matter of principle, representing a very strong private sector emphasis of providing services to Government and within the wider community, we think that the involvement of private sector auditors in some Government activities is warranted. We do not support it right across the board. I think that it would be unwise to suggest that for all statutory authorities we think private auditors are necessary. However, I understand that with bodies like the State Bank and ETSA, for example, there are private sector auditors, so it is not uncommon. As this body deals essentially with the private sector, I think that it would be useful to have private sector involvement in the auditing of the corporation's accounts. So we support the initiative of the Hon. Mr Gilfillan.

The Hon. C.J. SUMNER: The Government opposes the amendment, which enables a private auditor to be appointed to verify the financial accounts of the corporation in lieu of the Auditor-General. It is important that the auditor of this important statutory body not be beholden to the corporation for audit fees and, therefore, to that degree not be totally independent. The Auditor-General is totally independent and must also report directly to Parliament. The amendment is opposed. If the corporation wishes to buy in commercial expertise by way of audit or other advice from accountants, clearly it can do it; but the basic responsibility for the audit ought to rest with the Auditor-General, who is completely independent and not beholden to the corporation for any fees.

The Hon. K.T. GRIFFIN: If one carries that argument to its logical conclusion, the same criticism could be made of the private auditors of the State Bank, the Electricity Trust and other statutory authorities, and I just do not accept that that follows. They get fees on a professional basis and they are registerd company auditors. They are subject to scrutiny by the Corporate Affairs Commission, and I do not see that there can be any reflection on a private auditor or auditing firm undertaking this responsibility.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 15, lines 39 to 41—

Page 16, lines 1 and 2—Leave out subclause (2) and insert new subclauses as follow:

(2) For the purposes of audit under this section, the corporation shall, within the first three months of each financial year, appoint two or more auditors of the corporation for that financial year.

(3) An auditor appointed under subsection (2) must be a registered company auditor or a firm of registered company auditors.

(4) It is the duty of the auditors to report on the corporation's accounting records and on the accounts to be laid before Parliament in respect of the financial year for which they are appointed as auditors of the corporation.

(5) The auditors shall have a right of access at all reasonable times to the accounting and other records of the corporation and are entitled to require from any officer of the corporation such information and explanations as they think necessary for the purposes of the audit.

(6) An auditor of the corporation incurs no liability in defamation for any statement made by the auditor in the course of fulfilling the duties of auditor.

The amendments are actually consequential upon the argument that I put up before, and have in fact been the substance of previous debate. I will not speak to them further.

The Hon. C.J. Sumner: They are not consequential and the Government opposes them.

The Hon. K.T. GRIFFIN: The Opposition supports the amendments.

Amendments carried; clause as amended passed.

Clause 19—'Annual reports.'

The Hon. L.H. DAVIS: I move:

Page 16, line 4—Leave out 'December' and insert 'October'.

There is no novelty about this amendment, the aim of which is to bring Government departments and agencies into line with the standards and disciplines which are accepted in the private sector. The amendment seeks to require the corporation to report by 31 October rather than 31 December. In other words, it has four months from the end of the financial year in which to deliver to the Minister the annual

report containing its operations for the financial year ending 30 June and the audited accounts of the corporation for that financial year. As I have mentioned on more than one occasion, in the private sector public companies listed on stock exchanges are required to report within a four month period. Huge companies such as BHP, with tens of thousands of workers, and complex financial operations both in Australia and overseas, are required to comply with stock exchange regulations.

It is not unreasonable to expect that the proposed Workers Compensation Corporation should likewise fulfil such an obligation. It is important that statutuory authorities report within a reasonable time. The matters dealt with in these financial reports are of public interest and often of particular interest to Parliament. I am concerned that the Government persists in giving statutory corporations or departments more time than is provided in the private sector.

In fact, we have had quite recently on several occasions instances of statutory authorities and Government agencies which are required to report and which have not lodged a report until two or three years after the required date. Therefore, I hope that the Attorney-General will accede to this amendment. I know that he is usually a reasonable man and that he has acceded to such an amendment on more than one occasion in the past.

Amendment negatived; clause passed.

Clause 20 passed.

Clause 21—'Other staff of the corporation.'

The Hon. M.S. FELEPPA: I move:

Page 16, after line 27—Insert new subclause as follows:

(2) In choosing staff the corporation shall have regard to—

(a) the need for the staff to be sensitive to cultural needs of the population of the State;.

In proposing this new subclause I consider that the administration of the corporation should not only be fair to all injured workers of ethnic background but, more importantly, must appear to reflect the multicultural composition of our society. Therefore, the amendment is very important and I commend it to the Committee.

The Hon. I. GILFILLAN: We support the amendment. It is a salutory reminder to the Chamber that we are of this diversity. I am afraid that many of us of the old traditional ethnic background are not sufficiently sensitive and conscious of such things. I am deeply grateful to the Hon. Mario Feleppa for raising these matters frequently and hope he will continue to do so.

The Hon. C.M. HILL: I record my support for the amendment and commend the Hon. Mr Feleppa for introducing it. This is the form of amendment that I support wholeheartedly in regard to this particular question: in other words, the amendment is saying that the corporation shall have regard to these things. This is an entirely different approach from the earlier approach, what we call the old fashioned approach, where legislation laid down that so many people must be from migrant communities.

The Hon. C.J. Sumner.: Where is that?

The Hon. C.M. HILL: The honourable member's Party included that in legislation introduced in this Chamber in 1985 and I rose and queried it.

The Hon. C.J. Sumner: Which one? You had better get it straight.

The Hon. C.M. HILL: Yes, it was. However, Mr Feleppa is up to date and progressive with things as compared to the Attorney-General. This very sensible approach reminds the corporation of the situation in real life in the diverse community in which we live. It will require the corporation to have regard to the three aspects written into the amendment, which I support.

The Hon. C.J. SUMNER: Obviously, I support the amendment. I have no idea what the Hon. Mr Hill was talking about in his reflections on previous amendments introduced by the Government. I think that this amendment reflects what has been done on previous occasions and I do not know why the Hon. Mr Hill bothered to make his contribution.

Amendment carried; clause as amended passed.

Clauses 22 to 25 passed.

Clause 26—'Rehabilitation programs.'

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

Page 17, line 20—Leave out 'possible' and insert 'practicable'.

This clause relates to rehabilitation programs. I have a number of amendments on file relating to this clause. One of our concerns about rehabilitation programs is that nothing is specified, it is left to the corporation to establish or approve at some time in the future. This is all very vague. We expected the Government to have some greater detail about rehabilitation as well as safety, health and welfare rather than the vague generalisations presently obvious from the Bill and the second reading explanation. Safety, health and welfare legislation ought to be run in tandem with this Bill so that we can get a proper perspective of what the Government has in view with respect to rehabilitation.

It is not present, so we have to stumble around in the dark trying to discern what the Government might propose. Subclause (1) of this clause provides:

The corporation shall establish or approve rehabilitation programs with the object of ensuring that workers suffering from compensable disabilities—

(a) achieve the best possible levels of physical and mental recovery;.

The concept of 'possible' is quite a bit wider than what might be practicable. A great deal of time, effort and money might be spent to achieve the ultimate level of physical and mental recovery. However, in terms of an injured worker's own attitude and his or her ability to participate in rehabilitation programs, the extent of that possible level of achievement may not be something which is either fair or reasonable so far as that worker is concerned: nor may it be fair and reasonable to the extent of the expenditure of resources. So rather than aiming at the best possible levels of physical and mental recovery the concept of practicability is, in my view, preferable, because it allows all factors to be taken into consideration to achieve the best practicable levels rather than reaching for the stars and falling very much short.

The Hon. I. GILFILLAN: We have looked at the Liberal amendments to this clause and consider that the amendments to subclause (1) are of very little consequence as far as impact on rehabilitation is concerned. The general criticism has come to us that the Bill does not contain specific and dynamic momentum towards rehabilitation and that may well be the case, but the minor window dressing choice of word in paragraph *(a)* and some other juggling in the other two subclauses seem to us to be of very little significance. We oppose this amendment. The second amendment appears to be more sensible and we will support that.

The Hon. M.J. ELLIOTT: What are the legal implications of such wording? Does it have such implications? Can a person make claims because he has not achieved the best possible? The term 'possible' would almost imply that you have to build a $6 million man, if a person demands it, because it is possible.

The Hon. K.T. GRIFFIN: That is an interpretation. I think there is a significant difference between what is possible and what is practicable. What is practicable seems to have an element of reasonableness in it and to take into account what is achievable rather than aiming for the possible, which is very much out in front of the concept of

practicability. I have looked at this subclause in the context of the obligation upon the corporation. It may be possible for an injured worker to take some action in relation to rehabilitation where it is not regarded as practicable to pursue a particular course of rehabilitation but, nevertheless, because of even a remote possibility that it might be effective, then the corporation has not satisfied its task.

I suppose the other aspect is that the Ombudsman might become involved. It might be regarded as an administrative decision which is subject to review by the Ombudsman. In that context, I think that 'practicable' is a more realistic level which ought to be sought rather than what is possible.

Amendment carried.

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

Page 17—
After line 20—Insert 'and'.
Line 21—After 'workforce' insert 'and the community'.

By moving this amendment I wish to clarify the drafting and refer to the obligation of the corporation in approving rehabilitation programs to have some emphasis on restoration to the workforce and the community. It seems to me that that is preferable to paragraph *(c)*, which states:

... restored, as far as possible, to the social life of the community.

There is a little more to community life than the social life. It seems to me that my drafting broadens the concept and does not limit it as does paragraph *(c)*.

The Hon. I. GILFILLAN: I support the amendments, and I hope that I am speaking on behalf of both of us.

Amendments carried.

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

Page 17, lines 22 and 23—Leave out all words in these lines.

I regard this amendment to be consequential upon the earlier two amendments.

Amendment carried.

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

Page 17, line 27—Leave out paragraph *(b)*.

Subclause (2) provides:

A rehabilitation program may be established by the corporation in relation to—
(a) a particular worker;
(b) workers of a particular class;
(c) workers suffering from disabilities of a particular class.

I am somewhat puzzled by paragraph *(b)*. I can appreciate a rehabilitation program in relation to a particular worker and I can also appreciate that you can have a rehabilitation program for workers suffering from disabilities of a particular class so that the program is related to the disability, but I do not see how you can have a rehabilitation program related to workers of a particular class. I am concerned that this may be used more to identify certain types of workers rather than relating rehabilitation to the particular disability. As there is no need for paragraph *(b)*, I move that it be deleted.

Amendment negatived.

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

Page 18, lines 1 and 2—Leave out paragraph *(h)* and insert paragraph as follows:
(h) take steps to encourage and assist persons, who are in a position to do so, to help workers to overcome or cope with their disabilities;.

In relation to rehabilitation programs, the corporation may provide assistance to persons who may be in a position to help workers to overcome or cope with their disabilities. Paragraph *(h)* rather suggests that there is something quite tentative about that and maybe assistance can be provided on that rather speculative basis without having regard to whether or not they are in fact in a position to help workers overcome or cope with their disabilities.

The paragraph which I seek to insert is much more specific and it takes steps to encourage and assist persons who are in a position to do so, to help workers overcome or cope with their disabilities. It is positive and not speculative.

The Hon. I. GILFILLAN: If the clause really needs to be determinately amended, I think that they both have the fault that they provide assistance to persons who may be in a position—surely the 'may be' should be 'are' in a position.

The Hon. K.T. Griffin: That is my amendment.

The Hon. I. GILFILLAN: The honourable member's amendment seems to be equally hard to translate—'take steps to encourage and assist persons who are in a position to do so'. Is that 'encourage and assist persons'?

The Hon. K.T. Griffin: To help.

The Hon. I. GILFILLAN: If the honourable member cut out 'to do so' it seems to make sense.

The Hon. K.T. GRIFFIN: It is to take steps to encourage and assist persons who are in a position to encourage and assist persons to help workers to overcome or cope with their disabilities. I know the amendment is in my name and I know I have to accept responsibility for it, which I do. I do not blame anybody else.

The Hon. I. Gilfillan: Delete 'to do so'.

The Hon. K.T. GRIFFIN: I prefer to move it in the form in which I have moved it and not to seek leave to amend it. It is to take steps to encourage and assist persons who are in a position to do so to help workers to overcome or cope with their disabilities. 'To do so' relates to 'help workers to overcome or cope with their disabilities'. It is all right. I move it accordingly.

Amendment negatived.

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

Page 18, line 8—Leave out paragraph *(l)*.

This is a 'catch all' provision. It may be that if somebody was sent on a Pacific cruise it would assist in rehabilitation of that worker. It is too broad. If we delete it, there are adequate ranges of responsibilities conferred by paragraphs *(a)* to *(k)*. I do not believe that the corporation should be given the sort of power which is embodied in paragraph *(l)*.

The Hon. I. GILFILLAN: I do not intend to support the amendment. However, if we had had more time to look very closely and minutely at the wording it might have been improved by replacing the word 'may' with 'will'. That may be the substance of an amendment later on. I do not intend to support the amendment.

Amendment negatived; clause as amended passed.

Clause 27—'Clinics and other facilities.'

The Hon. I. GILFILLAN: I move:

Page 18—Before line 12 insert subclause as follows:
(1) In the exercise of its powers under this Division, the corporation shall give all practicable forms of encouragement and assistance to the establishment and provision of rehabilitation facilities and services in the private sector.

Our amendment is to encourage the corporation to use existing rehabilitation facilities. It seems fairly obvious to argue that there is no point in duplicating facilities. Nobody will gain by expending funds unnecessarily and also it seems to us that it will definitely develop the right atmosphere for rehabilitation if there is the optimum degree of cooperation between the corporation, employers, employees and private enterprise providers of rehabilitation entities.

The Hon. R.J. RITSON: I support the amendment. It represents part of what I hope will be a package of community based rehabilitation instead of institutionalised rehabilitation. The matter that the Hon. Mr Gilfillan has raised is important for the various professional bodies that register their members to be able to put forward lists for registration of people who are appropriately qualified for this form of work, and similarly for registration and approval to be given to those community institutions which have particular facilities to offer, because not every person and

not every institution that might get on the band wagon would necessarily be appropriate. In other words, it is a form of quality assurance which I support. I am distributing an amendment which matches in with this because it really deals with the whole question of whether rehabilitation should be institution-based or whether it should be a web of facilites through the community.

The Hon. K.T. GRIFFIN: I have an amendment in relation to this as well. It is not inconsistent with the amendment proposed by the Hon. Mr Gilfillan. His amendment seeks to utilise rehabilitation facilities and services provided by an employer of a disabled worker. I can support that. My amendment seeks to require the corporation to give all practicable forms of encouragement and assistance to the establishment and provision of rehabilitation facilities and services in the private sector. The two are not inconsistent. So, I suggest that I can support the proposition of the Hon. Ian Gilfillan. I would then like to move my own amendment for an additional subclause.

Amendment carried.

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

Page 18, after subclause (1)—Insert new subclause (1a):

To require the corporation in the exercise of its powers to give all practicable forms of encouragement and assistance to the establishment and provision of rehabilitation facilities and services in the private sector.

The emphasis is more on practicable rather than possible. The amendment does not do anything more than express a principle of support for private sector rehabilitation facilities where practicable. It is an important principle that ought to be embodied in the Bill, just as was the subclause successfully inserted by the Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: The Democrats are not opposed to the intention of the amendment. I will not support the amendment in its current form unless words in the second line in the provision to be inserted 'all practicable forms of' are deleted. I believe that the amendment would be effective if the provision were amended in that way.

The Hon. K.T. GRIFFIN: That is a reasonable comment, and I seek leave to move the amendment in an amended form.

Leave granted.

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

Page 18, after subclause (1)—Insert new subclause (1a):

To require the corporation in the exercise of its powers to give encouragement and assistance to the establishment and provision of rehabilitation facilities and services in the private sector.

The Hon. C.J. SUMNER: The Government opposes the amendment, which adds nothing to clause 27 *(a)*. It specifically mentions the private sector, but surely the corporation should be able to freely determine decisions of this sort.

The Hon. R.J. RITSON: I remind the Attorney that to all practical intents and purposes federal legislation has the effect of enforcing this in any case, at least as far as the medical treatments are concerned, and the allied aspects of rehabilitation medicine, such as the services of splint makers and physiotherapists, because patients requiring this treatment are compensable, are denied Medicare benefits as a matter of law, and upon entering a public hospital are immediately classified as private patients, and they remain as such throughout all the other aspects of their rehabilitation in relation to services provided by allied health professions. I can see no harm in the amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 18, line 16—Leave out 'and';

This amendment is to accommodate the insertion of a paragraph, to be proposed by an amendment after line 19 which will seek to establish and maintain a register of persons and organisations that are, in the opinion of the corporation, properly qualified and equipped to provide rehabilitation services. Rehabilitation will become a much more important part of the process in relation to injured workers. We enthusiastically support the direction of the Bill in this way and consider that the register of those involved is an important measure to ensure the quality and standard of the training and the calibre of people involved in rehabilitation.

Amendment carried.

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

Page 18, lines 17 to 19—Leave out paragraph *(b)*.

Although this amendment simply seeks to leave out paragraph *(b)*, my reason for this is that the provision will be replaced by new provisions.

The CHAIRPERSON: The Hons Mr Gilfillan, Mr Griffin and Dr Ritson all have indicated amendments to insert new provisions in this clause.

The Hon. R.J. RITSON: The reason why I want paragraph *(b)* deleted is to enable two provisions to be inserted. The first proposal is that a registered association shall not be party to an arrangement under subsection (2) *(a)*. That would have the effect, amongst other things, of preventing the commission from having an arrangement, for instance, of referral and reporting between itself and a medical clinic owned by a union. I will not debate that at length: members will have a matter of preference and will decide that issue.

I believe that a treating clinic should be free of political and emotional, let us say, prejudices and aims, and should be purely scientifically objective, particularly since such a registered organisation will often be advocate for a party to a dispute, so that the medical reporting agency would be an agency with an interest by way of advocacy at times, and an interest by way of political activity at times.

I ask honourable members to consider that amendment and to consider that treating agencies should be scientifically objective. The second provision is that the corporation shall not establish any clinic for the treatment or rehabilitation of disabled workers. It may appear at first sight that that is unreasonable, but I have two reasons for moving that amendment.

The Hon. J.R. Cornwall interjecting:

The Hon. R.J. RITSON: I am sure that the Minister of Health will have done his homework and read the Commonwealth Rehabilitation Service Report of 1984, which examines quite extensively the successes and failures of the institutional rehabilitation clinics which it has run for many years. I have previously given the example of St Margarets on Payneham Road. The clinics were set up as special rehabilitation clinics to which doctors and medical referees could refer patients to see whether they could be rehabilitated to the extent of making them independent of social services.

They failed abysmally. The Commonwealth has just closed St Margarets as a failure. The number of people returned to the workforce from those organisations is about 2 per cent, and the Commonwealth has instead adopted a policy of community based rehabilitation, where regional officers are set up and where patients are referred out to the appropriate existing service, and these can be many and varied.

For instance, a person who is blinded can best be rehabilitated by the Royal Society for the Blind, particularly in Melbourne where there is expert vocational retraining and training in the use of guide dogs. That is just one example of a highly specialised existing rehabilitative service, but across the whole field of disabilities there is a variety of existing units, many of which are under the able administration of the Hon. Dr Cornwall. Now he is arguing for a reduplication of many of those services in a clinic run by an organisation that really has no understanding of what it

will do about this problem, run by a group of people with no experience in health administration.

The Minister has spent ages in this place arguing against reduplication of health services. His own colleagues federally are winding down institutionalised exclusively rehabilitative clinics as a failure, and are producing a new document and a new policy concerned with community based rehabilitation using existing services. In these circumstances, I would not have thought that the Minister could, in all conscience, oppose this amendment.

My other reason is very much related to the matters raised by the Hon. John Burdett relating to the Pooh-Bah effect of the corporation which is, in many instances, judge and jury in its own case. If the corporation establishes a treatment clinic of its own, it will be from time to time sitting as judge over disputes dealing with medical reports emanating from its own clinic. That is a little bit like a judge having a court clinic, referring litigants to his own clinic in his own chambers and then, when disputes arise about reports from that clinic, getting up on the bench and judging his own cause.

The Hon. John Burdett explained with great clarity the Pooh-Bah effect—the Lord High everything—that surrounds the proposed corporation. Given that the great need is for encouragement and coordination of proper use of existing services—a matter for which the Minister of Health in his own area of responsibility is constantly arguing—why duplicate and why give the Pooh-Bah the ability to be judge and jury in its own cause? So I do commend the amendment to the Committee.

The Hon. C.J. Sumner interjecting:

The Hon. R.J. RITSON: You are a very rude man, Mr Sumner.

The CHAIRPERSON: Order! I think that is a reflection on the honourable member.

The Hon. R.J. RITSON: Did you hear what he said?

The CHAIRPERSON: No, I did not.

The Hon. R.J. RITSON: Then you ought not to have selective hearing, Madam. I commend the amendments to the House, and if—

The CHAIRPERSON: Order! I said that was a—

The Hon. C.J. Sumner: I don't mind.

The CHAIRPERSON: The Chair also has the responsibility to see that reflections are not passed on members of Parliament.

The Hon. C.M. Hill: The Chair should listen to other interjections, too.

The Hon. R.J. RITSON: Is it your ruling, Madam, that it is unparliamentary to use the phrase 'You are a very rude man' because, if it is, I withdraw it.

The CHAIRPERSON: I would ask that the honourable member withdraw it—not as being unparliamentary, but as being an unwarranted reflection on a member of Parliament, and therefore contrary to Standing Orders.

The Hon. R.J. RITSON: I am very happy to withdraw that, Madam. I have to learn a new set of consistent rules.

The Hon. C.M. Hill: There wasn't even a complaint by the member.

The CHAIRPERSON: Under Standing Orders, a member does not have to complain before the Chair can—

The Hon. R.J. RITSON: All I want to say is that if there are any members who would support one but not the other of these provisions, perhaps we could put the two parts separately, otherwise I commend the amendments to the Chamber.

The Hon. I. GILFILLAN: We are not persuaded that the amendments proposed by the Hon. Bob Ritson are an improvement on what we consider to be the aim of rehabilitation. We do not have any particular enthusiasm for encouraging either the corporation or registered associations to just become involved for the sake of being involved, but to have a prescription or prohibition on them seems unduly harsh.

Amendment negatived.

The CHAIRPERSON: There are three amendments for insertion after line 19. The Hon. Dr Ritson has spoken to his; there is one from the Hon. Mr Gilfillan and another from the Hon. Mr Griffin. The order in which they were received was from the Hon. Mr Gilfillan first, the Hon. Mr Griffin second and the Hon. Dr Ritson third. I am prepared to have any discussion on all three and then to put them in the order in which they were received.

The Hon. K.T. GRIFFIN: Madam Chair, I am happy to support the amendment moved by the Hon. Dr Ritson. In essence his paragraph (3) is the same as mine and is designed to ensure that when the corporation enters into arrangements under paragraph *(a)* it does not enter into such arrangements with a registered association; that is, it prevents trade union clinics dominated or organised by the trade union movement and, as the Hon. Dr Ritson has indicated—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: 'Registerd association' applies equally to employer and employee.

The Hon. C.J. Sumner: It stops a big factory having a clinic.

The Hon. K.T. GRIFFIN: That is not correct. If the amendment is carried, we will ensure the independence of the treatment facility.

The Hon. I. GILFILLAN: I move:

Page 18, before line 12—Insert new subclause as follows:

(1) In the exercise of its powers under this Division, the Corporation should seek to utilize rehabilitation facilities and services provided by the employer of a disabled worker.

On your instruction, Madam Chairperson, I gather that we are debating all three options at once. If I understand correctly, I speak in favour of my amendment and indicate that I am opposing any others, either in the name of the Hon. Dr Ritson or the Hon. Trevor Griffin. I do not need to expand further on that matter.

The CHAIRPERSON: I will put the amendments in the order in which they were received: first, the Hon. Mr Gilfillan's amendment.

Amendment carried.

The CHAIRPERSON: I now put the Hon. Mr Griffin's amendment.

The Hon. K.T. GRIFFIN: I did not move my amendment.

The CHAIRPERSON: I now put the amendment moved by the Hon. Dr Ritson.

Amendment negatived; clause as amended passed.

Clauses 28 and 29 passed.

Clause 30—'Compensability of disabilities.'

The CHAIRPERSON: There are three indicated amendments, the first from the Attorney-General.

The Hon. C.J. SUMNER: I move:

Page 19, line 14—Leave out 'while the worker is in' and insert 'in the course of'.

This clause deals with a situation where compensation is payable for a disability. My amendment is a technical one. Submissions on the Bill have noted that the passage in clause 30 (2) *(b)* (ii) relating to secondary disability and disease is slightly different from a corresponding provision in the existing Act and have questioned whether a change in meaning is intended. This is not so. However, to stop further debate on this point the Government has decided to alter the relevant passage to pick up the present wording.

Amendment carried.

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

Page 19, line 18—After 'employment' insert 'where the journey or a part of the journey is made for a purpose connected with the worker's employment (and for the purposes of this paragraph the journey of the worker includes any deviation or interruption in the journey that is made by the worker for a purpose connected with the worker's employment);'.

This amendment relates to an amendment to the definition clause in relation to journies. The point I made at the time was that the Opposition believes that there ought to be some limitation on liabilities arising out of journey accidents. The amendment seeks to ensure that there is such a limitation on journey accidents. Subclause (3) provides:

> . . . the employment of a worker includes—
> *(a)* a journey between the worker's residence and place of employment (whether to or from the place of employment);

My amendment provides that a journey has to be related to the employment and not be what might be regarded as a frolic of the workers own choosing. I think that the qualification to paragraph *(a)* would help clarify the matter quite significantly and would be a useful basis upon which some benefits are restricted, which is really one of the objectives that the Australian Democrats have professed to be important in their consideration of the Bill.

The Hon. C.J. SUMNER: The Government opposes the amendment. This matter was debated the day before yesterday and I would have thought that there was little point in rehashing the argument, as the Hon. Mr Griffin lost his point.

