LEGISLATIVE COUNCIL

Thursday 19 November 1992

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: When is it proposed to bring the Bill into operation?

The Hon. ANNE LEVY: I understand it will be proclaimed as soon as it is possible to get the regulations fully in place. There is no intention to delay it any longer than is absolutely necessary.

The Hon. K.T. GRIFFIN: Can the Minister indicate some sort of time frame? Is it a matter of one, three or six months? If she could give some parameters within which 'as soon as possible' might be more likely to be identified, I would appreciate that.

The Hon. ANNE LEVY: I understand the aim is to try to have it proclaimed to become operative from 1 January next, but that might be a bit too tight as a timetable