The Hon. I. GILFILLAN: I am not sure that I understood what the Attorney said about who lost the point.The Hon. Mr Griffin is right—we are concerned about the definition of 'journey'. It appears to us that this is a reasonable amendment. I cannot see that it further the contradictions or restricts the definition that we supported in relation to clause 3. Therefore, we support the amendment.

Amendment carried.

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

Page 20, line 37—Leave out ', or in contravention of,'.

Subclause (7) provides that a worker who is acting in connection with, and for the purpose of, the employer's trade or business shall be deemed to be acting in the course of employment notwithstanding the fact that the worker is acting in contravention of a statutory or other regulation applicable to the employment or the worker is acting without, or in contravention of, instructions from the employer.

Perhaps we ought to move also for the deletion of the words 'in contravention of a statutory or other regulation applicable to the employment'. That may be inadvertent and we can accept that, even though an employee or worker may be inadvertently acting in contravention of a statutory or other regulation and is injured, the compensation provisions ought still apply. However, we cannot accept that, where a worker is acting in contravention of instructions from an employer, the employee or worker ought to be covered. I think it is a ludicrous proposition that a worker, who is injured, acting in direct contradiction of the instructions of an employer, should be entitled to recover.

The Hon. I. GILFILLAN: We do not support this amendment. There are other clauses in the Bill which allow for a penalty to be imposed on an employee who is guilty of wilful misconduct. The danger with this is that 'contravention of instructions' is not defined precisely enough that it does not leave it open for someone who has no real justification to be excluded from the purposes of the Bill. We feel that it is an unfair restriction and we oppose it.

The Hon. J.R. CORNWALL: I do not think I need add much to the remarks of the Hon. Mr Gilfillan. It is for that very reason that it has been inserted. The Hon. Mr Griffin's proposal would be an unfair restriction and we believe could be open to misinterpretation by the courts. For that reason the Government is unable to accept the amendment.

The Hon. K.T. GRIFFIN: In the light of that indication from both the Government and the Hon. Mr Gilfillan, if I am not successful on the voices, I will not divide.

Amendment negatived; clause as amended passed.

Clause 31—'Evidentiary provision.'

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

Page 21, lines 3 and 4—Leave out subclause (2).

Clause 31 is an evidentiary provision and provides:

> (1) Where a worker—
> *(a)* suffers a disability of a kind referred to in the first column of the second schedule;
> and
> *(b)* has been employed in work of a type referred to in the second column of that schedule opposite that disability,
> it shall be presumed, in the absence of proof to the contrary, that the disability arose from that employment.

We have no difficulty with that. The schedule comes before Parliament and we have an opportunity to comment upon it. However, subclause (2) provides:

> The regulations may extend the operation of subsection (1) to disabilities and types of work prescribed in the regulations.

I think it is wrong for the presumptions referred to in subclause (1) to be extended by regulation. They ought to come back to Parliament so that there can be proper parliamentary scrutiny of that extension.

The Hon. I. GILFILLAN: The amendment appears to extend into regulations conditions which we would normally prefer to see in legislation and, therefore, it is our intention to support the amendment.

The Committee divided on the amendment:

Ayes (11)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (8)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), and G. Weatherill

Pair—Aye—The Hon. M.B. Cameron. No—The Hon. Barbara Wiese.

Majority of 3 for the Ayes.

Amendment carried; clause as amended passed.

Clause 32—'Compensation for medical expenses, etc.'

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

Page 21, line 7—
Leave out 'for costs' and insert 'for necessary and reasonable costs.'
Leave out 'reasonably'.

The emphasis of my amendment is to ensure that the costs which are incurred are not only reasonable but are necessary. So, there is an additional qualification. It would be unwise to provide for the reimbursement of costs which might be reasonable but which may not be necessary. I move the amendments to include the qualification that they are necessary as well as reasonable.

The Hon. I. GILFILLAN: I do not believe that the amendments actually add to the clause and its interpretation. We oppose it.

The Hon. K.T. GRIFFIN: I will not spend a lot of time on it. I think it does: what is reasonable may not also be neccessary. I am putting in two qualifications instead of one. The costs have to be necessary as well as reasonable. There is a considerable difference between the two concepts.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 21, after line 29—Insert new subclause as follows:

> (2a) where—
> *(a)* a disabled worker is covered by a health insurance scheme;

(b) the worker would, if the disability were not compensable under this Act, be entitled to benefits under the scheme in respect of costs of a kind described in section (2),

the entitlement of the worker under this section shall be reduced to take account of the value of those benefits.

This amendment complies with an indicated intention in my second reading speech that we believe it is fairly the responsibility of the Federal Government to cover both the medical and any unemployment cost factors in compensation. It specifically applies to the obligation we feel should fairly rest on Federal Government shoulders to cover the medical cost of work induced injury. Whatever one believes about the pros and cons of the universal health scheme—and I am not opposed to it—but even for those who are it is currently working across the board in Australia today. It seems quite unfair that it should be a penalty on the cost of employment. This amendment is moving to put the responsibility for medical costs squarely on the shoulders of the Federal Government.

The Hon. C.J. SUMNER: This amendment seeks to ensure that the Federal Government continues to pick up the cost of medical expenses under the Medicare scheme. Unfortunately, it may be illegal. It may not be within the power of the State Parliament to do it. I understand that this Act could not transfer the cost to the federal scheme and the result of the amendment would be to leave workers out of pocket for their medical expenses. Accordingly, I believe that the provision may need to be opposed, but obviously the Government is sympathetic to the principle proposed and will be making submissions to the Federal Government about such a transfer. Preliminary discussions have taken place with Victoria, which has similar concerns about the medical costs under its new system of workers compensation. Should legal advice be obtained that it is not possible to transfer the cost as a result of this legislation, the Government would put on notice that it may not proclaim this amendment should that advice indicate that workers would be without adequate compensation for their medical expenses. It may be possible, I suppose, to accept it, but not proclaim it if it was considered impossible.

The Hon. K.T. GRIFFIN: It is a great scheme if the Commonwealth will pick up its real responsibilities under the Medicare program and pay for costs incurred, both medical and hospital, as a result of an injury to a worker. However, the fact is that it will not. I have always thought at least since Medicare came in that it was quite unreasonable: that every person who earns an income pays a health insurance levy to the Commonwealth Government. There is no reason at all why Medicare should not carry the cost of the provision of medical and hospital care. However, the Commonwealth has seen fit to cut its own costs by putting this back on to the private insurers at the moment. That is unreasonable and unfair, but from a practical point of view this legislation will not achieve the result which the Hon. Mr Gilfillan is seeking to achieve.

In respect of the health insurance scheme provided by registered organisations under the National Health Act it is a bit rough for this Parliament to impose a liability by Statute upon those organisations. There is even some doubt as to whether we have the jurisdiction to do that in relation to medical benefits organisations. There has been no consultation, I imagine, with those organisations. In South Australia they are mutual organisations. If this sort of liability is to be imposed upon them it can mean only one thing—health benefit insurance rates will go up yet again. I do not believe that all contributors should pay for medical benefits for a few. My view at present is to oppose the clause and certainly wish the Government well in any negotiations with the Commonwealth to ensure that the Commonwealth Medicare scheme bears its real burden, but let us not impose a liability on registered medical benefits organisations without consultation with them and in circumstances where it would ultimately mean an increase in insurance premiums.

The Hon. C.J. SUMNER: We need to oppose the amendment as it stands, because it is not possible to implement it.

Amendment negatived; clause passed.

Clause 33—'Worker entitled to be conveyed for initial treatment.'

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

Page 21, line 41—Leave out ', at the employer's own expense,'.

This amendment deletes reference to 'at the employer's own expense' in connection with transporting an injured person to a hospital or medical expert for initial treatment. It does not remove the obligation from the employer to transport but means that the employer does not carry the cost of that transportation, which may well involve use of an ambulance. Also it may be that this is wide enough to provide for the employer to carry the initial hospital and medical treatment, and certainly that is unreasonable in the context of this scheme. Subclauses (2) and (3) are, in a sense, consequential provisions, and I shall comment on those later, depending on whether or not this amendment is carried.

The Hon. I. GILFILLAN: Do I take it from The Hon. Trevor Griffin that he is actually reversing the intention of this; that the employer may recover from the corporation the cost of providing transportation ?

The Hon. K.T. Griffin: Yes.

The Hon. I. GILFILLAN: I do not support the intention. I consider that the wording of the clause in the Bill does leave the employer open to possibly quite incredible expense. That is, a country employer might have to go to great expense to get an injured worker to hospital or to a medical expert. It may be that that should be part of the insurance cover. However, in relation to the amendment, the Democrats will not support its intention. I simply make the comment that the provision as worded in the Bill does leave the employer who operates in remote situations open to what could amount to monstrously high charges resulting from a worker sustaining quite minor injuries.

The Hon. K.T. GRIFFIN: That is part of the problem with voting against the amendment, in that we will not remove the reference to an employer having to bear the costs of transportation. It is also open to construction as to whether an employer must meet the initial treatment costs as well as the transportation costs; that to me seems to be both contrary to the objective of the Bill and to place a very heavy burden on the employer, because frequently the initial costs of treatment are amongst the largest costs involved. If my amendment is carried, this matter can come back to us later, as we will retain control of it. However, if the amendment is lost it will be the end of the consideration of that principle. I would think a sensible course to follow would be to support my amendment, even if honourable members are not 100 per cent satisfied with it, with a view to having a further look at it later.

Amendment negatived.

The Hon. K.T. GRIFFIN: The further amendment to clause 33 that I have on file is consequential to the previous amendment and I will not proceed to move it.

Clause passed.

Clause 34 passed.

Clause 35—'Weekly payments.'

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

Page 22, lines 18 and 19—Leave out 'equal to the notional weekly earnings of the worker' and insert 'equal to 95 per cent of the notional weekly earnings of the workers'.

My amendment is to reduce the notional weekly earnings to 95 per cent. This clause deals with weekly payments, and subject to the other parts of the provision it provides that, where a worker suffers a compensable disability that results in an incapacity for work, the worker is entitled to weekly payments of compensation, or where total incapacity is suffered, weekly payments equal to the notional weekly earnings of the worker. The Opposition believes that that ought to be 95 per cent to provide an incentive to return to work, and also to take into consideration that the notional weekly earnings would in fact cover overtime and other additions to the base salary. This goes to the question of cost of the scheme. I hope on that basis that the Democrats will support the amendment.

The Hon. I. GILFILLAN: I am sorry to disappoint the Hon. Trevor Grffin. The Democrats do not intend to support the amendment. We realised that this could be part of the Bill which would be reviewed if the costings inquiry showed any dramatic results which challenged the costing of the whole workers compensation structure as it is currently working, and anticipated to work in future. However, it does not appear to us to be essential to deprive a worker of what is a level of benefit at this level, unless there is overwhelming evidence that that has to be done. We oppose the amendment.

The Hon. K.T. GRIFFIN: In the light of that indication, if I lose on the voices, I will not call a division, in view of the lateness of the hour.

Amendment negatived.

The Hon. K.T. GRIFFIN: My next amendment is consequential, and I do not propose to move it.

The Hon. I. GILFILLAN: I move:

Page 22, line 32—Leave out '3' and insert '2'.

There are several of these amendments. This refers to the number of years for which notional weekly earnings will apply before they are subject to the other processes of the Bill. This amendment is one of only two that we will move that have a direct effect on costing. At the time we were deliberating on the Bill we considered that it would be a worthwhile amendment to restrict to a degree the actual cost to the system of the benefits as listed in the Bill.

The Hon. K.T. GRIFFIN: The amendment is identical to one that I have on file, so obviously I support it. I think it is appropriate to limit the period to two years rather than three years.

The Hon. C.J. SUMNER: The Government opposes the amendment. It seems to us to be not unreasonable to provide three years cover. Accordingly I cannot support the amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 22—
Line 33—Leave out '3' and insert '2'.
Line 35—Leave out '3', twice occurring and in each case insert '2'.
Line 39—Leave out '3', twice occurring, and in each case insert '2'.

Amendments carried.

The Hon. I. GILFILLAN: I move:

Page 22, lines 41 to 44—Leave out 'That the worker is earning in suitable employment that the worker has obtained or could earn in suitable employment that the worker has reasonable prospects of obtaining' and insert 'that the worker is earning, or could earn, in suitable employment'.

This is a relatively significant amendment which, if we had the time to dwell on it would reflect the allaying of quite serious fears that have been raised that the compensation, the actual pension, would cover the capacity to earn that a worker had been assessed as having, yet, because that worker does not have that employment, for whatever reason, the pension would be paid in full. The intention of the amendment is to accurately reflect what the system is aiming to do, and that is to accurately assess what pension the worker is entitled to as a result of his or her injury, and take an accurate and fair assessment of their capacity for employment, and to have the pension reflecting that. It should not be contingent on whether the worker has obtained or has reasonable prospect of obtaining the employment. We do not consider (and this goes back to points I have made before) that this ought to be a quasi-unemployment benefit.

The Hon. K.T. GRIFFIN: This amendment is identical to one which I have on file. Quite obviously, I will support that which has now been moved by the Hon. Mr Gilfillan, only because it was first on file, but I agree that it ought not to be an unemployment benefit and ought, in fact, to relate to the earning capacity of the disabled worker.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

The CHAIRPERSON: There are two amendments here for the same lines, one from the Hon. Mr Griffin and one from the Hon. Mr Gilfillan.

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

Page 22, line 46 and following—Leave out subclause (4)

In light of the amendment which has just been passed to subclause (3) *(b)*, it does not appear relevant that we should have any part of subclause (4), because subclause (4) deals with the factors that can be considered in an assessment of the prospects of a worker to obtain employment, the nature and extent of the worker's disability, the age, level of education and skills, experience in employment and any other relevant factor.

Even if the Hon. Mr Gilfillan moves his amendment, I do not think that is relevant to subclause (3) *(b)*. We do not need subclause (4) in light of the amendment which has been passed, so I will move my amendment and, of course, leave it to you, Madam Chair, to decide the best way to put it.

The Hon. I. GILFILLAN: I would prefer the Government to indicate its attitude.

The Hon. K.T. Griffin: The deletion of subclause (4) is consequential upon the amendment that has just been carried.

The Hon. I. GILFILLAN: I would prefer to hear it from the Government.

The Hon. C.J. SUMNER: The Government opposes the amendment. The Government's proposal allows the payment of full benefits to workers although only partially incapacitated. The Government's provision would cover those workers who, because of such factors as age, the nature of the disability and personal and language skills, will suffer complete loss of income as a result of the work-related injury.

The Hon. K.T. Griffin: Subclause (4) is not relevant.

The Hon. C.J. SUMNER: I think that it still is. Subclause (4) is still applicable despite the fact that subclause (3) *(b)* has been amended. Subclause (3) *(b)* still talks about what the worker could earn in suitable employment, and for the purposes of determining what is suitable employment subclause (4) says that the following factors shall be considered in an assessment of the prospects of the worker to obtain employment, and then lists the things that can be taken into account: the worker's disability, age, level of education and skills, and experience in employment. So I would oppose the amendment of the Hon. Mr Griffin.

The CHAIRPERSON: Do you wish to move your amendment, Mr Gilfillan?

The Hon. I. GILFILLAN: Are we dealing with the Hon. Mr Griffin's amendment or mine?

The CHAIRPERSON: The Hon. Mr Gilfillan is moving to change subclause (4). What I was going to do is to consider the words of subclause (4) from the beginning down to and including 'assessment of the' and move that they stand part of the Bill. If that is defeated following the Hon. Mr Griffin, if they are struck out I would put that the remaining part be struck out, but if they are not struck out then the Hon. Mr Gilfillan's amendment can be put, changing the words beyond that. That does depend on whether Mr Gilfillan intends to move that amendment or not.

The Hon. I. GILFILLAN: I have no intention of not moving my amendments.

The CHAIRPERSON: I put the question: that the words proposed to be struck out by the Hon. Mr Griffin to the beginning of subclause (4) down to and including 'assessment of the' stand part of the clause.

Question carried.

The CHAIRPERSON: Those words now stand part of the Bill.

The Hon. I. GILFILLAN: I move:

Page 22, line 47—Leave out 'prospects of worker to obtain' and insert 'ability of a worker to earn money in suitable'.

Mine is a sensible amendment to follow my successful amendment to subclause (3) *(b)*.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 23, lines 4 and 5—Leave out all words in these lines.

This amendment deals with paragraph *(d)*, which is completely irrelevant. This is irresponsible drafting and I oppose it.

The Hon. K.T. GRIFFIN: The Opposition supports the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 23, line 9—Leave out ', if the corporation so determines,'.

The intention of the amendment is to take away from the corporation the actual option of saying 'yes' or 'no' to this issue.

The Hon. K.T. GRIFFIN: I agree with that.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

After line 19—Insert new subclause as follows:

(6a) Where a disabled worker who is incapacitated for work would, if the disability were not compensable under this Act, be entitled to a benefit of a prescribed kind under the Social Security Act 1947 of the Commonwealth, the weekly payments payable to the worker under this section shall be reduced to take account of the value of that benefit.

This is similar to an earlier amendment relating to health costs. We are attempting to amend the Bill so that there will be some pressure on the Federal Government to accept its responsibility under its general obligation to pay unemployment benefits. It is the second of what we regard as quite unjust imposts on employers in this system. It is not the fault of the State Government and it is not the fault of the system but, in our opinion, it is a failure on the part of the Federal Government to pick up its share of responsibility. This can be quite clearly seen in the situation where a disabled worker has been assessed at a certain percentage of disability on a permanent basis (it may be 20 per cent) with a basic 80 per cent ability. He is likely to be employable in quite a range of circumstances but, as with many other potential employees or workers, employment may be hard to find. In any other circumstance with so-called able bodied workers who cannot find employment, they are then the subject of unemployment benefits. Under this amendment the Federal Government would be obliged, under the circumstances I described, to make unemployment benefits available to that potential worker.

The Hon. C.J. SUMNER: The Government has some sympathy with the sentiments, but does not feel that it can support the amendment for the reasons outlined in the clause dealing with Medicare.

The Hon. K.T. GRIFFIN: I also support the sentiment of the amendment, but wonder how achievable it is. As I understand it, under the Commonwealth Act there is a conflict. As a State Parliament we have no jurisdiction over matters which are within the jurisdiction of the Commonwealth. Although I have some sympathy for the amendment, it would be unwise to pass it without having before us all the implications of the Commonwealth jurisdictional point. Although we accept the principle of it, we are not prepared to support it.

The Hon. I. GILFILLAN: I am disappointed that this amendment and the previous one have received this response from the Opposition and from the Government. I realise that the failure to allow enough time for this to be considered in depth has not allowed for the correct response. In relation to the health example, my advice was that, if it was proclaimed, the Federal Government would be obliged to make up the shortfall if the health medical care charges were not paid. So the potential is there for it to be effective and remove the costs imposed on workers compensation premiums. There is the potential for that to happen in this case. If they are not passed even in a form that they could be held and not proclaimed, there is absolutely no continuing pressure at all on the Federal Government.

I urge both the Government and the Opposition, in the time that I hope that we will have before we finally pass the third reading of this Bill, to give serious consideration to forms in which the two subclauses can be incorporated in the Bill. I am sorry to hear that, at least at this stage, they will not be supported. I urge that they be reconsidered and possibly reintroduced.

The Hon. K.T. GRIFFIN: It is all very well to express disappointment. I have expressed it in relation to some of my clauses which have not been supported.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: I just make that point. In view of the pressure of the sitting, I have not had an opportunity to look at the Commonwealth Social Security Act and determine the inter-relationship of unemployment and sickness benefits between that Act and this Bill. If the Hon. Mr Gilfillan is able to produce some chapter and verse to indicate that, if we pass this subclause, it could be implemented, then I am certainly prepared to consider it and ultimately support it.

The Hon. I. GILFILLAN: These are probably two of the most significant areas of potential saving, particularly the one in relation to the medical care. The benefit to be gained will have a substantial effect on the prime people involved, namely, the employees and the employers. There may be the capacity for more generous benefits and obviously for reduced premiums, so I urge the Committee to support it.

Amendment negatived.

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

Page 23, lines 21 to 26—Leave out all words in subclause (7) after 'falling' in line 21 and insert 'after the date on which the worker attains the normal retiring age for workers engaged in the kind of employment from which the worker's disability arose or 70 years of age (whichever is the lesser)'.

We believe that the dates specified in subclause (7) as to the cut-off point for weekly payments are inappropriate. Subclause (7) provides:

(a) the date on which the worker attains the age at which the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pen-

sion under the Social Security Act 1947 of the Commonwealth:

or

(b) the date on which the worker attains the normal retiring age for workers engaged in the kind of employment from or in the course of which the worker's disability arose or 70 years of age (whichever is the lesser).

We do not see any reason to have any reference to the Social Security Act pensionable ages which are fixed. We think it is better to relate the flexibility provided in the amendment to the normal retiring age for workers engaged in a particular kind of employment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

The Hon. I. GILFILLAN: Without further justification for supporting it than I have understood to date—and there may well be more that I have not understood—we will not support the amendment.

Amendment negatived.

The Hon. C.J. SUMNER: I move:

Page 23, lines 28 and 29—Leave out 'or in the course of'.

This is a technical amendment to delete from clause 35 (7) the passage 'or in the course of', which is superfluous. This is because the Bill refers to disabilities arising from employment which encompasses disabilities arising in the course of employment.

Amendment carried; clause as amended passed.

[Sitting suspended from 12.55 to 10.30 a.m.]

Clause 36—'Discontinuance of weekly payments.'

The Hon. C.J. SUMNER: I move:

Page 23—

Line 37—Leave out 'or reduced'.

Line 39—Leave out 'or reduction'.

Lines 43 and 44—Leave out all words in these lines after the word 'work' in line 43.

Page 24, line 10—Leave out 'or reduction'.

After line 11—Insert new subclause as follows:

(1a) Subject to this Act, weekly payments to a worker who has suffered a compensable disability shall not be reduced unless—

(a) the worker consents to the reduction of weekly payments;

(b) the corporation is satisfied, on the basis of a certificate of a recognised medical expert, that there has been a reduction in the extent of the worker's incapacity for work;

or

(c) the reduction of weekly payments is authorised or required by some other provision of this Act,

(and any reduction made on the basis of this subsection must be consistent with section 35).

Line 13—After 'subsection (1) *(b)* or *(c)*' insert 'or subsection (1a) *(b)*'.

This clause deals with discontinuance of weekly payments. I will speak to all the amendments, as they are related. They are technical, designed to ensure further proper operation of clause 36. It has been argued that once a reduction in incapacity for work is shown, the corporation will, under clause 36, be able to discontinue weekly payments. This is not intended, as clause 35 would still be relevant to determining a worker's ongoing rights. This amendment, by dealing with discontinuance and reduction separately, should put the matter beyond doubt.

The Hon. K.T. GRIFFIN: I could not quite follow what the Attorney was putting, so will he amplify that? It seems to me that his amendments do not allow any reduction in the weekly payments but allow only discontinuance. I would have thought there would be some merit in the corporation's having power to at least reduce payments if the incapacity ceases to be as significant as it was when the compensation was first determined.

The Hon. C.J. SUMNER: It does not mean that a worker cannot have his weekly payments reduced. If we look at the insertion of new clause 1a, which I am proposing and to which I spoke, it provides that the weekly payments to a worker who suffered a compensable disability shall not be reduced unless—and then it sets out the circumstances in which a reduction can occur.

It further states that any reduction must be consistent with clause 35. It has been argued that once a reduction in incapacity for work is shown the corporation will be able to discontinue weekly payments, but it may be only a partial incapacity for work. If that is the case, there should be a reduction only in the weekly payments. That should occur in accordance with clause 35. It is not doing away with the capacity to reduce weekly payments; it is dealing with it in a different way.

The Hon. K.T. GRIFFIN: I appreciate the Attorney-General's explanation: I now understand the point he was making when he first spoke. As it is essentially a drafting matter, I do not raise any objection to it.

Amendments carried.

The Hon. I. GILFILLAN: I move:

Page 24, after line 26—Insert new subclause as follows:

(4) Where on a review referred to in subsection (3) weekly payments are discontinued or reduced, any amounts to which the worker would not have been entitled but for the operation of subsection (3) may, subject to the regulations, be recovered from the worker as a debt.

Our amendment is to provide that the corporation, on the rare occasion (I would assume and hope that it would be rare) that a worker had been paid amounts to which he or she was not entitled, may recover from the worker. We believe that this is an option which will be exercised with consideration and compassion by the corporation.

It is not our intention to institute witch hunts, and it would be quite fruitless for the corporation to do it, but for it not to have the option in our opinion leaves it without what, to us, appears to be a reasonable course to follow under certain conceivable circumstances—where there may have been quite a substantial overpayment in some way or an error, or there were very good grounds for reduction, and the worker was in a position (and established quite clearly for the corporation's satisfaction) to repay what had in fact been over and above his or her entitlement.

The Hon. C.J. SUMNER: I oppose the amendment. The provision seeks to give the corporation discretion to recover any overpayments of benefits. No such provision exists under the current Act, and the reason is that social security benefits are not retrospectively paid. Thus, if the recovery of an overpayment was attempted (and this is a difficult matter) and the worker was required to pay back workers compensation benefits, it could well leave the worker totally out of pocket. Such a circumstance would be quite unfair. I am not talking about cases of fraud, misrepresentation or deceit on the part of the worker, but where there has been an overpayment as a result of some misunderstanding of the law.

The Hon. I. GILFILLAN: That is a ridiculous objection to this amendment. If we assume that the corporation will behave in that manner—hunting down people and causing them economic stress—then we have no confidence in the way this legislation will work. That is why the amendment specifically says 'may'. I hope that the corporation would rarely consider exercising this provision, but I believe it is ridiculous not to let the corporation have that option.

Amendment carried; clause as amended passed.

Clause 37—'Suspension of weekly payments.'

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

Page 24, line 33—After 'the worker has' insert 'reasonably'.

This clause provides that the corporation shall not suspend or reduce weekly payments to a worker on the ground that the worker has refused surgery or the administration of a drug; certain other circumstances are set out in subclause

(2). Where a worker quite unreasonably, where there is no known danger as a result of surgery or the administration of a drug, refuses such treatment, the corporation will not be able to take any action to suspend or reduce weekly payments, and the worker is in a position where he or she can, in effect, snub the nose at the corporation and, by reason of that refusal to undertake surgery or to receive a drug, will be able to continue compensation.

That seems to be an unnecessarily strong provision. If the word 'reasonably' is inserted it provides some balance. The corporation will then not be able to suspend or reduce weekly payments on the ground that the worker has reasonably refused surgery or the administration of a drug; other circumstances are also specified in that subclause.

The Hon. R.J. RITSON: It is extraordinary that a healthy young man with an inguinal hernia possessing only manual skills should have the option of retiring on a pension for his working life rather than undergoing the simple and safe operation of herniorrhaphy. I support the amendment.

The Hon. C.J. SUMNER: I think the amendment is reasonable. The amendment moved by the Hon. Mr Griffin reflects the current law—not necessarily in the Workers Compensation Act, but the current general law—in respect to the causality of a particular incapacity as a result of an action. The courts now would hold that if a person, who has been injured, unreasonably refuses to undergo treatment, then they will take action to reduce the damages.

In other words, there is an obligation on the person who has been injured, or anyone who has suffered damage, whether a personal injury or not, to mitigate the damage. If they refuse to undergo what is reasonable medical treatment to mitigate the damage then the court would reduce the amount of damage commensurately. I think that in so far as it reflects the existing law it reflects common sense, because if somebody who had been injured refused unreasonably to undergo medical treatment despite the fact that all the medical practitioners involved said that it would assist the situation, that person could still continue to get weekly payments despite the refusal to undergo medical treatment being quite unreasonable.

The Hon. I. GILFILLAN: The word 'reasonably' is a rather indeterminate word to use to qualify refusal to have surgery. It would be a rare case where this would be exercised in some wayward way to continue a disability. I also make the point that there may well be justification for an injured worker in his or her mind to refuse surgery on grounds to which some other person may not hold water, so it does have an ethical consequence. We oppose the amendment but, as we do not have the numbers on this occasion, we will not divide.

The Hon. K.T. GRIFFIN: It has an equal connotation both ways. If the injured worker says that he does not want the surgery (and that might be a quite unreasonable attitude), then what that injured worker is doing is putting himself or herself above the status of ordinary people and continuing to take compensation from the corporation. That is equally unethical, in my view.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 25, after line 8—Insert new subclause as follows:

(5) Where on a review referred to in subsection (4) weekly payments are suspended or reduced, any amounts to which the worker would not have been entitled but for the operation of that subsection may, subject to the regulations, be recovered as a debt.

This amendment is similar to a previous one. We seek to give the corporation the option to recover money which may have been paid in error. I will not repeat my earlier remarks made in relation to clause 36, but they apply equally here.

The Hon. K.T. GRIFFIN: Consistent with our indication of support for the same principle on a previous clause, I indicate support for this amendment.

The Hon. C.J. SUMNER: I oppose it.

Amendment carried; clause as amended passed.

Clause 38—'Review of weekly payments to disabled worker.'

The Hon. I. GILFILLAN: I move:

Page 25—

Line 9—Leave out 'The' and insert 'Subject to subsection (2), the'.

Lines 12 to 14—Leave out subclause (2) and insert new subclause as follows:

(2) The corporation is not required to comply with a request for a review under subsection (1) if the request is made within six months from the completion of an earlier review.

We are concerned about restrictions on review contained in this clause. One notes from reading it that there is a restriction that a review may not be made within six months of completion of an earlier review.

Although we do not believe that there should be a mandatory review in between that period of time, the corporation is obliged to have a review on the request of either a worker or an employer on the six monthly time span. We seek in this amendment to allow the corporation the option of a review if approached by either a worker or an employer for it within the six month period. We consider that to be a sensible amendment to keep the system flexible and current, so that a current assessment is available to the corporation if, in its judgment, it feels it is worth while.

The Hon. K.T. GRIFFIN: While the Attorney-General is giving consideration to this matter, I indicate that we do not support the amendment. We think that the mandatory minimum six month period is a reasonable provision. Leaving it open may lead to other pressures upon the corporation for more frequent reviews at earlier times than the minimum six months, and that will necessarily mean increases in costs of operating the corporation for no useful purpose.

The Hon. C.J. SUMNER: The Government supports the amendments.

Amendments carried.

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

Page 25, lines 19 to 27—Leave out subclause (4).

My amendment provides that, where a worker has received weekly payments for a period of incapacity of work for three years or more, in adjusting the amount of weekly payments payable to a worker who is partially incapacitated, the corporation is not to reduce the weekly payments to take account of an improvement in the earning capacity, unless it appears that the aggregate of the weekly payment, plus the actual weekly earnings of the worker, is likely to exceed the notional weekly earnings of the worker, the notional weekly earnings being defined in clause 3 as being the worker's average weekly earnings or his average weekly earnings adjusted to take into account changes in the level of earnings or in the value of money or both.

That relates to the CPI indexation. It seems to us that it is unreal on the one hand to have a worker who has improved his or her earning capacity as a result of rehabilitation but, on the other hand, is not to have compensation reduced as a result of the improvement in earning capacity if the aggregate of the weekly payment plus the actual weekly earnings is not to exceed the notional weekly earnings of the worker. It is for that reason that we do not believe that subclause (4) is appropriate. If there has been an improvement in earning capacity, the compensation ought to be adjusted and not have any limitation on it, as proposed in this subclause.

The Hon. I. GILFILLAN: I oppose this amendment. I think that it stifles any incentive and would mitigate against rehabilitation. If a worker finds work from which more can

be earned than was accepted in the setting of the payments above that, they then feel that they will be penalised. It would have a psychologically deterrent effect on rehabilitation. It is petty to remove that specifically as there is an upper limit prescribed in the current subclause. We oppose the amendment.

The Hon. C.J. SUMNER: The Government opposes the Hon. Mr Griffin's amendment and will oppose the Hon. Mr Gilfillan's amendments when they are moved, although in the case of the Hon. Mr Gilfillan's amendments, I recognise that the matter of reducing from three years to two years the period of full weekly payments has already been determined. I oppose the Hon. Mr Griffin's amendments for similar reasons to those outlined by the Hon. Mr Gilfillan. The present subclause (4) provides that, after three years of weekly payments, no reduction may be made on the grounds of increased earning capacity unless the sum of weekly payments plus the actual weekly earnings of the worker is likely to exceed the notional weekly earnings of the worker. You cannot get more than the notional weekly earnings, and it therefore seems to be self-defeating for the Hon. Mr Griffin to remove this subclause.

As the Hon. Mr Gilfillan has said, the purpose is to provide an incentive for injured workers to seek work to boost their incomes. If additional income reduced the level of benefits payable on a dollar for dollar basis, there would be a reduced incentive or no incentive to seek work and break away from any reliance on workers compensation benefits. I point out that the proposal was part of the so-called white paper agreement.

The Hon. K.T. Griffin: It was not an agreement though.

The Hon. C.J. SUMNER: It is not now: it was then proposed.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 25—
Line 20—Leave out '3' and insert '2'.
Line 21—Leave out '3' and insert '2'.

The Hon. K.T. GRIFFIN: Before the question is put on the next amendment, I indicate that it is consistent with our previous position concerning the reduction from three years to two years and we will support the amendment.

Amendment carried; clause as amended passed.

Clause 39—'Economic adjustments to weekly payments.'

The CHAIRPERSON: Both the Hon. Mr Gilfillan and the Hon. Mr Griffin have identical amendments on file, but I will deal with the Hon. Mr Gilfillan's amendment because it was received first.

The Hon. I. GILFILLAN: I move:

Page 26, line 6—Leave out ', 2nd and 3rd' and insert 'and 2nd'.

The amendment is consequential.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 26, line 20—
Leave out '4th' and insert '3rd'.
After 'shall' insert ', subject to subsection (2a),'.

The first part of the amendment is consequential, because it deals with the year, as we have been discussing and have accepted. By making subclause (2b) subject to new clause (2a), we will more accurately link the pension to the wage rather than just the CPI. The amendment is fairer in establishing pensions related to earning capacity or the actual achieved earnings of the worker if the worker were still in the work force.

The Hon. K.T. GRIFFIN: This amendment is identical to one that I have on file. We will support the amendment. The Hon. Mr Gilfillan's amendments are on file first only because of differing rates of production, photocopying and so on. The principle is the same and we support it.

The Hon. C.J. SUMNER: The Government opposes the amendment. It seeks to vary the method of indexation of benefits to ensure that benefits are not indexed by the CPI when changes in the general rate of remuneration are less than any change in the CPI. The purpose of the Government's provision is to retain the real purchasing power of benefits for long-term incapacitated workers. Therefore, the amendment is opposed as it is not consistent and does not allow for benefits to be increased beyond the CPI when the average remuneration of other workers exceeds it.

In other words, if the general level of remuneration that is awarded to workers is less than the CPI, the amendment says that that is what should be paid. If the general level of remuneration awarded to workers is more than the CPI, the amendment is silent on it, and for those reasons I oppose it.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 26, after line 22—Insert new subclause as follows:
(2a) If changes in the consumer price index over the period referred to in subsection (2) *(b)* are not fully reflected in the rates of remuneration payable under awards, there shall be a corresponding reduction in the extent of the adjustment under subsection (2) *(b)*.

Amendment carried; clause as amended passed.

Clauses 40 and 41 passed.

Clause 42—'Commutation of liability to make weekly payments.'

The Hon. I. GILFILLAN: I move:

Page 28, lines 1 and 2—Leave out 'worker has received compensation' and insert 'determination of any entitlement that the worker may have to compensation or damages'.

Strange to say, this is a consequential amendment to a more substantial amendment to clause 54 in which we seek to give the injured worker the option of action at common law or the prescribed lump sum compensation for non-economic loss. If that is successful, the amendment to clause 42 is required so that where the commutation takes place it would not only be restricted to the clause in that paragraph 'worker has received compensation', because there is a variety. It is possible that damages of common law would be the elected process that the worker took.

So, although it may sound a little confused to discuss it now in this context it really does hinge on the success of an amendment that I have on file to clause 54. It is the aim of that amendment to make quite plain that an injured worker will make a deliberate choice between accepting the lump sum in the schedule or taking common law action. There will not be a specific blending or defined situation in which a worker will have necessarily received compensation in the meaning of the clause or paragraph that is currently in the Bill. Therefore, for this paragraph to have sense if my amendment to clause 54 is successful, this amendment needs to be carried. I am not sure whether it is within our options at this stage to defer consideration of this amendment until after dealing with clause 54.

The CHAIRPERSON: I think it might be better if the Hon. Mr Gilfillan argued the case for the amendment to clause 54 now, seeing that the two are linked. The vote will be on clause 42, but the discussion can certainly cover the consequential amendments. I suggest that the issue be discussed, then the vote on this can be taken as a test vote on the group of amendments that go together.

The Hon. I. GILFILLAN: In that case, I will. It is a reasonably substantial matter to raise. The amendment to clause 54, in essence, obliges injured workers to make a choice so that they cannot have compensation in both areas. If, by taking action at common law, they are awarded damages lower than the schedule that was available in the Act, they cannot apply for that either as a top-up or an option.

So, it does restrict, I consider fairly, the activity of an injured worker. At the second reading stage we argued that there was no point in encouraging any more legal disputation in the exercise of this legislation than was absolutely essential. This, although not the only reason for it, is one way in which we feel there will be a disincentive for an injured worker to just take common law action on the off chance punt—'Well, we may do better, we may not, but anyway we can always fall back on the schedule.' The amendment does, in essence, give the injured worker the responsibility of making a decision and then living by it.

If I am to discuss the whole of the amendment at this time, it also contains a clause that will put a ceiling on the amount obtainable at common law, my amendment providing for 1.1 times the prescribed sum. That means that it would be linked to the $60 000 or whatever happens to be the amount in any year. Once again, although we see that as being a restriction on the upper limit, it also tends to act as a restriction for the bounty hunters who, quite often led by enthusiastic legal advice, are prepared to take an expensive track, which rebounds on the premiums employers pay, to no-one's advantage.

The fact that there is a common law potential here means that injured workers may not be granted what is considered reasonable compensation in the schedule and, after some deliberation, will consider that they have a good chance of getting a fairer and more substantial benefit from an action at common law. The amendment does not seek to remove the common law provision completely, but it does put a ceiling on it and puts the obligation on the worker to opt for either the scheduled prescribed sum or common law and, once having made that choice, it is not then reversible.

The Hon. C.J. SUMNER: We oppose the amendment.

The Hon. K.T. GRIFFIN: This amendment will give further incentive for litigation. If the Hon. Mr Gilfillan wants to ensure that some of my colleagues in the legal profession have more work, I am prepared to accept the principle. Within the context of this Bill, and in so far as the Liberal Opposition has the objective of trying to reduce outgoings, it seems that this is more likely to lead both to litigation and to an increased cost to the corporation and ultimately the employer and consumer. It introduces less certainty into the Bill, and we do not support that.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: From what the Hon. Mr Gilfillan has said, it introduces less certainty into the Bill than is already there and opens up the opportunity for more litigation and ultimately additional costs to the corporation, the employer and the consumer. The Hon. Mr Gilfillan has made a comment about enthusiastic lawyers. Lawyers do their duty according to the law, which requires them to give advice. If we have large common law claims currently, it is because the framework of the law allows it. If lawyers did not give their clients advice as to the prospects of success or failure and as to the amounts which courts are awarding, they would not be doing their duty to their clients. There is a real prospect of their being sued for professional negligence. I come to the defence of the legal profession, as one might expect, in regard to common law actions presently taken. They take action on instruction of their clients and advise them according to the law as it stands. If the law changes they will advise their clients in accordance with the law. One cannot blame the enthusiastic legal profession for large common law claims.

Be that as it may, it seems to us that this amendment, as well as the Hon. Mr Gilfillan's proposed amendment to clause 54, opens up greater opportunities for litigation and uncertainty than exist presently in the Bill. We oppose the amendment.

The Hon. I. GILFILLAN: I urge the Opposition to remain uncommitted, at least until I make some further remarks. I think it is quite wrong to believe that this opens up more scope for common law actions and will increase the costs involved, as the Bill currently allows both activities to occur; an injured worker can receive compensation in a lump sum as well as take action at common law. Does the Hon. Mr Griffin agree with that? As well as that, there is no statutory limit on the amount claimed at common law, and possibly achieved. On deliberation, the Hon. Trevor Griffin might realise that, assessing this on a cost saving basis alone, it does reduce the potential of costs awarded as far as the corporation is concerned.

In my opinion, it will reduce the number of common law actions, because an injured worker and his legal adviser will quite responsibly consider that if they do not do as well with a common law claim they will be worse off. Therefore, this is a reasonable statutory sum that has been worked out. I believe that this is an important provision in the Bill, and I support the $60 000 provision, which has been worked out in an endeavour to give fair compensation by means of a simple low cost method. It is preferable that as many claims as possible be settled through application of the schedule.

On the rare occasions when there might be good grounds for a limited action at common law, we feel that it is tolerable to leave this option in the Bill. However, it would be a pity to leave that option as it is, untouched. I understand that the Hon. Trevor Griffin and others may not have fully thought this through; I am sympathetic in that regard, and in no way is that a criticism, but I urge the honourable member to deliberate on this matter a little longer.

The Hon. K.T. GRIFFIN: Will the Attorney-General say why he opposes the amendment? I certainly want to place restrictions on the benefits that are being granted. My understanding of the Hon. Mr Gilfillan's amendment is that it really does not impose any limits. However, if I have misinterpreted the amendment, I am certainly prepared to reconsider the comments that I made earlier.

The Hon. I. GILFILLAN: I am referring to my proposed new subclause (3a), the last line of which provides:

> . . . the damages awarded in respect of that loss must not exceed 1.1 times the prescribed sum.

The Hon. K.T. GRIFFIN: I am certainly prepared to listen to further debate on the amendment. A major objective, as I indicated, is for us to keep the lid on compensation, and thus the cost of workers compensation. If the honourable member's amendment does that, I am prepared to change my mind. Perhaps the Attorney-General should indicate why he sees some difficulties with the amendment—so that we can have all the cards on the table.

The Hon. C.J. SUMNER: The amendment seeks not only to make the commutation of weekly payments dependent on the amount received as a statutory benefit for non-economic loss but also to take account of any compensation paid at common law. This would have the effect of delaying commutation and also of reducing the amount of weekly benefits that could be commuted. The proposal is considered unnecessarily cumbersome, because in my submission it only serves to reduce the amount that may be commuted and does not have any effect on costs; therefore, it should be opposed.

The Hon. I. GILFILLAN: The Attorney's comments are applicable to the proposal that liability may be commuted only after a worker has received compensation for non-economic loss and not to the wider topic of whether there should be the election (either/or) or in the concept of the ceiling of 1.1 times the prescribed limit. In other words, I understand that the Attorney's comments refer to the direct impact of my amendment on clause 42 (2) (*b*) and not to

the general concept of the option either to have common law or not, and the ceiling.

The CHAIRPERSON: I point out to the Attorney that we are also considering the amendments to clause 54. Both lots of amendments go together. We are treating the amendment to clause 42 as a test case for the totality of these amendments.

The Hon. C.J. SUMNER: We oppose the proposition in clause 54 whereby one must elect. The amendment to clause 42 is related to the amendment to clause 54 in that they provide for either entitlement to compensation or damages at common law. Therefore, my comments in relation to clause 42 are also applicable to clause 54. We say, first, with respect to clause 42 that the honourable member is delaying commutation. It does not have any effect on costs, whereas clause 54 may have. Our view is that there ought not to be an obligation on an employee to elect to go for either compensation or common law damages.

The Hon. I. GILFILLAN: There is a slight hiatus. There would be only a few cases where commutation was delayed. That would occur only where a person had elected for common law action and damages were awarded in that regard. This is a rather insignificant criticism of the amendment. I can appreciate that there is a more substantial argument in relation to elect either common law or compensation and also to the ceiling, but the effect on this amendment seems to be rather trivial.

The Hon. K.T. GRIFFIN: It is complex. From my consideration of the amendments in the course of this long consideration of the Bill my present position would be that I would not want to support the election but, under clause 54, I would be prepared to accept the limit on common law of 1.1 times the prescribed sum. It seems to me that, if these amendments are not carried, the only effect is to prevent the election, but it would not prejudice the other aspect of the Hon. Mr Gilfillan's amendments to clause 54 as to the limit on common law claims for non-economic loss.

I suggest that we do not take this amendment as being a test case for all the amendments to clause 54, but only to the extent that the amendments to clause 54 relate to the question of an election as to whether one takes a common law rate for non-economic loss or the division v compensation. The other question of the limit for the common law claim for non-economic loss, that is, 1.1 times the prescribed sum, is a separate issue. It seems that there are two separate issues in what the Hon. Mr Gilfillan is putting.

At the present time I am inclined to not accept the election but to support the limit, recognising that the whole issue is complicated and that we would want to have another look at it if, in fact, the Bill does not finally pass. Even if it does finally pass with the support of the Democrats, I presume that there would be a further opportunity to consider the matter because the House of Assembly will have to look carefully at the amendments made in this place. On the basis of not wanting to lose control of some aspects of this matter, so far I would not support the amendment relating to election, but I would support the proposed amendment to clause 54 in so far as it relates to a limit on the common law aspects of compensation.

The Hon. I. GILFILLAN: I stand to be corrected if I am under the wrong impression, but I understand that the Government intends to oppose my amendments to clause 54 totally.

The Hon. C.J. Sumner: Yes.

The Hon. I. GILFILLAN: Under those circumstances, and because of the Hon. Trevor Griffin's comments, it appears that there is no point in persisting with the amendment currently before us, and therefore I seek leave to withdraw it.

Leave granted; amendment withdrawn.

The Hon. I. GILFILLAN: I hope that there will be further consideration given by the Opposition to the totality of my amendments to clause 54, although the legal aspect has had adequate expression in the Hon. Mr Griffin's assessment. The option is aimed at restricting the activity in common law. I believe that the Opposition agrees with the Democrats that that is desirable, both in keeping down the costs and in streamlining the operation of the corporation.

Legal actions are not only expensive because of what is paid to the legal profession and the courts, but also because there is extra staff required by the corporation. I am strongly of the opinion that we want to restrict the activities at common law, and this is a disincentive but not, in our opinion, an unfair one. I realise that if there is a change of heart and we, in fact, enlist support for it, it is not impossible to come back to clause 42, so I would suggest that I withdraw all of my listed amendments to clause 42.

Clause passed.

Clause 43—'Lump sum compensation.'

The Hon. I. GILFILLAN: I move:

Page 28, lines 35 to 38—Leave out paragraph *(b)*.

This is a fairly clearly targeted amendment to remove from non-economic loss a feature mentioned in this paragraph which, I believe, is directly related to economic loss and, therefore, is totally inappropriate to be placed in this clause. Subclause (3) provides:

> Where a compensable disability in respect of which compensation is payable by way of a lump sum under subsection (1) is not mentioned in the third schedule, the lump sum shall be fixed by the corporation as a percentage (not exceeding 100 per cent) of the prescribed sum having regard to—
>
> *(a)* the nature of the disability;
>
> *(b)* the employment or occupation for which the worker was suited before the occurrence of the disability, and the employment or occupation (if any) for which the worker is suited after the occurrence of the disability;
>
> and
>
> *(c)* the extent to which the worker's ability to lead a normal life has been impaired by the disability.

Bearing in mind that this whole division is compensation for non-economic loss, paragraph *(b)* is specifically aimed at interpreting the economic impact of the injury, and we believe that it is therefore inappropriate to have it in this clause.

The Hon. K.T. GRIFFIN: My present view is to support the amendment as it seems a reasonable proposition.

The Hon. C.J. SUMNER: The Government opposes the amendment. Subclause (3) *(b)* provides one of the criteria to be used in determining the lump sum for non-economic loss in the case of a disability not on the maims schedule. The current Act does contain something similar; therefore, I oppose its removal.

The Hon. I. GILFILLAN: In comparing it with the current Act, I point out that the current Act does not have a pension system.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 29, lines 22 to 25—Leave out subclause (9).

This amendment is consistent with previous amendments. The Democrats are not happy about the Government having the opportunity to alter schedules without that being referred to Parliament. I do not think I need explain it further.

The Hon. K.T. GRIFFIN: I feel very strongly about this, as I have on previous occasions on similar issues. It is a matter of substance. It ought not be the subject of regulation, but ought to be presented as an amendment to the legislation if there is an intention to amend that schedule. I support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

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

Page 29—
Line 28—Leave out '$60 000' and insert '$30 000'.
Line 31—Leave out '$60 000' and insert '$30 000'.

This amendment will reduce the prescribed sum in relation to a disability from $60 000 back to $30 000, with $30 000 being the amount that was promoted by the Government in the white paper—Work Cover—on which it campaigned fairly vigorously prior to the election. Since the white paper, which was promoted as an agreement among employers, unions and the Government, there have been a number of changes to the level of benefits proposed by the Government, and now reflected in the Bill. One of them is the increase in the prescribed sum for non-economic loss from $30 000 up to $60 000, and the introduction of the common law aspect that we were debating a few moments ago in relation to clause 42 and the prospective clause 54.

This is one of the major issues on which we have been joining against the Government with a whole range of people in the community. We do not believe that with the provision for an indexed pension and the particular extension to allow certain common law claims that it is appropriate to increase the previously agreed figure of $30 000 to $60 000. We very strenuously promote this amendment.

The Hon. I. GILFILLAN: We oppose the amendment. We believe that the Bill incorporates substantial attempts to be fair, and the schedule allows for an upper limit of $60 000. It seems, particularly as it was our intention to restrict common law action both in its occurrence and its impact, that the schedule needs to be adequate and compassionately reflective of the non-economic loss that an injured worker suffers from various trauma. It seems to us that $60 000 will not substantially increase the cost of a fair compensation system. As it is the upper limit, it does not reflect what would be the amount involved in all compensation for non-economic loss. We consider that it is a reasonable level to incorporate in the Bill.

The Hon. C.J. SUMNER: The Government opposes the amendment. The current maximum lump sum payable under the maims table in the existing Act is $40 000. However, if it had been indexed since it was set at $20 000 in 1974 it would now be $65 538. A maximum of $60 000, which is set in the Bill for the concept of non-economic loss, which replaces the maims table, is a fair compromise. To reduce the amount to $30 000 would put the level of such benefits back 10 years. It would also be lower than the Victorian lump sum of $61 750.

The Hon. K.T. GRIFFIN: That still does not deal with the question relating to Work Cover—the so-called agreement which subsequently became a white paper. That agreement which was announced by the Premier as being one between employers, trade unions and the Government, clearly indicates that $30 000 was the figure involved. There has been no reasonable argument or reason presented by the Government, or anybody else, since the agreement became a white paper and was subsequently amended at the behest of the unions why it should be increased to double the amount that was then announced as the agreed figure.

The Hon. C.J. SUMNER: What I said before was not entirely applicable because under the present Workers Compensation Act a person must elect to either take the maims table or apply for redemption, whereas in this case there is a maims table and, in addition, a weekly benefit which under the existing Act is commuted into a lump sum which one can take only if one does not elect to take payment under the maims table. Therefore, the figures that I read out before, while correct, do overlook the fact that under existing law one must elect between the maims table and redemption for loss of weekly payments or loss of salary; that is, redeeming the weekly payments into a lump sum.

Under the Government's proposals there is an increase in benefits because a worker will now be entitled to get $60 000 in a lump sum for, in effect, the maims table and in addition continue to get a pension. Therefore, while the figures that I read out previously were correct, it overlooks the fact that those figures had to be elected for and taken either under the maims table or by way of redemption of weekly payments, whereas this proposal provides the worker with increased benefits by way of payments for both a maims table up to $60 000 and a continuing weekly pension payment.

The Committee divided on the amendment:

Ayes—(9) The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes—(10) The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.J. Elliott, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. M.S. Feleppa.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 44—'Compensation payable on death.'

The Hon. I. GILFILLAN: I move:

Page 30, line 3—
Leave out 'under Division V' and insert '(whether under Division V or at common law)'.

I understand this to be consequential on an amendment that was defeated earlier. However, I would like clarification from the Attorney-General whether it indeed is complementary, because it says:

(i) a lump sum equal to the prescribed sum less any amount that the worker received as compensation for non-economic loss under Division V;.

Perhaps Division V does cover adequately damages which may be awarded under common law without having the words 'or at common law' added. However, I would like to be assured of that. It may be a sensible amendment in its own right, regardless of my earlier amendment. I am getting the signal, 'No', so I think under those circumstances I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

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

Page 31, lines 5 to 9—Leave out all words in these lines.

Clause 44 (3) deals with the entitlement of a spouse to a lump sum, and the clause as a whole deals with compensation payable on death. Under subclause (3), the spouse is not entitled to a lump sum unless the spouse was cohabiting with the worker on the date of the worker's death, or the spouse was cohabiting with the worker within six months before the date of the worker's death and it is, in the opinion of the corporation, fair that the spouse should receive a lump sum under that provision.

It seems to me that the criterion should be cohabitation at the date of the worker's death. Cohabitation does not mean just residence, but has a much wider connotation in the law. If the spouse was not actually resident with the worker at the date of death, that does not preclude the operation of paragraph *(a)*, because cohabitation may still be established at law. It is therefore potentially open for abuse by the corporation if six months prior to the date of death is the time frame within which a lump sum may be paid to the surviving spouse at the discretion of the corporation.

The Hon. I. GILFILLAN: We oppose this amendment. We feel that it is a reasonable and understanding clause in the Bill.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 32—
Line 1—Leave out 'Where' and insert 'Subject to subsection (11a), where'.
After line 9—Insert new subclause as follows:
(11a) Where a child is by reason of a physical or mental disability, incapable of earning a living, the corporation may pay a supplementary allowance under subsection (11) during the period of incapacity even though the child has attained the age of 18 years.

These amendments attempt to show consideration for those who are caring for a child or a dependant who reaches the age of 18 years but still remains dependent because of incapacity. It would avoid the callous cut-off of consideration of those caring for a child who definitely needs the care and who could quite clearly argue the essential requirement of extra care. These amendments are aimed at allowing that situation to be covered.

The Hon. K.T. GRIFFIN: We support the amendments.

The Hon. C.J. SUMNER: The Government supports the amendments.

Amendments carried; clause as amended passed.

Clause 45—'Review of weekly payments.'

The Hon. I. GILFILLAN: I move:

Page 32—
Line 34—Before 'to reflect' insert 'subject to subsection (4a)'.
After line 36—Insert now subclause as follows:
(4a) If changes in the Consumer Price Index over the preceding 12 months referred to in subsection (4) *(b)* are not fully reflected in the rates of remuneration payable under awards, there shall be a corresponding reduction in the extent of the adjustment under subsection (4) *(b)*.

The Hon. K.T. GRIFFIN: I have an identical amendment and I indicate support for these amendments. As I understand it, the Hon. Mr Gilfillan has moved them only because his were on file first in time. They relate to the differences between the consumer price index and the rates of remuneration payable under awards, which are not necessarily a reflection of the consumer price index, concurrently with the increase in the consumer price index or for the whole of that consumer price index.

The rates of remuneration under awards may be discounted for amounts such as the estimated cost of devaluation in the Australian dollar, so the proposition is reasonable in an attempt to adjust compensation and weekly payments more in line with award increases in rates of pay than the CPI, which is frequently very much in advance of such wage increases under the industrial conciliation and arbitration system.

The Hon. C.J. SUMNER: The Government opposes the amendments and we have debated the measure previously.

Amendments carried; clause as amended passed.

Clause 46—'Incidence of liability.'

The Hon. I. GILFILLAN: I move:

Page 33—
Line 24—After 'incapacity' insert 'in respect of the particular disability'.
Line 26—After 'incapacity' insert 'in respect of the particular disability'.
Line 28—After 'where' insert 'in respect of a particular disability'.
Leave out 'commence' and insert 'occur'.
Lines 29 and 30—Leave out '(whether attributable to the same disability or not)'.

This provision deals with the employer's ability to pay the first week or part thereof in the case of a disability. As in the Bill, it would restrict the employer to the obligation to pay for up to one week. It might restrict it to only one payment, whether it is the full week or not, for a single employee. Our objection to that is that if there is the workplace situation whereby an employee suffers two or more disabilities from different causes in one year, there is no justification to protect the employer from paying up to the first week of disability compensation required for each.

There is a good feature of the Bill: the incentive for safety, the incentive for reducing accidents while requiring the employer to pay the first week's compensation. If it is a secondary injury—in other words, if the claim results from an earlier disability in the one year—it is fair enough that there be no obligation for the employer to front up with the wages lost. Without our amendment, the employer is protected from this obligation that we believe in the general terms and intention of the Bill is the employer's responsibility. We seek to amend this clause so that the employer will be responsible for paying wages of up to one week for any separate disability caused to any single employee in the course of a single year. But, the employer is still protected from paying more than the first week if the disability is a secondary or a recurrence of the earlier disability.

The Hon. R.J. RITSON: I oppose that. The Hon. Mr Gilfillan is displaying enormous ignorance of illness and disease. Where people have chronic or recurrent disabilities and they are undergoing rehabilitative programs, if this Act is to work at all it has to work towards restoring people to the work force. This includes trials of work, possibly with rehabilitation counsellors visiting the workplace and observing them. It requires employer cooperation, and it may require modification of the job.

In terms of the Hon. Mr Gilfillan's proposition, I cite the following instance. A patient may have been disabled for three weeks and underwent a trial at the same job, or at the new job, which that person may have been unable to perform; so he went off again, another modification was made involving lighter duties: that person, who might ultimately be got back to work, will simply be thrown on the scrap heap by the boss because he will have multiple absences from work during the rehabilitation process. Each time he is absent, the Hon. Mr Gilfillan's proposition will lumber the employer with that cost.

So that, a person perhaps being eased back into the work force after a major fracture may have seven or eight intermittent one week absences from work—there may be absences from one day to another for attendance at physiotherapists or splint makers—and the Hon. Mr Gilfillan's proposition will simply cause the permanent unemployment of people who would otherwise perhaps be able to get back into the work force due to graded reintroduction to work. It must be the first week and no more, for those reasons.

The Hon. I. GILFILLAN: The Hon. Dr Ritson has missed the point of my amendment. He has argued for precisely the intention of the amendment—in terms of rehabilitation and recurrence of a disability, there will be no imposition on the employer. We have recognised that, and I would argue for it again and again, because it is essential. However, the point of the amendment is to impact on the employer where the employee has suffered two or more completely separate accidents or disabilities. Under those circumstances, we are not arguing for the employer to be protected from the first week's obligation.

The Hon. K.T. GRIFFIN: As I understand the amendment—and maybe there is some confusion about it that we need to clarify—it really is directed only to clarifying the responsibility of an employer in relation to the first week's incapacity, and it does not broaden the liability of the employer, recognising that under the Bill the employer pays the first week of any incapacity arising from a particular injury at work. If this will have the effect of widening the employer's liability, I would not support the amendment. However, as I understand it, it is directed towards clarifying and ensuring that the liability of employers is not extended.

The Hon. R.J. RITSON: I thank the Hon. Mr Griffin for his clarification, which has lessened my anxiety.

The Hon. C.J. SUMNER: The Government does not support the amendment. Clause 46 deals with the question of employers being responsible for the first week's payment in relation to compensable disability. The provision in the Bill was to limit the employer's liability to one week per calendar year per employee. That would be altered by the Hon. Mr Gilfillan's amendment by providing that the employer would be responsible for one week's payment for every disability suffered by an employer during a particular year, even though the second disability may have been a recurrence of an earlier incident.

The Government proposes in clause 46 to limit it to one week per employee per year on advice from Victoria, where problems had arisen with the first week provisions because employers were claiming further disability in a particular year relating to an earlier disability and therefore avoiding paying the first week. The Government's Bill decided to take a clear unequivocal approach to this matter, in order to avoid dispute over these issues, by limiting the employer to one week per annum.

Because the amendment could lead to an increased number of disputes as to who was responsible—the corporation or the employer—the amendment is opposed. It may be superficially attractive, but in practical terms it could lead to disputes as to who was going to be responsible for payment. The employer being limited to one week per annum does not mean that the worker is deprived of any payment but that the corporation is responsible for paying. For practical reasons the Government opposes the amendment because the clause presently provides a degree of simplicity and a minimisation of disputes.

The Hon. I. GILFILLAN: That is a fair amount of gobbledegook. If the whole point of the Bill is purely convenience, either the aim of it becomes completely submerged in a foreseen inability to do the thing properly or it is an avoidance of or escape from the obligations to apply it properly. The obligation for an employer for an originally caused disability is to cover the first week's wages. I have not heard that argued anywhere, yet in this clause that liability will occur only once in a calendar year, no matter how many accidents arising from all sorts of causes may result from the employers' negligence or irresponsibility: they could not care less, as their claims would not be affected.

The real deterrent is having to pay that first week's wages, and they will be excused from doing that. From the fact that it is pinned on the same calendar year, it appears that they will be obliged to pay the first week if a recurrence or secondary injury happens between 31 December and 2 January or whatever dates are applicable. As currently worded, it is a fatuous clause and mitigates against one of the prime aims of the Bill, namely, to encourage safety in the work place. It will be unfortunate if it is not amended.

The Hon. K.T. GRIFFIN: All that seems to have clarified the matter in my mind; I am sorry I was not as quick on the uptake as perhaps I should have been.

The Hon. C.J. Sumner: You usually are.

The Hon. K.T. GRIFFIN: I am not so bold as to make that assertion. On the basis that the Bill provides a maximum of one week for any employee in a particular year being picked up by the employer, that is accepted by me and the Opposition. I now understand fully what the Hon. Mr Gilfillan is putting, and that could have a very substantial impact on employers where a series of accidents are experienced by one worker in a particular year. On the basis that I hope that I now understand the matter fully, I oppose the amendments.

Amendments negatived.

The Hon. I. GILFILLAN: I move:

Page 34, line 14—After 'work' insert 'that results from that disability'.

If amended as suggested clause 46 (9) would provide:

No compensation by way of income maintenance is payable to a disabled self-employed worker whose disability arises from self-employment in respect of the first week of incapacity for work that results from that disability.

I am applying the argument that I put in relation to earlier amendments referring to a person who is self-employed and covered by the Work Cover system.

The Hon. R.J. RITSON: I ask the Hon. Mr Gilfillan to consider that this is a rehabilitation Bill, even though only a page and a half of its 70 pages deal with rehabilitation. Rehabilitation is referred to prominently in the title of the Bill. To penalise an employer recurrently throughout the year for allowing a person to return for a trial of work, which may fail with the worker requiring a further period off work for the same disability but eventually resulting in rehabilitation, would mean that the employer would just not have the fellow back. There is enough of that going on now. In my practice—

The Hon. I. Gilfillan: Is this relevant?

The Hon. R.J. RITSON: This is very relevant. It is a very important matter. In my practice I have noticed for many years that some employers have no concern at all for rehabilitation. When one gives a patient a certificate for light duties, the employer's understanding and interest in trying to provide light duties is zero. The patient usually returns two days later with a certificate and the comment that the boss said, 'Go home and stay away. If you are not fit for your usual job, I do not want to see you until you are better.' That is a common employer reaction to sickness—'I do not want to know about it or understsand it.' Commonly enough, the doctor accepts that without going to the workplace and finding out what the patient can do there.

One of the good things about the Bill is that it provides for a program involving people skilled in ergonometrics and other areas who go into the work situation and try to place a worker being rehabilitated in a job for a trial period. The Hon. Mr Gilfillan is saying that whenever such a trial fails on a temporary basis and the worker needs two more weeks of physiotherapy, before trying again, or some such incident, the employer is again up for the first week. I believe that the Hon. Mr Gilfillan's amendment is moved out of his understandable lack of knowledge of sickness and rehabilitation. I do not expect him to be professionally trained in this area—I am, and I have seen these cases across my consulting desk for 20 years, and I know about it. I know that employers will aviod these people like poison if the amendment passes. The Hon. Mr Gilfillan's amendment attempts to throw thousands of people on to the unemployable scrap heap. The amendment is just not acceptable.

The Hon. I. GILFILLAN: In reply, I believe both the Hon. Bob Ritson and the Attorney-General (whom I heard interjecting in support of the statements) are suffering from a recurrence of a previous disability, and that is failure to understand the intention of my amendment. There is absolutely no consequence of my amendment which would prevent an employer from engaging an injured worker and being absolutely unaffected by either a recurrence of that disability or an inability for that worker to continue: and that is the avowed intention of the Democrats, that that should remain in the Bill. It has nothing to do with that at all; it relates purely to the employer who may have a dangerous workplace.

Whether or not an employee is back there rehabilitating from a previous injury, the employee is exposed to more than one hazardous situation and he could suffer a com-

pletely original and unique disability. If the employee suffers more than one injury in one 12 month calendar period (which seems to be a God ordained time span), the employer is not responsible for the first week. That is a wonderful bit of illogic! I understand the logic behind it—convenience of operation and avoidance of some degree of dispute. To argue it on the philosophical grounds of the Hon. Bob Ritson, and goaded on by an unaware Attorney (who seems to be having a little sport), may be entertaining to fill in the time, but it is not relevant to my amendment.

The Hon. R.J. RITSON: The Hon. Mr Gilfillan speaks as though the problem of distinguishing old injury from new injury is simple. The Attorney-General is correct—there is an enormous area of dispute. If one has an injured right leg and returns to work and suffers a pain in the left leg, is that a new injury or is it because you are favouring one leg because of an old injury? The opportunity for dispute is enormous. The Attorney is correct when he says that we will create insoluble problems if we go down this track.

Amendment negatived; clause passed.

Clause 47 passed.

Clause 48—'Payments by corporation on behalf of defaulting employer.'

The Hon. I. GILFILLAN: I move:

Page 34, line 28—Leave out 'may' and insert 'is entitled to'.

This amendment is in keeping with our attempt to amend the Bill so that there is an opening for and an encouragement to the corporation to recover debts owed to it when it so chooses, and in this case to encourage it to do so, where the corporation has paid compensation on behalf of the employer.

There should be a stronger inducement for the corporation to take action and, if we delete the word 'may' and say that the corporation is entitled to recover, that will be achieved. It may be an easier course of action in some circumstances for the corporation not to recover, and it may so choose, but we do not want to leave it as a soft option because employers who pay premiums are entitled to be assured that the corporation will attempt to recover debts where it has fulfilled the liability and obligations of an employer. This amendment seeks to achieve that. The following amendment is consequential.

The Hon. K.T. GRIFFIN: I am happy with the amendment, which is really pedantic and is not necessary at all. However, the next proposed amendment is of some substance, and I am happy about that.

Amendment carried.

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

Page 34, line 32—Delete paragraph *(c)*.

I am slightly disturbed by the fact that a penal clause provides that the amount of penalty be fixed in accordance with the regulations. The employer will, first, be forced to make payment through the corporation, secondly, a fee will be imposed as a penalty upon the employer and, thirdly, there will be a statutory penalty, in effect a minor criminal penalty. I am disturbed that that should be left to regulation made by a QUANGO and therefore I ask the Attorney to consider deletion of paragraph *(c)*.

The Hon. K.T. GRIFFIN: That is reasonable. No penalty for breach of the statute should be fixed by regulation. It is appropriate to fix a penalty in the regulations for breach of regulations, but a penalty for breach of a statute should be fixed in the statute. I support the amendment. In conjunction with that, the word 'and' should be deleted.

The Hon. I. GILFILLAN: I am in sympathy with the move to remove the penalty being fixed by regulations, but I believe that it is appropriate that a penalty should be there. Perhaps the Government can suggest wording by which we could vary it and still keep it there.

The Hon. C.J. SUMNER: It is not a matter that we can resolve immediately. People will have to take their own options.

The Hon. I. GILFILLAN: We will support the deletion of that paragraph.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 34, after line 32—insert new words as follows '(and the corporation shall take all reasonable steps to recover that debt)'.

I think I have argued to this amendment before: you were going to put it again.

Amendment carried; clause as amended passed.

Clause 49—'Corporation may undertake employer's liability to make weekly payments.'

The Hon. I. GILFILLAN: I move:

Page 34, lines 37 to 43 and page 35, lines 1 and 2—Leave out subclauses (2) and (3).

I am pleased to see that a similar amendment is on file from the Hon. Trevor Griffin. This is an attempt to protect an exempt employer from arbitrarily losing the right to pay weekly payments to injured workers and have that taken over by the corporation. We believe that the exempt employer is a very important part of the workers rehabilitation and compensation system as we hope will apply in South Australia.

Exempt employers will be accepted having been given thorough scrutiny and complied with certain basic requirements. Having reached that status, we believe that they should then be accepted as being capable of continuing to fulfil their obligations quite adequately.

If they are in default, there are other areas in the Bill in which certain operations can be removed from them or, in fact, they can be deregistered as exempt employers. We believe that it should be their decision whether they wish to continue with weekly payments after a three-year period and that it should not be open to the corporation. Subclause (2) provides:

Because we are not in favour of clauses (2) and (3) remaining in the Bill, I have moved for their deletion.

The Hon. C.J. SUMNER: This amendment seeks to remove subclauses (2) and (3) which would have enabled the corporation to request an exempt employer to pay a lump sum to redeem the future liability of those workers suffering permanent incapacity.

The object of the Government's provision is to ensure that sufficient funds are available to meet the liabilities to workers which may stretch over 20 or 30 years. While many exempt employers would still be in the market after that period of time, it was considered responsible to ensure that those long term liabilities were properly funded where there were any doubts about a particular exempt employer's long term existence.

The Hon. K.T. GRIFFIN: I have some sympathy for that principle. However, the difficulty is that the provisions of subclauses (2) and (3) allow the corporation unilaterally to require this, and the exempt employer has no say in it at all.

The Hon. I. Gilfillan: Subclause (1) gives one the option to do it mutually.

The Hon. K.T. GRIFFIN: That is right. However, subclauses (2) and (3) have a unilateral assumption by the corporation of responsibility for the injured worker, and the only way in which the exempt employer can react is to argue about the lump sum before the tribunal. That is not much of an option. That lump sum might be a crippling amount and would put those who are exempt employers out of business. The whole concept of an exempt employer or a self insurer is a body which has stability and the capacity to meet obligations towards its injured workers, in terms of both compensation and rehabilitation. I think that

subclauses (2) and (3) are ill conceived. As I have identical amendments on file, I support the Hon. Mr Gilfillan's amendment.

Amendment carried; clause as amended passed.

Clause 50 passed.

Clause 51—'Duty to give notice of disability.'

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

Page 35, line 23—Leave out paragraph *(a)* and insert paragraph as follows:

(a) If practicable within 24 hours after the occurrence of the disability but, if that is not practicable, as soon as practicable after the occurrence of the disability;.

This clause seeks to ensure that notice of a disability suffered by a worker is given to the employer by whom the worker is employed at the time of the occurrence of the disability or, if the worker is not then in employment or is self employed, then to the corporation. Subclause (2) *(a)* provides that the notice of disability is to be given as soon as practicable after the occurrence of the disability. There are then certain other time limits within which the notice is to be given.

From the point of view of the employer, it is important to have the notice of disability from the employee at the earliest opportunity. The concept of acquiring that notice as soon as practicable leaves it open to some debate as to what is as soon as practicable. My amendment seeks to fix a time limit of 24 hours but also, as a standard, gives an option of some time after that if it is not practicable to give it within 24 hours.

For example, there may be someone injured on an oil drilling rig and it may not be practicable to give notice within 24 hours. That, therefore, can be done as soon as practicable after the occurrence of the disability. In ordinary circumstances, 24 hours ought to be the general standard time within which notice is required to be given to an employer.

The Hon. I. GILFILLAN: We oppose this amendment. The eminently desirable word 'practicable' that the Hon. Mr Griffin wanted included in the legislation is there as clear as daylight. There will obviously be all the desired impetus for a worker to get notice to the right place as soon as possible. The amendment tends to have a whiff of suspicion of workers in this context and is quite inappropriate.

The Hon. C.J. SUMNER: We oppose the amendment.

Amendment negatived.

The Hon. R.J. RITSON: I have a question of the Attorney-General about notification. I did not move to add anything to this clause because I thought that I might be able to get an indication from the Government about how the service would work in terms of the time scale that elapsed before rehabilitation services commenced.

The Victorian Accident Rehabilitation Council, which is set up separately from the commission under the Act, is required by regulation to examine the rehabilitation program in respect of workers who are disabled for more than 21 days. People with various degrees of professional expertise who have lobbied me have been keen to see a requirement in either our Act or regulations which will result in people being called up and their situation being reviewed if they are off work for more than 21 days, the reason being that amongst those patients will be some who will be rehabilitatable if certain matters are detected and dealt with at that stage.

However, if situations are allowed to become chronic the opportunity for rehabilitation will be lost. It is considered very important that the assessment of rehabilitation programs commences within about three weeks of an injury which has the potential to become chronic or permanent. Rather than move that the corporation shall institute a rehabilitation program within 21 days, I ask the Attorney-General what method of reviewing patients early after they receive notification under this clause will the corporation institute. Will he explain the time scale within which the first assessment of rehabilitation possibilities will be made and whether or not there will be any regulations requiring them to be made within a certain time scale, for example, three or four weeks from date of injury?

The Hon. C.J. SUMNER: The point made by the honourable member is obviously an important one. There is nothing in the Bill to indicate that rehabilitation should be identified and commenced within a particular time. What happens will depend on the future policy of the corporation. Obviously, the corporation is responsible for obtaining costs and ensuring that premiums do not become excessive, and it is therefore beholden on the corporation to take action as quickly as possible to assist in the rehabilitation of the worker. I am not able to give any specific answers to the honourable member's question, except to say that I agree with his comments and that will be a matter determined by the corporation once it is established.

The Hon. R.J. RITSON: Is the Minister able to give me an assurance that he will discuss with his colleagues in Government and at least attempt to persuade them that the Government will use its influence with the new commission to establish a provision similar to the Victorian Accident Rehabilitation Council 21 day provision? I am only asking him to assure me that he will speak to his colleague in another place and have the matter discussed. The VARC was created under the Act with regulation making powers. It is a 21 day provision. The initial notification is obtained as in this clause. If a person is not back at work within 21 days, the council examines the case. I am only asking for an assurance that the Minister will speak with Mr Blevins and do what he can by persuasion to lobby for some similar approach to be taken by the new corporation using what influence he can bring to bear. That is better than moving amendments.

The Hon. C.J. SUMNER: I can go further than that for the honourable member. I will not lobby Mr Blevins; I can indicate now that the Government accepts it as a desirable principle. Whether or not it is 21 days depends, of course, on the commission, but it is certainly accepted as a principle that rehabilitation should be commenced as quickly as possible, and that is what we will endeavour to do.

Clause passed.

Progress reported; Committee to sit again.

WORKERS REHABILITATION AND COMPENSATION BILL COSTINGS REPORT

The House of Assembly intimated that it did not concur with the resolution contained in message number 43 from the Legislative Council.

[*Sitting suspended from 12.45 to 2.20 p.m.*]

WORKERS REHABILITATION AND COMPENSATION BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1013.)

Clause 52—'Claim for compensation.'

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

Page 37, lines 36 to 39—Leave out all words in the definition of 'prescribed period' after 'arises' in line 36.

Subclause (7) defines 'prescribed period' as a period of six months commencing on the day on which the entitlement to make a claim for compensation arises. The subclause then goes on to qualify that and states:

. . . if the claimant is not immediately aware that an entitlement to make a claim exists, the period of six months commencing on the day on which the worker becomes so aware.

This all relates to the making of a claim for compensation and it is generally a six month period within which the claim must be made. I am perturbed by the qualification to the definition of 'prescribed period' because it is then a matter for the worker who might be out of time to say that he or she only became aware of it on such and such an occasion.

It is entirely subjective and only within the knowledge of the worker. If claims dangle around for a long time (and the period of six months is largely calculated from the date upon which a worker becomes aware of it), that will not help the corporation or employers. I think it is too flexible and needs to be fixed at six months.

The Hon. C.J. SUMNER: The Government opposes the amendment.

The Hon. I. GILFILLAN: As I believe the amendment has some merit, I will support it.

The Hon. C.J. Sumner: Are you deleting all the words?

The Hon. K.T. GRIFFIN: I am deleting all the words in line 36 after the word 'arises'. What the prescribed period will be if the amendment is carried is the first three lines of the definition, as follows:

'prescribed period', in relation to the making of a claim in pursuance of this section, means the period of 6 months commencing on the day on which the entitlement to make the claim arises.

Those lines will remain, but they are the only words that will remain in the definition.

Amendment carried; clause as amended passed.

Clause 53 passed.

Clause 54—'Limitation of employer's liability.'

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

Page 38, lines 26 to 31—Leave out subclause (1) and insert subclause as follows:

(1) Subject to subsection (2), no liability (except a liability under this Act) attaches to an employer in respect of a compensable disability arising from employment by that employer unless the circumstances giving rise to the disability were attributable to recklessness or gross negligence on the part of the employer.

The CHAIRPERSON: This clause has already been debated; it is a consequential amendment.

The Hon. K.T. GRIFFIN: With respect, that is not entirely correct. We certainly referred to clause 54, but at that time I made the point that there were really two issues. One was related to the series of amendments proposed by the Hon. Mr Gilfillan which sought to provide a right to elect whether there would be a claim for compensation for economic loss or a common law action. The other was whether or not there should be a limitation on the common law claim for damages for non-economic loss to the extent of a maximum of 1.1 times the prescribed sum.

We dealt with the first issue. I indicated on that occasion that I was not persuaded that there ought to be an opportunity for an election to be made by the injured worker, but that I would give some further consideration to it. I indicated also that I was certainly sympathetic to some limit, as suggested by the Hon. Mr Gilfillan, to the amount that could be recovered in a common law claim for non-economic loss. So, to a certain extent the issues have been canvassed, but I have an amendment to subclause (1) which is not really related to those two arguments, in the sense that my amendment seeks to give a right to pursue a common law claim for non-economic loss only where it is established that the circumstances giving rise to the disability were attributable to recklessness or gross negligence on the part of the employer. Quite frankly, that limits the opportunity to pursue common law claims for non-economic loss even more than the Hon. Mr Gilfillan's proposed mathematical limit of 1.1 times the prescribed sum.

So, I still wish to pursue my amendment to subclause (1) and whether or not it is successful I still wish to pursue and support part of the Hon. Mr Gilfillan's subsequent amendments which propose a limit of 1.1 times the prescribed sum on the amount of compensation that can be recovered for non-economic loss. If it is appropriate, I move my amendment, as follows:

Page 38, lines 26 to 31—Leave out subclause (1) and insert subclause as follows:

(1) Subject to subsection (2), no liability (except a liability under this Act) attaches to an employer in respect of a compensable disability arising from employment by that employer unless the circumstances giving rise to the disability were attributable to recklessness or gross negligence on the part of the employer.

Lines 36 to 39—Leave out subclause (3).

My amendment has the effect of limiting those common law claims to situations where there is recklessness or gross negligence on the part of the employer.

The Hon. I. GILFILLAN: I understand that my colleague may have a question or some curiosity about the amendment. I am not attracted to this amendment if this is what, in your direction, Madam Chair, we are discussing. Are we discussing the Hon. Trevor Griffin's amendment to subclause (1)?

The CHAIRPERSON: Seeing there are two proposed alternatives to subclause (1), both should be discussed at the same time. The Hon. Mr Gilfillan's amendment was received by the table before that of the Hon. Mr Griffin. When it comes to putting the question I would first put the question that subclause (1) stand as printed. If that is lost, then I would put the question that the new subclause proposed to be inserted by the Hon. Mr Gilfillan be so inserted. If that is passed, in effect the Hon. Griffin's amendment is negatived, but if the insertion proposed by the Hon. Mr Gilfillan is not passed, the insertion proposed by the Hon. Mr Griffin can be put.

The Hon. I. GILFILLAN: As far as the procedure goes, it would be very much easier if we work along the track and I get an indication from the Hon. Trevor Griffin of whether he intends to oppose my amendment to give the option, in which case we might as well streamline the proceedings and I will not proceed with any amendments that link to that, whcih will save the time of those being presented. If that is the case, I will apply my remarks to that and seek your cooperation in that, Madam Chair.

The Hon. K.T. GRIFFIN: I indicated earlier that I remain to be persuaded that an election by a worker ought to be supported, that is, an election either to proceed for a common law claim for non-economic loss or to proceed by way of a lump sum for compensation under division V of the Bill. That is still my position but, as I indicated, that is only one part of the matters raised by the Hon. Ian Gilfillan. The other refers to subclause (3a) and that is a matter which, if I am not successful with my amendment, I would be inclined to support.

The Hon. I. GILFILLAN: I will not be proceeding with the other amendments to clause 54 except that to subclause (3a) which I will move later. While I am commenting on this. I indicate that I intend to oppose the Hon. Trevor Griffin's amendment to replace subclause (1). I am not persuaded that it is a fair measure. Rather than a person having an arbitary choice in making a decision that a disability was attributable to recklessness or gross negligence on the part of the employer, I think a court ought to

determine that. It should not be a restraint as to whether an employee chooses to take common law action. I will oppose that amendment and will seek support for my proposed new subclause (3a).

The Hon. C.J. SUMNER: The Government opposes the Hon. Trevor Griffin's amendment to insert new clause 54 (1), which limits common law claims to recklessness or gross negligence. That provision would to some extent bar common law claims, as it would be difficult to prove that an employer was reckless or grossly negligent. This is something of a turnaround from the Opposition's previous position, which was to retain common law for economic loss as well. That was its earlier policy in that respect. The Government believes that the retention of the residual right for non-economic loss at common law is reasonable. The amendment would constitute a significant restriction on that.

The Hon. K.T. GRIFFIN: The amendment does seek to place a restriction on the right to recover at common law. One has to remember that the Government's own package of benefits has been quite radically extended as a result of some lobbying by the unions prior to the State election, and subsequently. We in the Opposition have to endeavour to find some reasonable alternative on the basis that the benefits, as indicated by the Attorney-General prior to the lunch adjournment, are better than those in the present Act. We also need to find mechanisms by which premiums can be kept down. The benefits under this Bill are quite substantial, and we take the view that, in relation to common law, if an employer has been reckless or grossly negligent and an injury ensues that is a point at which the common law right ought to cut in. If both the Government and the Democrats propose not to support my amendment, I see where the numbers lie and I will not call for a division if I lose it on the voices.

Amendment negatived.

The Hon. K.T. GRIFFIN: My foreshadowed amendment to leave out subclause (3) is consequential on the amendment which I have just lost, so I do not wish to proceed with that.

The Hon. I. GILFILLAN: I move:

Page 38, after line 39—Insert new subclause as follows:

(3a) Where an action is brought at common law against an employer for damages for non-economic loss arising from a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2)), the damages awarded in respect of that loss must not exceed 1.1 times the prescribed sum.

The CHAIRPERSON: The Hon. Mr Griffin is moving an amendment to leave out subclause (3).

The Hon. K.T. GRIFFIN: That amendment is really consequential on the amendment that I just lost, as I see it. So I do not wish to proceed with the amendment.

The CHAIRPERSON: The amendment before the Chair is to insert new subclause (3a).

The Hon. C.J. SUMNER: The amendment would limit the right to sue at common law for damages for non-economic loss. In that respect the amendment is no different from the Government's provision under subclause (1). The Democrats amendment limits the amount that can be achieved at common law to 1.1 by the prescribed sum, that is, to a maximum of 10 per cent on whatever the prescribed sum for non-economic loss may be at any point in time. The Government's provision would not apply in a great number of cases and would arise only where a worker had suffered extreme pain or suffering or substantial loss of the amenities of life. It is predicted that the extra cost would be marginal but would provide some extra benefits to those suffering extreme non-economic loss. The amendment is opposed because it constitutes a restriction on common law entitlements. It is a restriction which is unacceptable.

The Hon. K.T. GRIFFIN: On several occasions I have indicated that I am inclined to support the amendment, because it contains a restriction on benefit in line with previous amendments, which the Opposition has lost, to place a restriction on the common law right. We support the amendment.

The Committee divided on the amendment:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan (teller), K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (8)—The Hons G.L. Bruce, B.A. Chatterton, M.S. Feleppa, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. J.R. Cornwall.

Majority of 3 for the Ayes.

Amendment thus carried.

The Hon. C.J. SUMNER: I move:

Page 39—

Line 2—After 'paid' insert 'or payable'.

Line 5—Leave out 'or other compensation'.

Lines 6 to 9—Leave out all words in these lines after 'compensation' in line 6 and insert 'is paid or payable is entitled to recover the amount of the compensation in accordance with subsection (5a)'.

Line 15—After 'paid' insert 'or payable'.

Lines 17 and 18—Leave out all words in these lines after 'corporation' in line 17 and insert 'is entiteld to recover the amount of the compensation in accordance with subsection (5a)'.

After line 17—Insert subclause as follows:

(5a) Where—

(a) compensation is paid or payable to a person ('the injured party') under this Act;

(b) the injured party has received, or is entitled to, damages from another person ('the wrongdoer') in pursuance of rights arising from the same trauma as gave rise to the rights to compensation under this Act;

(c) the person by whom the compensation is paid or payable under this Act ('the claimant') is entitled to recover the amount of the compensation by virtue of subsection (4) or (5),

then the following provisions apply:

(d) the claimant is entitled to recover the amount of compensation paid or payable under this Act from the wrongdoer or the injured party but subject to the following qualifications:

(i) no amount may be recovered from the wrongdoer in excess of the wrongdoer's unsatisfied liability to the injured party;

(ii) the claimant must exhaust its rights against the wrongdoer before recovering against the injured party;

and

(iii) no amount may be recovered from the injured person in excess of the amount of the damages received by the injured party;

(e) the claimant shall, on giving notice to a wrongdoer of an entitlement to recover compensation under this section, have a first charge, to the extent of the entitlement, on damages payable by the wrongdoer to the injured party;

(f) any amount recovered by the claimant against a wrongdoer under this subsection shall be deemed to be an amount paid in or towards satisfaction of the wrongdoer's liability to the injured party;

(g) an action for the recovery of compensation under this subsection—

(i) may be heard and determined by the Industrial Court;

and

(ii) must be commenced within 3 years after the date of the trauma referred to in paragraph *(b)*.

These amendments are interrelated. They arose after advice from the SGIC that the Bill should continue to provide for matters contained in section 84 of the present Act. In particular, an amendment is required to ensure that the cor-

poration can recover moneys paid to a claimant by virtue of the settlement of a common law claim against a third party. Experience has shown that a worker may negotiate a settlement of such a common law claim without informing the workers compensation insurer and also recover against the employer and hence the insurer for workers compensation. That can lead to double compensation and the appropriate solution is to allow the employer or insurer to cover an amount equal to the workers compensation payments. This amendment will vest the corporation and an exempt employer with appropriate powers in relation to this set of circumstances.

The Hon. K.T. GRIFFIN: I generally accept the principle, as I understand it, and that is to allow recovery by the employer of the first week's salary: the exempt employer or the corporation having paid out compensation, to recover from some other party who might have a liability to the injured worker to the extent of any outstanding liability by that other party to the injured worker, and, to the extent that the injured worker has been paid out by some other party, to recover from the injured worker. Is that the correct perception of this clause?

The Hon. C.J. SUMNER: That is the correct understanding of the situation.

Amendments carried.

The Hon. C.J. SUMNER: I move:

Page 39, after line 19—Insert definition as follows:

'damages' includes any form of compensation payable apart from this Act in respect of a compensable disability.

The CHAIRPERSON: The Hon. Mr Gilfillan also has an amendment, or or is this one of the amendments that he does not wish to move?

The Hon. I. GILFILLAN: I do not intend to proceed with the amendments dealing with page 39 after line 19, but I will proceed with that after line 31.

The CHAIRPERSON: The Attorney-General has already spoken to this amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 39, after line 31—Insert definition as follows:

'prescribed sum' means the amount that, at the time of the occurrence of the disability that gave rise to a liability at common law for non-economic loss, was the prescribed sum for the purposes of division V.

This is necessary because of the success of my amendment to insert new subclause (3a), and I understand that the definition of 'prescribed sum' is properly placed there.

The CHAIRPERSON: This is consequential on new subclause (3a).

Amendment carried; clause as amended passed.

Clauses 55 to 58 passed.

Clause 59—'Registration of employers.'

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

Page 41, line 14—Leave out '$10 000' and insert '$3 000'.

The amount of $3 000 was the penalty in the draft Bill dated 19 December 1985 and circulated by the Government. It is pretty rough to have a maximum penalty of $10 000 for an employer who is not registered by the corporation. Many people in the community have someone in to do a bit of gardening, the house cleaning, ironing or some other odd job not associated with a business activity.

My interpretation of the Bill is that everyone in that situation has to register as an employer. I think that is petty bureaucracy, and I have already addressed some comments to that during the second reading debate. It is pretty rough for that sort of person to be liable to a maximum penalty of $10 000 for not having registered with the corporation. An amount of $3 000 is bad enough in those circumstances, but at least it is better than $10 000.

The Hon. I. GILFILLAN: I look forward to the Attorney's remarks. I naively relied on the definition of 'employment' which, in part, states:

. . . casual work that is not for the purposes of a trade or business carried on by an employer . . .

The fear that the Hon. Mr Griffin is attributing to this should, therefore, not apply.

The Hon. Diana Laidlaw: Have you read the definition of 'employer'?

The Hon. I. GILFILLAN: I look to the Government to assure us of this. If it is wrong let us straighten it out. If I was an employer I would not want to be paying premiums when other employers were not. That is not the way that I want the game played. Bearing in mind the amounts of money that are paid in premiums for workers compensation, $3 000 is a fair enough risk to take, and I think $10 000 is probably an appropriate penalty.

The Hon. C.J. SUMNER: Clause 59 deals with registration of employers and requires employers to register with the corporation, as has been said. I accept what the Hon. Mr Gilfillan says. The penalty is quite heavy and is imposed for each worker employed in the event of non-registration by an employer. Under-declaration of payroll avoidance is a major problem and must be met by reasonable penalties. In Victoria, it is estimated that the level of under-declaration or avoidance is as high as 35 per cent of payroll.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It is the same principle.

The Hon. K.T. Griffin: It has nothing to do with it; it is only the registration of an employer.

The Hon. C.J. SUMNER: I know, but if one is not registered then one is presumably avoiding payroll and paying one's appropriate share of premiums, so it is related in that sense. It is one part of fixing the problem that could lead to cuts in premiums for those employers who properly declare their payroll.

The Hon. K.T. GRIFFIN: I can appreciate the concern about employers in business not registering, but I do not think that that adequately deals with the problem to which I have referred. I have a recollection that during the second reading debate the Attorney-General indicated in response to a matter raised by the Hon. Robert Lucas that, in fact, the Bill did apply to the casual domestic employment situation.

It may be that, if a professional gets somebody in to do some domestic work on the basis that the professional person can go out to work full time, that situation is caught: it is certainly part of the whole employment circumstances of that professional. I still have some real concern about the way in which this clause will render somebody liable to a maximum penalty of $10 000.

Amendment negatived; clause passed.

Clause 60—'Exempt employers.'

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

Page 42, lines 5 and 6—Leave out paragraph *(f)*.

This amendment seeks to delete paragraph *(f)* of subclause (4), which states:

(4) In determining whether it is appropriate to register an employer or a group under this section, the corporation shall have regard to the following matters:

It then mentions a number of technical matters. Paragraph *(f)* states:

(f) the views of any registered association that has, in the opinion of the corporation, a proper interest in the application;

This suggests that the corporation will allow unions to have a say on whether or not it is necessary for an employer to be registered either as an employer or as a group. It is certainly open to employer associations as well as employee associations. From all I have seen of the way in which this Bill has been put together, it will certainly be more likely

that with a Labor administration the unions will have considerable input into whether or not an employer has to be registered. I oppose it and see no reason at all why the corporation cannot make its own decision on the basis of the objective criteria set out in the other paragraphs of this subclause, and that is the proper place for the decision to be made. If there is to be any input by registered associations of employees or employers that can be done at the board level of the corporation where there are already representatives of both groups of persons to assist in the deliberations of the board. The provision is superfluous. It may well have some sinister connotations and for those reasons I move for its deletion.

The Hon. I. GILFILLAN: We support the amendment, not necessarily endorsing all the remarks of the Hon. Trevor Griffin.

The Hon. C.J. SUMNER: The Government opposes the amendment. It really highlights the Opposition's obsession with trying to ensure that unionists and people representing workers in industry are kept out of any decision making procedures, and accordingly, we oppose the amendment.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 42, lines 9 and 10—Leave out paragraph *(a)* and insert paragraph as follows:

(a) is subject to—

(i) a condition that the exempt employer shall not exercise any power or discretion delegated to the exempt employer under this Act arbitrarily, capriciously or oppressively;

and

(ii) such other terms and conditions as the corporation determines or as are prescribed by the regulations;.

This amendment is aimed at improving the independence of exempt employers from the Bill as it currently stands. The point at issue is whether an exempt employer should be completely deprived of the powers that are granted under clause 63 in a fairly draconian and arbitrary form. Clause 60 (5) *(a)* presently provides that registration of an exempt employer may be made subject to terms and conditions determined by the corporation or prescribed by regulation. My amendment is to expand subclause (5) *(a)* by dividing it into two paragraphs: first, the condition relating to delegated powers and, secondly, other terms and conditions determined by the corporation or prescribed by the regulations, as appears currently in clause 60 (5) *(a)*. I know what the intention is and I assume the amendment has been drafted to achieve it. I apologise for being somewhat vague about its interpretation, but may be in discussion we can get it sorted out.

The Hon. C.J. Sumner: It relates to clause 63.

The Hon. I. GILFILLAN: Yes, depending on what we want to do with the whole relationship between the corporation and the exempt employers. We do not believe that the corporation should have the right only of complete withdrawal of registration as the only sort of disciplinary measure, but that it should be able to withdraw part or all of those powers. If it is any easier, perhaps I can be briefed by Parliamentary Counsel.

I apologise for not being fully prepared. I understand that my amendment to clause 60 gives the corporation power to deregister or remove registration from any exempt employer who exercises the power or discretion which is provided in clause 63 arbitrarily, capriciously or oppressively. In a way, it reflects on what I am attempting to do when we get to clause 63, but that is the purpose of the amendment at this stage.

The Hon. C.J. SUMNER: The Government supports the amendment.

Amendment carried.

The Hon. C.J. SUMNER: I move:

Page 42, lines 26 to 33—Leave out all words in these lines.

This definition has been inserted earlier, and the amendment is consequential.

Amendment carried; clause as amended passed.

Clause 61—'The Crown and its agencies to be exempt employers.'

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

Page 42—

Line 36—Leave out 'subsection (2)' and insert 'this section'.

Line 39—Leave out 'the' and insert 'subject to subsection (4), the'.

After line 44—Insert new subclause as follows:

(4) The Governor may not make a proclamation under this section in relation to—

(a) the Electricity Trust of South Australia;

(b) the State Bank of South Australia;

or

(c) the State Government Insurance Commission.

These amendments are certainly related and are designed to ensure that the Government cannot proclaim the three agencies referred to, namely, the Electricity Trust, the State Bank or the State Government Insurance Commission out of the capacity to be registered as exempt employers. Clause 61 (1) provides that the Crown and any agency shall be deemed to be registered as exempt employers, and subclause (2) provides:

The Governor may, by proclamation, declare that an agency or instrumentality of the Crown is not to be regarded as an exempt employer, and in that event the agency or instrumentality shall not be regarded as an exempt employer.

In that event, the agency or instrumentality is not to be regarded as an exempt employer. That proclamation can be varied or revoked but, as I understand it, ETSA, the State Bank and the SGIC, the three major corporations, are all self-insurers, and if the Government at some time in the future sought to proclaim them as not to be regarded as exempt employers they would then be subject to full levies to the corporation even though they all have a good record as self-insurers.

The State Bank, for example, under its own Act and of course by profession of both the Government and the Opposition, is to compete in the private sector alongside other private enterprise banks, and SGIC is also to compete; and, if they are able to compete effectively on the basis of being self-insurers, they ought to be allowed to do so, and no arbitrary proclamation by the Government ought to be able to change that. This is designed to maintain the *status quo* and ensure that no proclamation can be made with respect to them in the future that will take them out of the category of self-insurers.

The Hon. C.J. SUMNER: The Government opposes the amendment, which effectively grants the Electricity Trust, the State Bank and SGIC permanent exempt employer status.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, but why go into this degree of particularity in the Bill? It is not necessary. ETSA and the State Bank are currently exempt employers, yet SGIC is not. The honourable member wants to impose by this legislation, irrespective of the will of the particular organisation, the status of exempt employers. There is no valid reason why these organisations should be given such status. Other Government related organisations—the Housing Trust, SAMCOR and the State Transport Authority—have not been accorded the same status by the Opposition's amendment, which should, therefore, be rejected. The Government has not received any submissions from those organisations that they want permanent exemption.

It is not envisaged that the permanent status of ETSA and the State Bank would be changed, but clearly the provision as introduced enables the required flexibility to be given depending on what particular status these organisa-

tions want, whereas the amendment locks at least three of them into a particular status, namely, that of exempt insurer, when one of them even at this time is not an exempt insurer.

The Hon. I. GILFILLAN: We oppose the amendments.

Amendments negatived; clause passed.

Clause 62 passed.

Clause 63—'Delegation to exempt employers.'

The Hon. I. GILFILLAN: I move:

Page 43—

Line 12—Leave out 'The following' and insert 'Subject to this Act the following'.

Leave out 'may be' and insert 'are'.

Leave out 'by the corporation'.

Lines 26 and 27—Leave out all words in these lines after 'Section 53'.

Lines 30 to 34—Leave out subclauses (2) and (3) and insert new subclauses as follow:

(2) Delegated powers and discretions referred to in subsection (1) shall not be exercised by the corporation in relation to the workers of the exempt employer.

(3) The corporation shall not overrule or interfere with a decision of an exempt employer made in the exercise of delegated powers or discretions.

The intention of my amendments is to reflect the Democrats' attitude to exempt employers, that they are a welcome and trusted factor in the workers rehabilitation and compensation system and that there are good reasons to encourage not only existing but other employers to join in that situation. There are aspects where an exempt employer is uniquely placed to continue the direct employer/employee link to show immediate concern for the injured worker and to be able to offer rehabilitation and re-employment situations all within the same workplace. Where that is exercised properly, it provides the best opportunity for rapid rehabilitation and re-employment. As well, it does that at the least cost. There is much to commend exempt employers in this whole system.

The earlier amendment, which was supported by the Government, did balance, in part, what I am attempting to do in this series of amendments: to isolate exempt employers from interference by the corporation. In the earlier amendment to clause 60, the power has been put there for the corporation—if it feels an exempt employer is acting capriciously, arbitrarily or oppressively—to take disciplinary action. However, the wording of clause 63 as it currently is in the Bill is very much opportunity by grace and favour from the corporation. We feel it quite unfairly reflects on the desired independent area and attitude of exempt employers. They are entitled to have it.

Therefore, the amendments are worded so as to express that aim in the amended clauses. It would read, starting from subclause (1):

Subject to this Act, the following powers and discretions of the corporation, in so far as they are exercisable in relation to workers of the exempt employer are [not 'may be'] delegated to the exempt employer.

It would also delete 'by the corporation'. Then are listed the powers and discretions under the following sections.

We are not prepared to prescribe, as in section 53 and the words after section 53, 'other than the power to nominate a recognised medical expert under section 53 (2)'. We move to delete that because it reflects again on the trust and integrity of exempt employers. We feel there is no reason to reflect on their ability to choose an appropriate medical expert. Because they are subject to the same conditions as the corporation, if there is an aggrieved employee he or she can take the steps with a review officer to appeal or to seek a different medical expert or attitude from a different medical expert. That is inappropriately placed there. We will move to delete subclauses (2) and (3) and to replace them with the following subclauses:

(2) Delegated powers and discretions referred to in subsection (1) shall not be exercised by the corporation in relation to the workers of the exempt employer.

(3) The corporation shall not overrule or interfere with a decision of an exempt employer made in the exercise of delegated powers or discretion.

They are quite clearly there to give exempt employers that secure feeling that they can go about their worker rehabilitation and compensation program in their own judgment and not have to be concerned and bothered with the risk that the corporation or some part of it is likely to come in and interfere with their program.

If there is a reason for it to be criticised that can be taken up in the earlier clause 65, which has that option there. After line 42, the subclause I seek to insert reads:

(6) If an exempt employer exercises a power or discretion delegated under subsection (1) arbitrarily, capriciously or oppressively, the corporation may, with the consent of the Minister, withdraw (in whole or in part) the delegation effected by subsection (1).

There is power for those exempt employers who abuse the powers and discretions given to them to have that restraint put on them. It does not have to be necessarily total withdrawal of the exempt employer position: it can be done to comply with whatever offence was committed by the exempt employer. They do all hang together as a series of amendments, and I commend them to the Committee.

The Hon. K.T. GRIFFIN: The amendments are similar to those I have on file in relation to power of delegation. We, too, think that it is unreasonable to fetter the opportunity of an exempt employer to operate effectively within the limits of the legislation and to have a big brother or big sister corporation—however one looks at it—looking over one's shoulder all the time in specific instances, rather than assessing the effectiveness of the work of that exempt employer generally is an impediment to the proper operation of the self-insurers and their responsibilities. We think, too, that exempt employers are very important, so the amendments moved by the Hon. Mr Gilfillan are supported by us.

The Hon. C.J. SUMNER: The Government considers exempt employers important, too, but this amendment has the effect of restricting the corporation's ability to revoke a delegation. The package of amendments reduces the flexibility of the corporation to revoke those delegations and limits it to cases where the exempt employer has acted in a capricious manner.

The Hon. K.T. Griffin: That is not so.

The Hon. C.J. SUMNER: Yes, it is. It restricts the capacity, and that is the basis of the honourable member's argument. I am not sure what he is interjecting about. The basis of their argument is that it distances exempt employers from the corporation. It limits the capacity of the corporation to revoke the delegations to certain specified actions of the exempt employer arbitrarily, capriciously or oppressively. The amendment will only create disputes on whether the powers and delegations have been exercised properly and, accordingly, the amendment should be opposed.

The Hon. I. GILFILLAN: That is another pathetic excuse for opposing it. Subclause (3) provides:

The corporation may, if it thinks fit, revoke the delegation under subsection (1).

What is the basis of 'if it thinks fit'? If it cannot be covered by the words 'arbitrarily, capriciously or oppressively', what right has the corporation got? Will it suddenly wake up one morning and say, 'We do not like that company' or say that something should be done more politely in communication between that company and the corporation?

The Hon. C.J. Sumner: Playing to the audience—he always does that.

The Hon. I. GILFILLAN: I am playing to the audience with some good purpose, I hope. The Attorney-General cannot see that the deletion of subclause (3) is replaced much more responsibly and shows much more respect for the exempt employers by the insertion of my subclause (6). I can excuse him if he has not read it, because he has been busy with other things, but subclause (6) gives the corporation just as much power as anyone could reasonably expect to be exercised under subclause (3) that we hope to delete.

The Hon. C.J. Sumner: Arbitrarily, capriciously or oppressively.

The Hon. I. GILFILLAN: What are the other grounds on which the corporation could do it?

The CHAIRPERSON: I can put the amendments to lines 12, 14, 26 and 27, but lines 30 to 34 contain differences in wording between the amendments moved by the Hon. Mr Griffin and those moved by the Hon. Mr Gilfillan.

The Hon. K.T. GRIFFIN: The differences, with respect, are minor and to assist you, Madam Chair, and the officers I do not intend to move mine. I defer to the Hon. Mr Gilfillan.

Amendments carried; clause as amended passed.

Clause 64—'The Compensation Fund.'

The CHAIRPERSON: Both the Hons Mr Gilfillan and Mr Griffin have amendments on file. They apply to the same lines although they are not identical. Perhaps these amendments could be dealt with concurrently, although they can be put to a vote separately.

The Hon. I. GILFILLAN: I move:

Page 44, lines 14 to 16—Leave out subclause (5) and insert new subclause as follows:

(5) The corporation should generally attempt to invest its funds so as to achieve the highest rates of return reasonably attainable but the corporation may, in appropriate circumstances, invest its funds at lower rates if to do so would promote the economy of the State.

I have not read the amendment that the Hon. Mr Griffin has on file. The intention of my amendment is that the investment of funds of the corporation should be to the benefit of employees and employers involved in the scheme. This should not be a surrogate source of funding for the Government's investment policies or for capricious use on some so-called State enterprise. The first priority must be to get the best return on the funds invested. However, as indicated in my proposed amendment, from time to time it would be reasonable for the corporation to make a decision concerning investing funds at lower rates for the purpose of promoting the economy of South Australia; such a decision would be made where, on balance, there are good enough reasons to persuade the corporation to do this. However, I believe that the emphasis should be on obtaining the highest possible rate of return for the benefit of employees and employers involved in the scheme.

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

Page 44, lines 14 to 16—Leave out subclause (5) and insert subclauses as follow:

(5) Subject to subsection (5a), in deciding how to invest funds that are available for investment, the corporation shall endeavour to achieve the highest possible rates of return.

(5a) The corporation is not required to comply with subsection (5) if the board unanimously decides, in relation to certain funds, to invest those funds at a lesser rate of return but so as to promote the economy of the State.

My amendment seeks to achieve the investment of funds of the corporation at the highest possible rates of return. The obligation is to endeavour to achieve those highest possible rates of return, on the same basis as referred to by the Hon. Mr Gilfillan. Funds invested at less than the highest possible rates of return will ultimately reflect on the levies that are imposed on employers to obtain cover against workers compensation and, ultimately, those costs will be passed on to the community through higher costs in the provision of goods and services. So, we are interested in endeavouring to keep the investment income as high as possible.

The Hon. C.J. Sumner: That is what our proposition does.

The Hon. K.T. GRIFFIN: The Government's proposition does not do that.

The Hon. C.J. Sumner: Yes it does.

The Hon. K.T. GRIFFIN: If the corporation unanimously decides that certain funds should be invested, at a lesser rate of return but so as to promote the economy of the State, that is possible, as provided for by proposed new subclause (5a). We are trying to ensure that there is a mechanism available—the unanimous decision of the board. I think that is an adequate safeguard. If an investment policy is to be pursued that will return lesser rates than the corporation could reasonably expect to receive, but for purposes of promoting the economy of the State (perhaps investing in a project that the Government wants to get up and running) and if the board of the corporation unanimously makes a decision to do that, that investment can be proceeded with. I think that that is a proper and reasonable safeguard against undue Government pressure to invest funds at a lesser rate of return than could be achieved elsewhere. It also ensures that conscious decisions are taken about investments at lesser rates than could otherwise be achieved. This is particularly relevant where there may be political involvement in the investment process. The unanimity required by my proposal is a reasonable safeguard. So, rather than supporting the Hon. Ian Gilfillan's amendment, I would prefer the Committee to support my amendment because of the additional, and reasonable, requirements in it.

The Hon. C.J. SUMNER: The Government opposes both amendments, which amount to a restriction on the capacity of the corporation to invest. The Government's proposition in the Bill is quite simple: that is, unless it is possible to obtain higher rates from other forms of investment, the corporation should invest sums to promote the economy of the State. That is simple. Basically, it says that the corporation can invest to promote the economy of the State but, if it can obtain a better deal somewhere else, that is what it should do. We believe that the corporation must be self-sufficient or should be able to operate in the commercial arena to maximise the use of the money that it receives by way of premiums. I oppose the amendments.

The Hon. I. GILFILLAN: I do not believe it is worth while pondering for a long time over the comparative value of the two amendments. I feel there is reason to support the Hon. Trevor Griffin's amendment. However, I have some misgivings about his phrase, 'If the board unanimously decides'. Any board unanimously deciding anything does not care much or it would be an unusual and rare happening. I anticipate that in a review of this subclause the wording may be revised. It is our intention to support the Hon. Trevor Griffin's amendment. Accordingly, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. K.T. GRIFFIN: I appreciate the difficulty with 'unanimously'. If the Bill is reviewed at a later stage, I am certainly prepared to accommodate some reasonable alternatives. I think the board needs to make a conscious decision about this sort of investment.

Amendment carried; clause as amended passed.

Clause 65 passed.

Clause 66—'Sufficiency of fund to be maintained.'

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

Page 45, line 1—Leave out 'covering the' and insert 'to cover the full'.

This is a very important clause which deals with the sufficiency of the fund administered by the corporation and comprising levies on employers and investment income. Subclause (1) provides:

In fixing levies to be imposed under this division in respect of a particular assessment period, the corporations's paramount purpose should be to establish and maintain sufficient funds—

(a) to satisfy the corporation's liabilities over the assessment period, insofar as those liabilities are attributable to traumas occurring over the period;

(b) to provide reserves covering the costs of future liabilities, insofar as those liabilities are attributable to traumas occurring over the assessment period;

(c) to make proper provision for administrative and other expenditure of the corporation;

and

(d) to make up any insufficiency in the fund resulting from previous liabilities or expenditures or from a reassessment of future liabilities.

Paragraph *(d)* is particularly important. I refer to the example I quoted during the second reading debate and the Ontario fund (which is not fully funded) having, in 1985, an unfunded liability of $2.3 billion (Canadian).

Unless there is provision in this investment clause to require the fund to be fully funded, there will be a very real problem wherein under paragraph *(d)* additional levies will be imposed to make up insufficiencies in the fund in the years ahead. The intention is to demonstrate that the corporation must maintain a fully funded fund.

The Hon. I. GILFILLAN: We support the amendment. It has advantages from several points of view. I believe that when our scheme is instituted it will have the respect of all States in that it will involve a fully funded scheme. In the long run, that will be as much an encouragement to employers to remain or to establish in South Australia as marginal differences in premiums. Employers are not so gullible as to be lured by what may be a very short term flash in the pan attractive premium if they are suspicious that in the long run they will be paying steep hikes in premium because the scheme has not been properly funded. We must be sure that the Bill emphasises that the scheme be fully funded as far as possible, and therefore the amendment is an advantage and we support it.

The Hon. C.J. SUMNER: The Government does not support the amendment, not because we oppose the sentiments expressed by the two honourable members but because we believe that the Bill as introduced meets the situation by providing for reserves covering the costs of future liabilities. I would have thought that that was adequate. When we bring in the notion of full costs, certain problems arise, in particular the estimation of full costs. Funding of the future liabilities is within the Government's contemplation, and I believe that that is covered in the clause as introduced.

Amendment carried; clause as amended passed.

Clause 67 passed.

Clause 68—'Adjustments may be made in respect of particular employers.'

The Hon. I. GILFILLAN: I move:

Page 45, line 41—After 'work' insert '(disregarding unrepresentative disabilities and secondary disabilities)'.

This is a very important clause and it will provide a strong incentive to safety in the work place if rewards are offered by way of annual levies or premiums that reflect performance. The wording must be right. Subclause (1) *(b)* provides no recognition for disregarding unrepresentative disabilities and secondary disabilities that really are not the proper burden of employers when they are receiving a bonus because they have a good track record for claims. The intention of the amendment is to make the fairest possible assessment of a real claims record of an employer in regard to his or her safety performance and claims record accurately attributable to the employer.

The Hon. K.T. GRIFFIN: I indicate that I have some sympathy with this, but I am not sure what 'unrepresentative disabilities' might mean. Perhaps the Hon. Mr Gilfillan could explain that a bit more fully.

The Hon. I. GILFILLAN: Certainly. In subclause (2) *(b)* you will note the bracket at the end of the paragraph. Unrepresentative disabilities are those which result from injury either in journey, before or after the hours of work or in lunch breaks. So, it seems quite unfair (although they are reasonable claims; I am not disputing that) that this employer should pay the penalty in his premiums as a result of that.

The Hon. K.T. GRIFFIN: We will support the amendment on the basis that it appears to be a reasonable proposition and is consistent with the converse situation in clause 68 (2).

The Hon. C.J. SUMNER: The Government will support it.

Amendment carried; clause as amended passed.

Clauses 69 to 76 passed.

Clause 77—'Proof of registration.'

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

Page 50, lines 26 and 27—Leave out 'or an officer of a registered association'.

This clause deals with an employer being required to produce evidence of his registration under the Act. The present provision is to be required by an authorised officer or an officer of a registered association. That can be an employer or an employee association—but I suspect that it is more likely to be an employee association. I want to delete any reference to an officer of a registered association.

I do not see why anybody other than an authorised officer under the Bill—which is an authorised officer of the corporation—should have the right to demand evidence of the employer's registration under the Bill. It is a bit like inspectors from the Department of Labour and Industry: they certainly have authority under the Industrial Conciliation and Arbitration Act, but no one else has authority to go into the workplace. I think that it is an intolerable position to have an officer of a registered association requiring an employer to produce this evidence. It can just as easily be done—if there is any suspicion that an employer has not a registration—by going along to the corporation and saying, 'Would you check to see that so and so is registered?'

It is a simple matter. Why should anyone other than an authorised officer of the corporation have power to go in and say, 'Are you registered? Please show me your certificate of registration.' That can be adequately monitored by the corporation.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is another product of the obsession of the Liberals with not giving union officials any rights and responsibilities. I would have thought that it would be of assistance to employers.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Obviously it would be. If it can be proved immediately that an employer is not registered, it assists in ensuring that premiums are properly collected. The amendment is unnecessary.

The Hon. I. GILFILLAN: We oppose the amendment. I have no objection to an officer of a registered association seeking to be assured that an employer is registered under the Act. We think it is appropriate.

Amendment negatived; clause passed.

Clause 78—'Review officers.'

The Hon. K.T. GRIFFIN: We are now embarking on a part of the Bill that deals with reviews and appeals. A number of amendments are proposed by members to provisions of this part, and it is the appropriate time to raise certain questions and issues. I understand that the South

Australian Council of Professions Incorporated has written a letter dated 5 March 1986 to the Premier about the Bill drawing attention to a number of concerns, many of which I have some sympathy with. The letter states:

> The council comprises the professions listed above. We consider that our calling and experience fit us to examine with some impartiality and expertise proposals for change affecting the social structure. We consider that there are certain fundamentals in that structure which should only be radically altered for a very good reason and in full awareness of the consequences. This legislation runs counter to some of those fundamentals, and the current debate and your Government's response does not provide reassurance that this fact is recognised or that some of the consequences have been given adequate consideration.
>
> The council asks that you do not proceed with the legislation until the community, including the members of my council, have had a better opportunity to comment on the Bill and to receive the explanations and answers which are lacking.

The letter then deals with matters of particular concern, first, in relation to the exclusion of the principles of natural justice. It states:

> *(a)* The corporation has an interest in keeping total entitlements low. Its officers are, in the first instance, to determine the claim. There is no formal hearing. There is an appearance of bias.
>
> *(b)* The review officer is an employee of the corporation. He is to consider the first appeal. He is not independent. There is an appearance of bias.
>
> *(c)* The review officer should act judicially, yet there is no requirement that he be appropriately trained. He has extremely wide powers to gather information including the capacity to compel witnesses. Disputes affecting the rights provided by the Bill should be handled by competent judicial officers exercising well recognised powers.

The council goes on to talk about medical panels. The letter continues:

> *(d)* The corporation may limit the choice of medical practitioners who may examine the injured employee. The interference in the choice raises the appearance of bias.
>
> *(e)* The Medical Review Panels are appellate courts on 'medical questions'. The definition of 'medical question' is so wide it encompasses virtually every issue likely to be in dispute. A panel comprises three medical practitioners. Inevitably they will be concerned with entitlement. The public and the protagonists in the industrial sphere, will see medical practitioners making decisions of a judicial nature affecting the rights and entitlements of workers.

That, of course, has to some extent been modified because we have made significant amendments to the definition of 'medical questions'. The letter continues:

> *(f)* In what appears to be a cynical acceptance that the procedures for determining entitlements will give rise to challenges of bias, secret hearings and unfairness, the Bill prohibits judicial review of decisions of the corporation, a Review Officer, the tribunal or a medical review panel by prerogative process.

As I understand the Bill, that has now been resolved by the removal of the prohibition on the prerogative process. It deals with the exclusion of common law rights, with rehabilitation and uncertain assumptions underlying the costings. The council of professions has raised very real concerns about the review and appellate process identified in this part of the Bill.

The Attorney-General yesterday, in answer to questions about the inclusion of judges, ministers and members of Parliament in the definition of 'employer', indicated that he had not received any letters from judges on that point, but hinted at having received letters from judges in respect of other parts of the Bill. I suspect that the 'other parts of the Bill' refers, generally speaking, to the part relating to reviews and appeals. Accordingly, because concern has been expressed about the structure of the appellate and the review process, can the Attorney-General say whether he or the Government has received any letters from any judicial officer with respect to this part of the Bill, or any other part of the Bill, and if he has, would he be prepared to table those letters?

The Hon. C.J. SUMNER: There are some letters and I do not mind if the honourable member reads them. I suggest that we postpone all clauses from 78 to 104 inclusive.

Consideration of clauses 78 to 104 deferred.

Clauses 105 to 107 passed.

Clause 108—'Payment of interim benefits.'

The Hon. K.T. GRIFFIN: As my amendment is identical to that of the Hon. Ian Gilfillan, and because he had his on file first, I presume that he would want to move his amendment.

The Hon. I. GILFILLAN: I move:

Page 59, lines 16 to 24—Leave out subclauses (2) and (3) and insert new subclause as follows:

(2) Where on the final determination of a claim it appears that an amount to which the claimant was not entitled has been paid under this section, the corporation may recover that amount as a debt.

This amendment complies with the intention of earlier amendments to allow the corporation, where it sees fit, to recover amounts that it has paid out inaccurately or without proper requirement as to the compensation included. The existing subclauses, and certainly subclause (2), prevent the corporation reclaiming. It is not entitled to receive repayment of an amount that has been paid inappropriately or inaccurately to the recipient. I emphasise that the corporation 'may' recover, because I believe that is where the discretion of understanding the particular situation of an individual can be applied, and I am certain that it would be.

The Hon. K.T. GRIFFIN: Obviously, as that amendment is identical to the one I have on file, I support it.

The Hon. C.J. SUMNER: The Government opposes the amendment on the same basis as previously.

Amendment carried; clause as amended passed.

Clause 109—'Employer may request progress report.'

The Hon. R.J. RITSON: Clause 109 lists two ingredients of a report to an employer, namely, medical progress being made, and the worker's incapacity for work. I think that all the employer needs to know is the medical status of the patient in terms of what he or she can or cannot do. When that is read in conjunction with clause 114, the secrecy provisions, there are a number of circumstances where the officers are not bound by confidentiality, and one is the making of a report to a disabled worker's employer.

Whilst there may be a number of circumstances where a lot of detail about the worker, including mental state and domestic background, might be needed, that is not needed in the making of a report to a disabled worker. There have been practical problems in the past in the matter of medical reporting in medico-legal matters where reports containing more personal material than was necessary for the purposes of the report have caused distress. Can the Attorney-General assure me that an authorised officer disclosing information under clause 114 would be in breach of his obligations of secrecy if, in a report to a disabled worker's employer, he provided more information than that which merely stated the medical progress and the worker's incapacity for work?

The Hon. C.J. SUMNER: I think that would be correct. The point made by the honourable member is a very good one.

Clause passed.

Clause 110—'Medical examinations at request of employer.'

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

Page 59, lines 40 and 41—Leave out subclause (3).

This clause provides that the employer of a worker who has made a claim may require the corporation to have the worker submit to an examination by a recognised medical expert nominated by the corporation. A worker is not to be

required to submit to examinations more frequently than is permitted by the regulations. Subclause (3) provides:

The corporation may, if it thinks fit, charge the cost of an examination under this section to the employer.

I do not think that is reasonable. I think that, if an examination is requested and is undertaken, there is no reason that the employer should have to pay for it.

The Hon. I. GILFILLAN: I am a little uneasy about this amendment, because I think the corporation could pay for medical examinations for an enormous number of employees. It is a reasonable option to have in the Bill, but I think that subclause (3) provides a satisfactory safeguard against its possible excessive and irresponsible use.

The Hon. C.J. SUMNER: The Government agrees with the Hon. Mr Gilfillan and opposes the amendment.

Amendment negatived; clause passed.

Clause 111 passed.

Clause 112—'Powers of inspector.'

The Hon. I. GILFILLAN: I move:

Page 60, line 16—After 'photographs' insert ', films or video recordings'.

My amendment attempts to ensure that paragraph *(c)* (v) pertaining to the taking of photographs is not restricted to a Box Brownie and that films or video recordings are equally available for that surveillance.

The Hon. K.T. Griffin: I do not see any problem with that.

The Hon. C.J. SUMNER: The Government cannot see the need for this amendment, and we oppose it.

The Hon. K.T. GRIFFIN: Technically, I think it is a reasonable amendment. As I do not think that videos are photographs in the technical sense, I am happy to support the amendment.

The Hon. I. GILFILLAN: I think it is very unfortunate that the Government has not seen fit to protect the worker in this situation. I think it is most unfair that, where an investigation of premises has shown them to be dangerous, videos and films may not be used to capture the situation. The Government is depriving the workers of this thorough investigatory procedure.

Amendment carried.

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

Page 60, after line 18—Insert new subclause as follows:

(1a) The powers conferred under subsection (1) shall, when the authorised officer is attending at any workplace, be exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at that workplace.

The amendment ensures that when powers of entry and inspection are exercised by the authorised officer, that officer, in exercising those powers, avoids any unnecessary disruption of or interference with work at that workplace. It is a reasonable proposition and in the Builders Licensing Bill only in the last week or so a similar provision was included.

The Hon. I. GILFILLAN: I have no specific objection to the amendment but, if the Government is going to argue against it, I am one of those flexible people who listens to debate.

The Hon. C.J. SUMNER: The honourable member is not envisaging that the authorised officers should advise the employer before they arrive?

The Hon. K.T. GRIFFIN: No. When an authorised officer goes to the premises the officer is to exercise the powers so as to avoid any unnecessary disruption of or interference with work at that workplace. The amendment is consistent with the provisions inserted in another Bill relating to builders licensing, and is perfectly reasonable.

The Hon. C.J. SUMNER: I raise no objection to the amendment.

Amendment carried.

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

Page 60, lines 19 to 21—Leave out subclause (2).

The removal of this subclause is proposed for reasons which relate very much to both the powers given above and to the provisions of the secrecy clause following, which is to be amended by the Hon. Mr Gilfillan. As has been said, the powers are very wide. They are the sorts of powers normally exercisable by the police and on the orders of courts, although we did confer some similar powers on the museum to search for meteorites at some stage, I think.

Subclause (2) provides that the authorised officers may be accompanied by such other persons as may be necessary to assist the authorised officer in the exercise of those powers. It is hard to say whether that means a taxi truck to take away documents or the local photographer to photograph documents, and whether he can hire a commercial security agent to assist him. But, the sorts of activities that might be being carried out could be the forced inspection of a worker's financial records to see whether perhaps he had a second job whilst claiming to be disabled. It could be a raid on a doctor's surgery. Doctors have been known to run businesses in selling false certificates, on rare occasions.

However, it is the sort of action that should not be in the hands of unspecified persons. It is very important that any such person exercising those powers be authorised by the corporation to do so and not simply receive delegated authority from the authorised officer himself.

It is a very serious thing to build a giant QUANGO with police powers. I ask the Government to support the deletion of this subclause so that every person who has to carry out such a task is an authorised officer and so that we do not get gung-ho methods with minor officials delegating powers to unknown persons in the exercise of these sorts of activities. The second reason for deleting this subclause is that, by so doing, the persons carrying out such an inspection or raid will be bound by the secrecy provisions of the Act. If the subclause remains in, the 'such other persons' that would be recruited by the authorised officer would not be bound by the Act.

In fact, they will not be unless the Hon. Mr Gilfillan's forthcoming amendment succeeds because he intends to move that the secrecy provisions, which presently apply only to an officer of the corporation, will also apply to an authorised officer. If my amendment succeeds, so that persons other than authorised officers cannot exercise powers of search, and if his amendment succeeds, so that those authorised officers, as well as officers of the corporation, are bound, then everyone taking part in a raid or inspection will be bound by secrecy. I urge the Government to support us in this matter as I think it horrific that with those wide powers we could have an unauthorised person assisting an officer and that person perhaps photographing an entire bank of doctor's records and not being bound by the secrecy provisions of this Act. I commend that to the Committee and look forward to its swift passage.

The Hon. I. GILFILLAN: It is a reasonable amendment and well argued by the mover.

The Hon. C.J. SUMNER: I am sympathetic to the instance the honourable member has outlined, but it could create difficulties: for instance, it may be that an authorised officer may want to take an engineer with him to look at the reasons for an industrial accident that may give rise to a common law claim. If this clause is deleted, that engineer will have to become an authorised officer in order to accompany the person. There is no problem with it, but happens to be more bureaucracy for no good purpose.

Amendment carried; clause as amended passed.

Clause 113—'Inspection of place of employment by rehabilitation adviser.'

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

Page 60—

Line 39—Leave out 'A' and insert 'Subject to subsection (1a), a'.

After line 40—Insert new subclause as follows:

(1a) A rehabilitation adviser may not in the inspection of a place of employment under subsection (1) disrupt or interfere with the performance of any work at that place of employment.

The provision in proposed new subclause (1a) is similar to the amendment that I moved in relation to clause 112. This provision allows rehabilitation advisers to inspect the place of employment of a disabled worker. I want to ensure that when a rehabilitation adviser makes the inspection he does not disrupt or interfere with the performance of any work at that place of employment. I think this is reasonable. It is similar to the sort of provision we put in the Builders Licensing Act Amendment Bill in relation to the inspection of sites.

The Hon. C.J. SUMNER: I am concerned about this amendment. In fact, the new subclause previously inserted in clause 112 is different from the one that the honourable member is attempting to insert now. The subclause in respect of powers of an authorised officer provided that authorised officers are to exercise their powers so as to 'avoid any unnecessary disruption of, or interference with' the performance of work, whereas this amendment provides that a rehabilitation adviser 'may not disrupt or interfere with' the performance of work. I think that that is too absolutist. I think it would be appropriate to postpone consideration of clause 113 so that a further amendment can be drafted.

Consideration of clause 113 deferred.

Clause 114—'Confidentiality to be maintained.'

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

Page 61, line 7—After '$3 000' insert 'or imprisonment for six months'.

I get very concerned about clauses which seek to protect the confidentiality of information and in relation to which there is merely a fine, and a relatively low one at that. On previous occasions, I have amended clauses that have provided only for a monetary penalty by having included in the provision a stipulation concerning a period of imprisonment. A breach of confidentiality is a fairly serious business. The clause provides:

> . . . an officer of the corporation shall not divulge information as to—
>
> *(a)* the physical or mental condition of a worker;
>
> *(b)* the personal circumstances of a worker or other person;
>
> *(c)* matters contained in a return furnished by an employer under this Act;
>
> that has come to the knowledge of the officer in the course of carrying out official duties.

I think there ought to be something more than $3 000 maximum monetary penalty to deter breaches of this clause. In my view it would not be unreasonable to impose a maximum period of imprisonment of six months, and that is the effect of my amendment.

The Hon. I. GILFILLAN: The Democrats do not support the amendment.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 61, after line 15—Insert new subclause as follows:

(3) In this section—

'officer of the corporation' includes a person who, although not an officer of the corporation, is authorised to exercise the powers of an authorised officer under section 112.

This amendment relates to the discussion we had on clause 112. The amendment enables the corporation to use people who are not necessarily full-time employees of the corporation. The amendment will make this available to the corporation.

The Hon. C.J. SUMNER: The amendment is accepted by the Government.

The Hon. K.T. GRIFFIN: I do not think the amendment makes sense. Under clause 112 there are authorised officers who have certain powers set out in the clause. Subclause (2) has been deleted by an amendment of the Hon. Dr Ritson. The proposed amendment seeks to include a person in the description 'officer of the corporation' who, although not an officer of the corporation, is authorised to exercise the powers of an authorised officer under section 112. As I understand it, 'authorised officers' are officers of the corporation. With respect, I do not see that the amendment makes sense.

The Hon. I. GILFILLAN: With respect, I respect the Hon. Trevor Griffin's confusion about this. I certainly think I am clear about its intention. It will enable the corporation to authorise individuals to act with the powers of clause 112, and therefore they would become authorised officers for that activity.

The Hon. K.T. Griffin interjecting:

The Hon. I. GILFILLAN: If that is the dilemma, there might be a drafting problem. I think I can explain the situation. I had forgotten the very effective amendment that I successfully moved earlier to alter the definition of 'authorised officer' to include 'a person'. Members who recall my remarks at that time will know that I foreshadowed this situation. I hope that the Hon. Trevor Griffin now feels assured.

The Hon. K.T. GRIFFIN: I suggest we let the amendment go through but consider it to see whether it is consistent with earlier amendments. I could not follow it in relation to clause 112, but it may be appropriate, so I will not insist upon disagreement. We can consider it later.

Amendment carried; clause as amended passed.

Clause 115—'Disabilities that develop gradually.'

The CHAIRPERSON: The Hon. Mr Griffin and the Hon. Mr Gilfillan have on file amendments that are almost identical.

The Hon. I. GILFILLAN: I move:

Page 61—

Line 21—Leave out 'the whole of the loss of function' and insert 'the loss'.

Line 22—Leave out 'immediately' and insert 'when the worker's employment last contributed to the loss'.

I assume that the Hon. Trevor Griffin will speak to this amendment. It is an attempt to provide approximately the situation as under the current Act in relation to the rather contentious subject of hearing loss. The clause would read:

> Where a claim is made under this Act in respect of noise induced hearing loss, the loss shall be deemed to have occurred when the worker's employment last contributed to the loss before the date of the claim.

The Hon. C.J. SUMNER: The Government opposes the amendment. Clause 115 seeks to repeat the terms of section 74 of the current Act, which has worked reasonably well. Accordingly, the amendment, which would introduce new concepts into this area, is opposed. It would seriously disadvantage workers who, through no fault of their own, were slow to realise that they have suffered a noise induced hearing loss. That is not an uncommon circumstance in industry.

The Hon. R.J. RITSON: I oppose the amendment. I see a semantic problem more than anything else, because in making medical reports the medical profession distinguishes from time to time between structural loss and functional loss. Indeed, under the maims section of the Act there are a number of clearly defined structural losses in relation to proportions of fingers, and it refers to functional loss of a thumb if one loses mobility of the joint of the thumb. In many cases if there is a structural loss of a finger, perhaps the maims table will not be taken, but the injury will be

described in terms of the functional loss or partial functional loss of the use of the limb.

In the case of hearing loss it is all functional, To my way of thinking, as someone who has written and read a lot of medical reports, the loss about which one is talking is functional rather than structural, as are those listed in the maims table. For that reason, I had not seen this as mattering very much: whether you refer to simply loss of hearing or functional loss of hearing, I would have thought that would mean the same thing to all doctors and resulted in the same sorts of medical assessment.

The crucial matter is one which is to follow, moved by the Hon. Mr Griffin, concerning the dating of the causality of that loss, so I am happy whichever way this amendment goes; whether 'functional' stays in or not does not matter, but I think the dating does.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 61, line 22—Leave out 'immediately' and insert 'when the worker's employer last contributed to the loss'.

This amendment is significant to the argument of making this clause a reasonable, in our opinion, assessment of the hearing loss so that fair compensation is available.

Amendment carried; clause as amended passed.

Clause 116—'Certain payments not to affect benefits under this Act'

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

Page 62, line 14—Leave out paragraph *(b)*.

Under clause 116 compensation is not to be reduced by an *ex gratia* payment, accident insurance payment or payment or benefit of a class prescribed by regulation. What I am deleting is reference to the accident insurance payment. If a person who is injured becomes entitled to compensation and also receives some accident insurance as a result of the injury, there is no reason why the compensation aspect ought not to be reduced by the amount of the accident insurance payment.

The Hon. I. GILFILLAN: We oppose the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. Whether a person has an accident insurance payment is a matter for private premium paying by the individual and should not affect the compensation.

Amendment negatived; clause passed.

Clauses 117 to 121 passed.

Clause 122—'Fraud.'

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

Page 63, line 38—After '$5 000' insert 'or imprisonment for one year'.

The period of one year is consistent with other penalties related to financial maximum penalties. For example, clause 121 has a maximum penalty of $5 000 or imprisonment for one year. It is incredible that fraud against this legislation is to be punished by a maximum fine of only $5 000. Fraud is a serious offence in whatever context it occurs. A maximum period of imprisonment should be prescribed to allow the courts flexibility in dealing with these cases. Of course, only the more serious cases of fraud will attract a penalty of imprisonment or a suspended prison sentence. If this provision is not there, I suggest it would indicate a not too serious concern about fraud against the system. Fraud is not just theft; it is a deliberate act designed to deprive the corporation of property or to obtain benefit on which there is no basis for such benefit to be granted.

The Hon. C.J. SUMNER: I think most offences involving fraud in the general law attract sentences of imprisonment. It is a little hard to argue against the logic of the honourable member's proposition.

Amendment carried.

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

Page 63, after line 45—Insert new subclause as follows:

(4) A person who—

(a) aids, abets, counsels or procures the obtaining of a benefit under this Act by fraud;

or

(b) solicits or incites the obtaining of a benefit under this Act by fraud,

is guilty of an offence.

Penalty: $5 000 or imprisonment for one year.

In some respects we may not need this provision because it may be covered in ordinary law. However, I remember last year or the year before we put it into another piece of legislation in a similar context. I cannot remember the Bill, but I would have thought it is a perfectly reasonable proposition.

Amendment carried; clause as amended passed.

Clauses 123 to 125 passed.

New clause 125a—'Independent review of review officers.'

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

Page 64, after line 28—Insert new clause as follows:

125a. (1) The Minister shall, at the expiration of one year from the commencement of Part VI, cause a review to be carried out on the effectiveness of review officers under this Act.

(2) The person appointed to carry out a review under this section—

(a) must be an independent person appointed after consultation with the United Trades and Labor Council and associations that represent the interests of employers;

and

(b) must deliver to the Minister a report on the outcome of the review within four months of being appointed.

(3) The Minister shall, as soon as practicable after the receipt of the report delivered under subsection (2), cause a copy of the report to be laid before each House of Parliament.

(4) In this section—

'independent person' means any person other than—

(a) a member of the board;

(b) an officer of the corporation;

or

(c) an officer or employee of the Crown or an instrumentality or agency of the Crown.

This clause requires an independent review of the effectiveness of review officers at the expiration of one year from the commencement of Part VI of the Bill. The person appointed to carry out the review must be someone independent, appointed after consultation with both the United Trades and Labor Council and associations that represent the interests of employers. That person must report to the Minister within four months of being appointed.

We have raised some real concerns about review officers and have deferred consideration of review officers until after clause 127. We are concerned about their status and their dual allegiance in the sense that they are officers of the corporation, and have responsibilities to the corporation, but are also to act independently. We think that there is likely to be a conflict of interest in that situation: on the one hand, the review officer desiring to keep his or her job and, on the other, having to review independently matters which are raised by injured persons and which may involve confrontation with the corporation, thus possibly then affecting employment prospects—so there are concerns about it. We think that there ought to be an independent review of review officers and that there ought to be a report. It is in that context that we believe that this amendment is important.

The Hon. C.J. SUMNER: I oppose the amendment. The system of review officers has worked extremely well in New Zealand. The accident corporation system in New Zealand is experiencing about 5 000 disputed claims for review each year. Of these 2 000 are settled by the corporation by agreement, and just under 3 000 are settled by review officers. Only 300 cases have required reference to the two part-time judges who are the final level of appeal in New Zealand,

which compares with our six Industrial Court judges in South Australia.

I cannot see any case for carrying out a review of review officers 12 months down the track. Indeed, the Law Society representative who went to New Zealand, Mr D.M. Quick, Q.C., said he was impressed by the fact that the number of applications for review from decisions of claims handlers was so small. He said that he thought South Australia had a lot to learn from the system with respect to the initial stages of dealing with claims, although he did consider that perhaps they should be more independent of the corporation than they were. Our Bill provides for them to be independent.

The Hon. K.T. Griffin: I think that it is a problem of allegiance.

The Hon. C.J. SUMNER: They are independent in their decision making processes and that is in the Act. The Government considers that necessary. The real difficulty is that we cannot have this system becoming bogged down and too formalised because if it does it just will not work.

The Hon. K.T. GRIFFIN: I am not seeking to bog the system down. What I have been saying is that there are concerns about the lines of authority in respect of review officers. On the one hand, they are officers of the corporation dependent upon the corporation for their salary and promotion prospects while on the other they have to act independently of the corporation with respect to their review function. There may well be a conflict between the two. It is in that context that I think there can be a review as to their effectiveness and lines of authority. It is just a review. I would have thought that it is in the interests of the whole system that there not be the potential for conflict which I believe presently exists in the provision for review officers.

The Hon. I. GILFILLAN: I am not sufficiently convinced of the argument to support it. I suspect that the effectiveness of the review officers would be the responsibility of the board. The Minister obviously will be concerned about the operation of the corporation. I would imagine that if there is any misgiving about the effectiveness of the review officers there will be some review procedure, and I hope that the corporation continues to review all its procedures. It is, in fact, an organisation sensitive to the way in which it is performing its job.

The Hon. K.T. GRIFFIN: The review officer has a vested interest and so does the corporation, and that is the real concern.

The Hon. I. Gilfillan: In what way?

The Hon. K.T. GRIFFIN: Well, the review officer is appointed by the corporation. He is an officer of the corporation for employment prospects through the system and presumably can be dismissed with the appropriate period of notice provided in the award. Yet, on the other hand, the Act provides that he will act independently of the corporation which might mean taking on the corporation, fighting it on behalf of an injured worker. That is the conflict. If you can tell me how a review officer would act fearlessly in the face of prejudice to an employment prospect, I am prepared to moderate my view. I just do not think that it is a fair proposition that the review officers, as employees of the corporation, will be able to act independently.

New clause thus negatived.

Clauses 126 and 127 passed.

First schedule.

The Hon. C.J. SUMNER: I move:

Page 65—

Clause 1—After the definition of 'the appointed day' insert definition as follows:

'compensating authority' means the corporation or an exempt employer.

Clause 2—Leave out subclauses (2), (3), (4), and (5) and insert subclauses as follows:

(2) This Act applies in relation to a disability (referred to in this clause as a 'transitional disability') that is partially attributable to a trauma that occurred before the appointed day and partially attributable to a trauma that occurred on or after the appointed day, but does not affect rights (referred to in this clause as 'antecedent rights') that had accrued before the appointed day in respect of a transitional disability.

(3) The following provisions apply in relation to a transitional disability—

(a) where a compensating authority pays or is liable to pay compensation to a claimant under this Act in relation to a transitional disability, the compensating authority is subrogated, to an appropriate extent, to the antecedent rights of the claimant;

(b) where the claimant has received, in pursuance of antecedent rights, damages or compensation (not being weekly payments for a period of incapacity that concluded before the appointed day), there shall be an appropriate reduction in the amount of compensation payable under this Act in respect of the disability;

(c) the extent of a subrogation under paragraph *(a)*, or a reduction in the amount of compensation under paragraph *(b)*, shall be determined having regard to—

(i) the amount of the compensation payable (apart from this subclause) under this Act in respect of the transitional disability;

(ii) then extent to which the transitional disability is attributable to a trauma that occurred before the appointed day;

and

(iii) any other relevant factors,

and any question relating to the extent of such a subrogation or reduction may be determined, on the application of an interested party, by the Industrial Court.

These amendments are intended to assist in the operation of the transitional provisions. These provisions presently provide that where a disability is partially attributable to a trauma that occurred before the appointed day and partially attributable to a trauma that occurred after the appointed day, the new Act is to apply in respect of that disability. However, accrued common law rights are not to be affected. Further analysis of these provisions has prompted this proposed amendment to deal with these issues in greater detail. In particular, the amendment will ensure the protection of all antecedent rights but also allow adjustments to entitlements under this Act to take into account amounts receivable under the repealed Act (in relation to those 'antecedent rights').

Amendments carried; schedule as amended passed.

Second schedule.

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

Second schedule, page 66—Leave out the following:

Aggravation, acceleration, exacerbation, deterioration, or recurrence of any pre-existing coronary heart disease	Any work involving physical or mental stress.

The second schedule is relevant because it is used in the context of reversing the onus and, from all the advice I have received (and my colleague the Hon. Dr Ritson would be in a better position to explore it than I), it is not reasonable to presume that physical or mental stress in a workplace is the cause of the particular disability to which I have referred. In fact, there are many other characteristics of the workplace and one's personal life which may well lead to aggravation and the other consequences of any pre-existing coronary heart disease. I move to delete reference to that from the schedule, which means that the injured worker is not unduly prejudiced, if at all, and will have to establish from his or her personal medical history and history of work that that occurrence of disability did in fact arise from that particular work endeavour.

The Hon. R.J. RITSON: I support the amendment. I also support the Hon. Mr Griffin's contention in the first place that stress in the workplace is not by any means the most

common form of stress and is not a significant contributor to the development of cardiovascular disease. There are many other factors which cause it. The second column in the schedule, in its evidentiary provision, states that it will be presumed that the aggravation is caused at work if the work involves any physical or mental stress. That does not refer to extraordinary or unusual physical or mental stress, but just 'physical or mental stress'. As we all know, we all suffer from that, so everybody qualifies for the second column.

Coronary artherosclerosis is a progressive disease, so everybody who is diagnosed as having this will suffer aggravation, acceleration, deterioration or recurrence. If we look at the cost factor and do some basic arithmetic, we can see the impact of this on the scheme. In South Australia cardiovascular disease accounts for approximately one-third of deaths, or some 3 000 deaths.

If one assumes that only one third of these people are in the work force and that, because of the provisions in the second column, they will be deemed to have physical or mental stress of some sort, then we have 1 000 times the $60 000 payout. Just for those deaths, we have a bill of $60 million freshly added to the cost of the scheme. That is not to begin to mention the premature retirement of the many thousands of people who suffer from this condition but who do not die before they reach the notional end of their working life at age 65.

These people would be entitled to compensation in the absence of proof to the contrary and would be added to the list of people prematurely retired on pensions under this scheme. This is a vital line in the Bill: it is a $100 million line in my view. In a slightly different drafting form it was in the draft Bill that was circulated. There was enormous resistance, both medically and from employers, and it disappeared and was not in the Bill introduced in another place.

I understand there was an amendment and it reappeared, not under 'V' for vascular heart disease at the bottom of the list where it was but under 'A' for aggravation and acceleration. It took a little while for us to notice that it had crept back in. Apart from the cost to the scheme, and apart from the fact that it is just plainly untrue that cardiovascular disease is by and large work caused, we are faced with the extraordinarily difficult task of negative proof.

I do not object to items appearing in this schedule where it is common knowledge that they are on balance connected with the stated cause in column 2 but, as my colleague the Hon. Mr Griffin said, it is plainly untrue and plainly known by the medical profession that by and large work stress is not a cause of the development and the acceleration of coronary artery atheroma. It represents not only a great expense but a misstatement of the truth scientifically, and it places the fund and the employer behind the eight ball in trying to prove a nebulous negative thing, namely, that the work stress so-called did not cause this acceleration and exacerbation. It is just extremely difficult in terms of argument and language to arrive at such a proof.

The final argument is its effect on rehabilitation. In addition to the deaths and the premature retirements—the thousands to which I referred—there are in this State each year some hundreds (from memory, approximately 1 000, but I will say hundreds so that I do not overstate the case) of people who undergo an operation know as coronary artery bypass.

This operation is quite remarkable in its effectiveness in that, where a patient is unable to do work because of crippling chest pain as a result of narrowed coronary arteries, the vein graft that bypasses the blocked arteries restores that person to the ability to return to work. Government members opposite will have friends who have been restored by this operation. If such a person then confronts an employer and someone who has been surgically rehabilitated by an operation but as someone who has established coronary artery disease, the employer will know, because he will know the progressive nature of the disease, that there is going to be a deterioration or recurrence with the passing of time.

He will also know that, if he employs these people and they have their inevitable recurrence, under the other clauses of the Bill dealing with the additional levies for people who have an adverse claims experience he will suffer a penalty. This will put all those people whom the surgeons have rehabilitated to make them fit to re-enter the work force out of work permanently. It is an anti-rehabilitation provision. It is important that that goes on the record. I vigorously support deletion of that provision.

The Hon. C.J. SUMNER: The Government opposes the deletion. What is put in the second schedule with respect to coronary heart disease is very similar to the existing law, because it states that, if a person suffers a heart attack or an injury caused by coronary heart disease at work, the onus falls on the employer to prove that the work did not contribute to the injury.

The Hon. R.J. Ritson: Why do you need to put it in here?

The Hon. C.J. SUMNER: Because it is not in the present Bill; it is in the Act that exists at the moment in those terms. We are now including in the second schedule a rebuttable presumption which is very similar to the *status quo*. I oppose the amendment. It is clear that the second schedule will have to be reviewed. All we are attempting to do with the second schedule is to pick up the existing law and incorporate it in this Bill. The Hon. Dr Ritson would probably agree, looking through the second schedule, that it does need to be reviewed. Obviously it must be reviewed in consultation with the medical profession, but in the meantime our aim is to retain the *status quo*.

The CHAIRPERSON: The Hon. Mr Griffin has moved to leave certain words out of the second schedule.

Amendment carried.

The CHAIRPERSON: The Hon. Mr Gilfillan has an amendment to the second schedule to strike out a number of words, including those which the amendment of the Hon. Mr Griffin has already struck out. I suggest if you want to proceed, Mr Gilfillan, that you move your amendment.

The Hon. I. GILFILLAN: I move:

Page 66—Leave out the following:

Asthma or asthmatic attacks . . .

Any work involving contact with, or the inhalation of, the dust of red pine, western red cedar or blackwood.

Any work involving contact with, or the inhalation of, flour or flour dust.

I do not intend to move to delete the words relating to noise induced hearing loss.

The CHAIRPERSON: The honourable member does not wish to move that?

The Hon. I. GILFILLAN: I do not wish to move that. However, I speak briefly to the 'asthma or asthmatic attacks' matter in the schedule. The condition of asthma is frequently detached from the cause of that condition and from the incidental circumstances in which the person finds himself or herself. I speak from personal experience: I have been a life long asthmatic. It would be quite ridiculous if I were in a place of employment such as those listed here and suffered an asthma attack of some degree. It would then be assumed that that condition was the responsibility of the employer and the workers compensation system and a reverse onus of proof would need to be put on it. It could be established, as it would with any other disability, to be the cause of this condition, but I know enough about the

asthmatic condition to know that it is inappropriate for it to be in the schedule.

The Hon. R.J. RITSON: Asthma is an extremely complex condition with multiple causes, including allergy. My attitude to the provision is that it does not matter whether it is in this evidentiary schedule or not in relation to western red cedar and blackwood. A very specific allergy can develop to those resins present in such timbers and they can provide a variety of allergic consequences, including asthma and dermatitis. As the Hon. Mr Gilfillan knows, so can many other things. The current stage of medical knowledge is such that the allergy specialist can easily and confidently state, in cases of alleged causation by these timbers, whether the condition is or is not, on the balance of probability, caused by that industrial exposure.

So, it is really a situation where it is a curiosity that one group of workers managed to get their allergy in the schedule and obviously others, who are equally susceptible to industrial allergies, did not. In the case of this allergy, if it does exist, there will be enough evidence to establish it positively on the balance of probabilities, whether or not it is in the schedule. For that reason I hardly care whether the words stay or go, but I will support the deletion.

The Hon. C.J. SUMNER: This is absurd. I do not want to increase the heat of the argument at this late stage of the proceedings, but this verges on the ridiculous. It has been in the schedule of the Workers Compensation Act since 1938 or thereabouts. Certainly it was in the consolidation of the Workers Compensation Act since 1958 in the Statute Book I have before me. The Hon. Mr Gilfillan is an asthmatic. He comes along and proposes to overturn 40 or 50 years of accepted medical testimony contained in the second schedule of the Workers Compensation Act and takes it out. He does not have any evidence or basis for so doing except his own prejudices. It has been there at least since 1958—and I think it has been in the Workers Compensation Act virtually ever since its inception. The second schedule goes back a long way. I can say with authority that the words are virtually the same, have always been there and yet are now proposed to be struck out. I find that quite astonishing.

The Hon. K.T. GRIFFIN: It is specifically referred to in the second schedule of the present Act, and certainly there is room for debate on the merit of its being there. However, in view of other issues we need to discuss and the fact that it is essentially evidentiary, I am not prepared to support amendment.

The Hon. I. GILFILLAN: Before I suffer the inevitable defeat, I would like to make a comment that, to argue against this on the grounds that one does not change it because it is already in the Act, seems to be fatuous.

The Hon. C.J. Sumner: That is not what I was arguing. I was arguing that you want to change it without a skerrick of evidence; you want to take it out because it seems like a good idea to you—without having any evidence as a basis for taking it out. The medical evidence that is backing it has been in the Act for 30 years.

The Hon. I. GILFILLAN: If I can speak over the interjection, I point out that it would not be the first time that an amendment was moved without a copious amount of evidence being brought forward. It is obvious that the schedule will be reviewed. That undertaking has been given by the Attorney-General, so I am not devastated by it and it is what I regard as being a helpful suggestion to getting the schedule reviewed and accurate where there should be reverse onus of proof as compared to positive, direct proof required of the suffering.

The Hon. K.T. GRIFFIN: I agree that the matter ought to be reviewed, and I have some sympathy with the view put by the Hon. Mr Gilfillan. However, on this occasion, on the formal basis of the amendment, I indicate that the Opposition will not support it.

Amendment negatived.

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

Page 67—Leave out 'Any work involving the handling or use of tar' and insert 'Any work involving processes which involve the handling or use of tar'.

This is a small matter that we should be able to dispose of quickly. Essentially it reverts the wording to that which was in the previous schedule. There is something slightly archaic about this; it really goes back to the chimney sweep scrotum days, where the tar collected in the underpants of chimney sweeps and caused skin cancer. These days almost every squamous cell and basal cell skin cancer is caused by the sun, but I think it is reasonable for a provision to remain in the legislation because, since the days when people recognised the chimney sweep scrotum problem, we have had a petro-chemical industry develop, and people are handling carcinogens in that industry.

But, for some reason the Government when drafting this second schedule changed the wording slightly to provide for any work involving the handling, etc., of these hydrocarbon materials, extending to the products and residues. Strictly speaking, if my work involves handling a biro, which is a product of those hydrocarbons, a skin cancer on my back could be presumed to be caused by the biro. I would be happy if we could revert to the wording that was used in the original Act, in which case at least the word 'process' at least implied that one ought to be involved in some sort of industrial process in the manufacture, preparation and handling of these hydrocarbons, and not simply work with their products. As it is, interpreted literally it could cover working with say, a biro, in which case the provision would apply to me. Does the Attorney object to the wording in the schedule as it was before, with the word 'process' included?

The Hon. C.J. Sumner: Why not just cross out 'work' and replace it with 'process'?

The Hon. R.J. RITSON: It requires something to make it clear that it is an industrial provision and that it does not apply to, say, clerical officers using biros, for example.

Amendment carried; schedule as amended passed.

Third schedule passed.

Clause 113—'Inspection of place of employment by rehabilitation adviser.'

The Hon. K.T. GRIFFIN: I seek leave to withdraw the two amendments that I moved earlier.

Leave granted; amendments withdrawn.

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

Page 60—

Line 39—Leave out 'A' and insert 'Subject to subsection (1a), a'.

After line 40—Insert new subclause as follows:

(1a) An inspection under subsection (1) shall be exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at a place of employment.

The amendments will overcome the objection raised by the Attorney-General. The objection was quite reasonable, I was pleased to note it and, as a result, have the new subclause redrafted.

Amendments carried; clause as amended passed.

Clause 4—'Average weekly earnings.'

The Hon. C.J. SUMNER: We have dealt with the average weekly earnings of a contractor, which we based on the rate of pay that a worker would have received. The argument was that it was picking up the existing law.

The CHAIRPERSON: It was discussed but not put, which is why, following discussion, the whole clause was postponed. We could not have postponed it if we had made amendments to it.

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

Page 9, lines 31 to 37—Leave out subclause (3).

I cannot remember precisely why we sought to postpone consideration of this clause; there has been so much debate on the Bill and associated matters in the past few days. This clause deals with average weekly earnings. Certain matters are to be taken into consideration under subclause (2) for the purpose of determining the average weekly earnings of the worker. Subclause (3) also refers to an award that might have some relevance to the work of the contractor. My recollection was that the question was raised whether that was consistent with section 8 (1) *(a)* of the present Act. I must confess that I have not considered this matter further since it was originally raised. There may be opportunity for further consideration at a later stage.

The Hon. I. GILFILLAN: We oppose the amendment. When discussing the whole ambit of the clause, there are grounds to delete 'for any other reason' in subclause (4), but this amendment refers to subclause (3).

Amendment negatived.

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

Page 9, lines 38 to 39—Leave out 'or for any other reason'.

This amendment relates to a situation where, because of the gradual onset of a compensable disability or for any other reason it appears that the level of earnings of a disabled worker prior to the relevant date were affected by the disability, the average weekly earnings are to be calculated in a particular way. The words 'or for any other reason' are not relevant. They at least give the opportunity to introduce extraneous material that is not related to the level of disability.

The Hon. I. GILFILLAN: I support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

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

Page 9, lines 44 and following—Leave out subclause (5).

This seeks to establish the average weekly earnings of a disabled worker who was not a full-time worker immediately prior to the relevant date but who had been seeking full-time employment and had been predominantly a full-time worker during the preceding 18 months, and in those circumstances the average weekly earnings are to be calculated as if the worker had been a full-time worker. I have some concern about the proposed formula, leaving a lot of matters up in the air, and without taking any further time on it I move the deletion formally.

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 10, line 41—Leave out 'male unit' and insert 'adult person'.

This is an interesting amendment, as I am sure you, Madam Chair, will find. Reference to the state average weekly earnings is a reference to the amount last published by the Commonwealth Statistician as an estimate of average weekly earnings for ordinary hours of work for each full-time employed male unit in this State. They allege that that is the State average weekly earnings—as if half the population does not count. I knew your indignation, Madam Chair, would show through. It would be appropriate, I feel, that the Democrats move this amendment and, probably, protect the Government, because I feel that this could be actionable under the equal opportunities legislation and result in all sorts of embarrassment. We move the amendment to truly reflect the State average weekly earnings.

The Hon. C.J. SUMNER: The Government opposes the amendment. This would, effectively, significantly lower the ceiling level of average weekly earnings.

The Hon. K.T. GRIFFIN: Probably no adult person rate is kept by the Commonwealth Statistician, anyway, so effectively it is rendered useless. I have some sympathy with the principle, but the fact is that, if the Commonwealth Statistician does not keep those figures for an adult person, you render useless the whole clause—and possibly a very significant part of the Act. If the male unit rate is presently kept, it seems to me to be reasonable to refer to it. As the Attorney-General says, it is the higher rate of the male and female units, anyway, so it seems to me to be a reasonable proposition in the Bill. I oppose the amendment.

The Hon. I. GILFILLAN: It looks as though there are a number of objections. If the intention of the Bill is to use the specific full-time employed male unit, let us not refer to it as the State average weekly earnings. I do not believe that the Commonwealth Statistician does not have statistics available for adult persons' full-time employment in this State. That seems to me to be ludicrous. So the amendment is not necessarily aimed only at changing the amount of the wage. If we are going to be defeated in the amendment we have before us, all I can say is that, in fairness to some sort of appropriate wording, it should not be 'the State average weekly earnings' when referring to the average weekly earnings for the full-time employed male unit.

Amendment negatived; clause as amended passed.

Clause 78—'Review officers.'

The Hon. K.T. GRIFFIN: In the debate on my proposed new clause 125a I referred to review officers and their role, involving potential conflicts: on the one hand, as employees of the corporation having a career path to follow; and, on the other hand, being charged to be independent of the corporation in terms of reviewing complaints and other matters affecting injured workers. I see potentially grave difficulty in review officers being able to act in their capacity as review officers independently of the corporation because of the potential pressure as a result of their employment path through the corporation.

I place on record that that matter should be reviewed. I had considered other mechanisms for making such officers independent of the corporation. It may be that that becomes evident and appropriate if finally the corporation is up and running and this Bill becomes law, but I have grave concerns about the potential conflict.

Clause passed.

Clause 79 passed.

Clause 80—'Membership of the tribunal.'

The Hon. C.J. SUMNER: The Hon. Mr Griffin asked me, when we came to part VI previously, whether there had been any correspondence from the Judiciary on the proposal. I indicated that I had received some information from the Chief Justice, who has been contacted and is happy for this correspondence to be tabled. I seek leave to table a letter from the Chief Justice to the Attorney-General dated 27 August 1985; a reply from the Attorney-General to the Chief Justice dated 10 October 1985; a letter from the Chief Justice to the Attorney-General dated 15 October 1985; a letter from the Chief Justice to the Attorney-General dated 3 February 1986; and a letter from the Chief Justice to the Attorney-General dated 13 February 1986.

Leave granted.

The Hon. K.T. GRIFFIN: In consequence of that correspondence, where the Chief Justice raises a matter of principle affecting the administration of justice in relation to the proposed appellate machinery (namely, the Workers Compensation Appeal Tribunal), will the Attorney-General indicate whether it is the Government's intention to appoint judges as presidents of the tribunal? Will he also indicate whether it is the intention to bring it under the umbrella of the Industrial Court system—either the Industrial Court or the District Court.

The Hon. C.J. SUMNER: The current intention is to have a tribunal that is a separate workers compensation

appeal tribunal, that is, separate from the Industrial Court and the District Court.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, a lawyer of seven years standing.

The Hon. K.T. Griffin: That might be so, but are they to be judges exercising the jurisdiction or just appointed on an *ad hoc* basis?

The Hon. C.J. SUMNER: It is not necessary that there be someone who is currently of judicial status. Legal practitioners of more than seven years standing could be a President and Deputy Presidents of the tribunal. On the other hand, it may be that one of the current judges will be appointed to head the tribunal.

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

Page 51, after line 18—Insert new subclause as follows:

(3a) The power of appointing ordinary members of the tribunal shall be so exercised so as to ensure that the number of members appointed after consultation with the United Trades and Labor Council is equal to the number of members appointed after consultation with associations that represent the interests of employers.

One of the concerns I have about clause 80 is that there is no clear expression of principle as to the way in which ordinary members of the tribunal will be selected. The tribunal comprises a President, such Deputy Presidents as may be nominated by the Minister, and such ordinary members of the tribunal as may be nominated by the Minister after consultation with the United Trades and Labor Council or associations that represent the interests of employers. It seems to me that there is no expression of the principle that equal numbers will be appointed.

The Hon. I. GILFILLAN: We are in favour of the amendment, which emphasises what in fact is the theme extending right through this matter, namely, that there is balance and no cause for feeling that there is a distortion or prejudice against one side or the other. It seems a practical amendment to include in the Bill.

The Hon. C.J. SUMNER: There is no point in the amendment, because the tribunal must sit in tripartite fashion with an independent Chairman and a representative of the employees and the employers. However, the numbers are not with me.

Amendment carried.

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

Page 5, lines 28 to 30—Leave out all words in these lines.

Subclause (5) deals with the cessation of office of the member of a tribunal. There are a number of bases on which a member ceases to be a member of the tribunal, and paragraph *(d)* provides:

(d) is removed from office by the Governor—

(i) for breach of, or non-compliance with, a condition of appointment;

or

(ii) on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily duties of office.

This really enables the Governor, acting on the advice of the Government, to remove a person from office which might impinge upon the independence of that person as a member of the tribunal, and it also means that, in the appointment of members, conditions of appointment might be laid down over which we have no control as a Parliament, but which may nevertheless, if not complied with, compromise the office of a member of the tribunal.

It really picks up one of the points, I suppose, that one could draw from the Chief Justice's comment about the independence of the tribunal: that they ought as much as possible to be free from any potential for Government interference or influence. It seems to me that if there is a condition of appointment imposed for a breach of which condition the Governor can remove that person, it does impinge upon the capacity of that person to act independently. There is sufficient safeguard for removal on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily the duties of the office and that, I think, ought to be the principal basis upon which the Government can remove a member of the tribunal.

Amendment carried; clause as amended passed.

Clause 81—'Constitution of tribunal, etc.'

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

Page 52, after line 3—Insert new subclause as follows:

(1a) Ordinary members of the tribunal should, as far as practicable, be selected under subsection (1) *(b)* and *(c)* in a predetermined order so that the work of the tribunal may be assigned to such members in a uniform manner.

Clause 81 deals with the constitution of the tribunal. It is to comprise a President or Deputy President who is to be the presiding officer, one member from the ordinary members appointed after consultation with the United Trades and Labor Council, and one member selected in accordance with the rules of the tribunal from among the ordinary members appointed after consultation with associations that represent the interests of employers. I think that it ought to be a principle enshrined in the legislation that, as far as practicable, those two members be selected in a predetermined order so that the work of the tribunal can be assigned to those members in a uniform manner.

It is really designed to try to establish a roster system without making it mandatory so that there cannot be any manipulation of the membership of the tribunal for particular matters which come before it. If there is a predetermined roster system established and it is followed as far as that is practicable, then it seems to me that it eliminates the potential for abuse of the system by selecting ordinary members of the tribunal to sit on particular matters according to the matters that come before it. I think this principle ensures that it is seen to be more independent in the selection of those persons to sit on the tribunal.

The Hon. C.J. SUMNER: I do not think there is a need for this amendment. It should be left to the rules of the tribunal. There is no such provision, as far as I am aware, in the Planning Act, for instance, in relation to the Planning Appeal Tribunal, and I do not see that it is necessary.

The Hon. I. GILFILLAN: I oppose the amendment.

Amendment negatived.

The Hon. K.T. GRIFFIN: Is there any provision for these rules of the tribunal to be subject to scrutiny by the Joint Standing Committee on Subordinate Legislation? The rules of the Supreme Court are so scrutinised and it seems to me that, if there is no provision, then we ought to give serious consideration to it in the light of the Attorney-General's response.

The Hon. C.J. SUMNER: I have not checked, but I think that the procedures would be covered by the Subordinate Legislation Act and, therefore, would have to be tabled in Parliament.

Clause passed.

Clauses 82 to 90 passed.

Clause 91—'Powers of Review Authority.'

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

Page 54, line 4—After 'any' insert 'relevant'.

I have moved this amendment because it asserts that the summons to require the production of any document, object or material must relate to relevant documents, objects or materials. I think it is quite a reasonable amendment.

The Hon. C.J. SUMNER: Accepted.

Amendment carried.

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

Page 54, lines 15 and 16—Leave out 'and approved by the corporation'.

Under subclause (2) a medical review panel may require a worker to undergo a medical examination:

(a) by the panel, or a member of the panel;
(b) by a medical expert nominated by the panel and approved by the corporation.

I think it is quite unrealistic to impinge upon the independence of the medical review panel by making it subservient to the corporation in the appointment of a medical expert to examine the injured worker. If the panel is going to be independent, it ought to act that way and ought not to be subject to any direction by the corporation as to any medical expert who might be requested by the panel to examine a worker.

The Hon. I. GILFILLAN: I support the amendment.

The Hon. C.J. SUMNER: I oppose the amendment.

Amendment carried.

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

Page 54—
Line 17—Leave out 'Subject to subsection (4), if ' and insert 'If '.
Line 32—Leave out 'A person' and insert 'Subject to subsection (4a), a person'.
After line 35—Insert new subclause as follows:
(4a) A person appearing before the tribunal or a Medical Review Panel is not excused from answering a question, or from producing any document, object or material, under this section on grounds of self-incrimination, but if, before answering the question or producing the document, object or material, the person claims that the answer, document, object or material would tend to incriminate him or her of an offence, the answer, document, object or material is not admissible as evidence against the person in criminal proceedings except proceedings for an offence against this section or, in the case of an answer, for an offence arising from the falsity of the answer.

I think that this series of amendments is related. Subclause (4) provides that a person is not obliged to answer a question if the answer to that question would tend to incriminate that person of an offence, and the same applies in respect of production of any document, object or material.

As a matter of principle, I generally support that. It is in most legislation which comes to us dealing with powers of inspectors in particular, but I see some merit in providing that, although there is that protection against self-incrimination, there ought to be a mechanism which is accepted in the Companies Code that, if a person objects to answering a question on that ground, then the answer cannot be used, nor can any document against which the same objection has been raised be used, in criminal proceedings, but the answers are available for use by the panel.

This is largely an administrative body which exercises some quasi judicial functions. If a person required to answer questions but says, 'I refuse on the basis that it might tend to incriminate me,' the tribunal is then unable to get access to any information that might be in the knowlege of, and have a material bearing on, the question of civil liability under this legislation. There are protections here against the use of the information in criminal proceedings, and that is the appropriate connection in the context of this legislation.

The Hon. I. GILFILLAN: I do not really understand the fine points covered by the amendments and so far there is no lead from the Government. I tend not to support them because I do not understand them.

Amendments carried; clause as amended passed.

Clauses 92 to 95 passed.

Clause 96—'Application for review.'

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

Page 56, after line 3—Insert paragraph as follows:
(ca) a decision refusing registration or cancelling registration of an employer or groups of employers as an exempt employer or a group of exempt employers:.

The amendment is a protection for exempt employers who are presently the self-insurers. This clause deals with reviews and appeals and particularly an application for a review. Subclause (2) sets out the decisions that are reviewable and my amendment adds to that list. It is an adequate safeguard against capricious, arbitrary or unreasonable action by the corporation in relation to exempt employers.

The Hon. I. GILFILLAN: We support the amendment.

Amendment carried; clause as amended passed.

Clauses 97 and 98 passed.

Clause 99—'Decisions of Medical Review Panel.'

The Hon. C.J. SUMNER: I move:

Page 57, lines 22 and 23—Leave out subclause (1).

The ACTING CHAIRPERSON (Hon. G.L. Bruce): The Hon. Mr Griffin has the same amendment.

The Hon. K.T. GRIFFIN: I defer to the Attorney-General on this occasion.

The Hon. C.J. SUMNER: This amendment and the next one relate to medical review panels. On further consideration it has been decided, because of the importance of decisions of medical review panels, to amend the Bill so as to allow unrestricted rights of review from decisions of medical review panels.

Amendment carried.

The Hon. C.J. SUMNER: I move:

Page 57, lines 24 to 26—Leave out ', by leave of the tribunal (which should only be granted where special reasons are shown),'.

Amendment carried; clause as amended passed.

Clauses 100 to 102 passed.

Clause 103—'Special jurisdiction of Review Officer.'

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

Page 58, after line 13—Insert new subclause as follows:
(5) The regulations may prescribe procedures for the reference of applications under this section to Review Officers.

This amendment basically provides for power to prescribe procedures for reference of applications to review officers.

The Hon. I. GILFILLAN: I do not see any justification for this. Here we go with regulations again. It seems counter to the argument of the Hon. Mr Trevor Griffin.

Amendment carried; clause as amended passed.

Clauses 104 and 105 and title passed.

The Hon. C.J. SUMNER (Attorney-General): I move:

That Standing Orders be so far suspended as to enable the Bill to pass through its remaining stages without delay.

It will enable the third reading of the Bill to proceed today rather than its being deferred until the next day of sitting. This involves a suspension of Standing Orders and therefore requires an absolute majority of the Council. In view of the cooperative attitude adopted by honourable members last evening and today, I am sure that they will be quite happy to support the motion. As honourable members will recall, this motion is a fairly normal procedure once the Committee stage is completed to enable us to proceed with the third reading on the same day. We suspend the Standing Orders which requires, at the completion of the Committee stage, the third reading to be made an Order of the Day for the next day of sitting.

The Government believes that the debate and Committee consideration on the Bill has been very full. I will not recapitulate all the arguments relating to costings that we have had on two or three occasions during the course of this debate at the second reading and Committee stages and on the motion that was moved yesterday. Suffice to say that the Government believes that the Bill should proceed to its third reading. I have therefore moved the contingent notice of motion to enable that to occur.

The Hon. I. GILFILLAN: I oppose the motion. We are certainly at the end of a very hard working and productive session in the Committee stages, and I commend the Council on its effective work in that regard. The Attorney referred to the costing question in his motion, which is substantially

the basis for my opposition to the motion. The costings have been put under question by a report from the Auditor-General which came in response to a request by the Government. By interpreting his comments in that report, it is essential that further work should be done before the Bill is passed in its final stage.

It is normal, except for the extraordinary course of moving this contingent notice of motion, for a Bill to be deferred to another day to be read a third time. This will give us time to more thoroughly assess the costings and give some opportunity—which some members I am sure would like to have—for reviewing other clauses that were dealt with in the Committee stages. Our intention is therefore to oppose the motion.

The Hon. K.T. GRIFFIN: The Opposition's view on this Bill has been well known for quite some time. We took the view that the Committee stage ought to be postponed whilst the question of costings was further examined in the light of the Auditor-General's report which was tabled earlier this week. However, we were not successful in having the Committee stage postponed when I moved that progress be reported on clause 3.

Throughout the Committee stage we proceeded to put our points of view on aspects of the Bill. Some amendments were successful and others were not. It seems to us that, having gone through that process, it is still appropriate to give further consideration to the very vexed question of costings, which are the subject of considerable controversy in the community. Therefore, the Opposition will not support the motion for suspension of Standing Orders. We still say that the Government ought to obtain a more detailed, comprehensive and accurate report, and we would be prepared to come back in April or May to give further consideration to the report, when it is available. The Opposition opposes the motion.

The Hon. C.J. SUMNER (Attorney-General): I am disappointed in the honourable member's attitude, but there is no point in belabouring the situation. I would like to thank honourable members for the attention that they give to the Bill during the Committee stage. It was a complex exercise and involved proceeding through a considerable number of amendments. I thank the Opposition in particular for their cooperation in ensuring that debate was reasonable and conducted as expeditiously as possible.

The Council divided on the motion:

Ayes (7)—The Hons B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, Carolyn Pickles, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Noes (10)—The Hons J.C. Burdett, M.B. Cameron, Peter Dunn, M.J. Elliott, I. Gilfillan (teller), K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. T.G. Roberts. No.—The Hon. L.H. Davis.

Majority of 3 for the Noes.

Motion thus negatived.

RACING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 March. Page 770.)

The Hon. J.C. IRWIN: I am conscious of the time and the fact that it is Friday afternoon after a very long week. I secured the adjournment of this debate (I think it was about three or four days ago, although it seems like three or four weeks ago) to allow further consultation before the Bill proceeded. I thank the Government and my Leader for allowing this course to be followed. The first thing I found when I contemplated the Bill was that there had been very little consultation. Any consultation had been inadequate, in my opinion, on both sides of the Council. I am disappointed about that because consultation is something that both Parties pride themselves on.

Although some may think that this is a small matter, it is certainly not seen that way by the three racing codes affected by this Bill. We hear so much about consensus but when we come to do it we seem to pay lip service to it. I refer to the second reading contribution to this Bill by the shadow Minister of Recreation and Sport in another place, as follows:

> I was concerned to hear that a Bill as important as this was not circulated to the three racing codes. I understand that during the past week the Minister has put to the three codes the possible distribution method and has advised them that that method has not been discussed by Cabinet. After sending out Bills to the three codes, I received a couple of letters that thanked me for doing so, because they thought that they would have been sent by the Minister as a courtesy. When one had a very significant change—

The very significant change in this Bill is the fixing of percentages for TAB distribution to the three racing codes. The one week referred to by the shadow Minister was only two weeks ago, before the Bill was introduced in another place. If proper consultation in a proper time frame does not take place—especially by a Government—I can only smell a rat. Why does the Government want to change the method of distributing TAB income? The explanation given so far certainly does not convince me, except to the extent that it continues the move towards more Government intrusion.

The Government has control of the business and the time that this Parliament sits. It is a lame excuse indeed to say that time is a factor in this case and I am now satisfied that consultation has taken place, albeit unsatisfactory in the light of the depth of consultation required. Another matter relative to the Bill has been brought to the attention of members on both sides, but that matter has been dealt with and I will not refer to it now. I return to the major substance of the Bill.

The Opposition supports the three main arguments on the provisions of the Bill, which are: first, that the Minister be given the authority to permit what is known as cross code betting; secondly, that authorised racing clubs when conducting charity race meetings be permitted to offset operating expenses incurred in conducting a meeting against the balance of totalisator commissions received by the club in determining the net proceeds payable to approved charities; and, thirdly, that the proposed fixed percentage distribution of TAB shares for racing be 73.5 per cent for galloping, 17.5 per cent for harness and 9 per cent for greyhounds, and that is the major provision.

This distribution will be implemented in the current financial year. I understand that is probably why this Bill has been rushed through both Houses. I accept the first two amendments, but I will oppose the third. The Liberal Party's policy at the last election was not to provide a fixed allocation to the three codes, but rather if a code needed subsidy the money would come from the Government's 50 per cent share of unclaimed dividends and fractions.

This 50 per cent share represents a considerable amount. Over the past four years it has aggregated to $4.37 million or $1.09 million average per year, so there is no shortage of dollars in this kitty for subsidisation, that is if the Government is really serious about subsidisation or helping one or more of the three codes. Some may say, and no-one more loudly than the present Minister of Health, that that would diminish the money earmarked for the hospitals or general revenue in reality. That may well occur, but in my

view the Government, or any Government, has no moral right to unclaimed dividends and fractions.

Regarding fixed percentages, the former Minister of Recreation and Sport when speaking in the second reading stage in the other place said:

I believe there is a strong moral and historical argument against fixed percentages.

He went on to substantiate his statement. The former Minister is a much respected gentleman and figure in racing circles in South Australia, and I have no problem in acknowledging that. He is also a caucus colleague of the present Minister of Recreation and Sport and, although differences of opinion are healthy in all Parties, I believe that the caucus meeting that decided on the fixed percentage allocation must have been interesting. I wonder (as we all should wonder) why that caucus meeting, if this matter was discussed at a caucus meeting, did not take the advice of the former well respected Minister.

My opposition to fixed percentages is twofold. First, it is quite clear that the major racing code—galloping—will subsidise the other two codes—harness, and greyhounds. Secondly, the philosophy of fixing will help to destroy healthy competition between the codes and initiative and inventiveness, thus leading to the lowest common demoninator mentality to which I have referred (and to which I will certainly refer in this place again). Why should galloping be required to do this subsidisation on behalf of the Government? If that is required, it is the obligation of the Government to subsidise from its own funds and not this cross subsidisation before us now. The Minister of Recreation and Sport stated a number of things clearly in the second reading explanation, as follows:

Section 69 (2) of the Racing Act 1976 currently provides that 50 per cent of TAB profits shall be paid to the Treasurer to be credited to the Hospitals Fund and the remaining 50 per cent divided among the three codes of racing in proportion to respective TAB turnover.

Whilst profit allocations to each of the codes based on this formula have increased annually, in varying proportions, to date, there exists a trend through the movement in turnover shares which, if maintained, will lead to reduced distributions in both real and absolute terms for the harness racing and greyhound codes . . .

The most recent available statistics on TAB turnover shares (up to mid-January 1986) indicate that the previously recorded rapid growth of the galloping code may have been arrested.

This could be attributed to two major causes: first, the night codes, particularly the greyhound code, have increased the number of meetings for which a TAB service has been given; and, secondly, it could be considered that the galloping code has reached a saturation point or peak level of proportionate TAB turnover.

It is contended, however, that this position does not affect the need to amend the scheme of distribution. The present situation may only be a temporary circumstance, and it is not supported by previous annual trends. In addition, it is dubious practice for the night codes to have to seek more and more race meetings to be serviced by TAB in order to simply maintain turnover and, therefore, profit shares. This is particularly relevant when one considers that their ability to generate TAB turnover is inhibited by factors over which those codes have no control.

In fact, for the three codes, the allocation of TAB dividends from 1982 to 1985 is as follows (I will not give fractions but will merely try to indicate a trend): the galloping code has gone in the past four years from 69 per cent to 70 per cent, to 72 per cent, to 74 per cent; trotting has gone from 14 per cent to 35 per cent, to 18 per cent and to 16 per cent (which is somewhat wavy but which over the last three years shows a downward trend); greyhound racing has gone from 17 per cent to 38 per cent, to 9 per cent to 9.8 per cent which, again, shows a downward trend over the past four years, with a bubble in the second year.

Clearly, 1983 was an unusual year as greyhounds and harness racing received something like double their annual allocation. I admit that I have not had the chance or the time to find out why that happened. It may have been contributed to by higher promotional activity in 1983.

And, of course, if we now get fixing, these unusual allocations for the two more minor codes in 1983 will not happen again, and any single increase in total TAB activity will be a reward for the three of them, not just for those that have shown initiative.

The Minister referred to a trend. This is borne out in percentage increases or percentage decreases, but the kitty has been growing considerably, and that has to be distributed. In real dollar terms, we find that in four years TAB returns have gone up $7.9 million or 73 per cent; galloping, $3.2 million or 86.2 per cent; harnessing, $540 000, or 52 per cent; and greyhound racing, $208 000 or 33 per cent. I do not think that anyone here—especially the farmers who are here helping me at this stage—would knock back a 33 per cent real increase in their income over the last four years.

So, although the examination in percentage terms may show an increase or a small decrease, this not only shows the percentage of the cake but also the percentage relativity between the three codes. The real dollar increase has been outstanding and, I would add, quite adequate. There is absolutely no room for any moans or groans from any of the codes receiving that sort of increase. However, according to calculations, there has been another trend in TAB returns for the new financial year 1985 up to mid-January 1986 (only 6½ months), apparently showing a decline in total TAB return.

Mind you, six and a half months is hardly sufficient time to substantiate a trend. The trend long-term may or may not be confirmed, and may also reflect a long-term swing away from TAB gambling on the three codes of racing towards other Government sponsored and encouraged gambling, such as the casino and the ever increasing instant money games, etc.

The Minister also said that the galloping code allocation may have been arrested. I cannot see that in the figures that I have looked at and the figures that I have given tonight—at least not in real dollar terms. The Minister also said that the galloping code had reached saturation. I cannot judge that, and I do not know who can. Under this Bill they have certainly hit a ceiling and, I strongly suggest, so too have the two sections within the galloping code—provincial and country racing—because their percentages are fixed with the Minister under the galloping code agreement. If a ceiling is set on the galloping codes their ceiling (provincial and country) is also set, and it cannot move because it now has a ceiling.

The Minister said that this may only be a temporary circumstance, and that it is not supported by previous annual trends. Only future statistical evidence will prove that, and this does not support the need for a fixed percentage allocation. The Minister referred also to the dubious practice of the night codes scheduling more meetings. I guess it is dubious because the cost of running extra meetings might not be covered by the extra TAB allocations that they hope to gain from their activities throughout the year.

If the Government sees it as a problem, it should address that problem with the harness and greyhound code and not seek to use this problem as an excuse to fix percentages for the three racing codes. Near the end of the second reading explanation, the Minister said:

The Bill seeks to establish a independent review of the impact of the fixed percentage scheme of distribution after a period of three years. This review will be undertaken by a committee of three people chosen by the Minister who will be independent of the racing code.

I am glad to see this independent review proposal, and I support it. It should give the three codes of racing enough

notice to get their houses in order, enough time to consult their industries and with members of Parliament, if they need to (we have certainly had a bit of that over the last four days), and enough time to be part of and observe the impact that fixed percentages will have on the three codes of the racing industry. Although I show considerable concern that we have to move towards the fixed percentages—and I support the former Minister who said that it was not the right trend to take—I hope that in three years that might be borne out in evidence. However, I will not vote against its implementation, as it is clearly the wish of the Government and the Opposition.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Application of amount deducted under section 68.'

The Hon. M.B. CAMERON: It is not my intention to proceed witht the amendment that I have placed on file. I appreciate the Government's holding up this Bill until today, as it gave an opportunity for various sections of the galloping code to have a meeting. That meeting was to establish the future of their percentage of what is defined in the Bill between the various sections which are, of course, country, provincial and the SAJC. The country racing organisation asked me to move an amendment to this Bill for an amount of 11.5 per cent, which is the percentage that they get presently. They have had a meeting, at which I have been informed the country section of the galloping code proposed the following motion:

We agree to retain the *status quo* in regard to the scheme of distribution.

They then asked that the amendment before the Council not be proceeded with. I am perfectly willing to accede to that request as put to me by the Country Racing Association. I indicate clearly that if in August 1987, when this agreement runs out, that amount of not less than 11.5 per cent is not adhered to I will be prepared to take action in this Council to see that corrective measures are taken.

I have also received an indication from the Minister that he will be watching the situation closely and that he understands the need for the Country Racing Association to have a reasonable slice of the cake. I expect his support if there is any problem. He did not necessarily indicate a particular course of action that he would take, but indicated some sympathy for that course. Of course, the Hon. Dr Cornwall in the past has been a great supporter of country racing, and it was with his support (not without some controversy with the Minister) that we established the 11.5 per cent amount in the first place.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: Yes, very good, and Mt Gambier, too. I will not be proceeding with my amendment, and I expect the galloping code to adhere to this agreement beyond 1987 to ensure that country racing receives a reasonable slice of the cake.

Clause passed.

Remaining clauses (5 to 7) and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 6.44 p.m. the Council adjourned until Tuesday 25 March at 2.15 p.m.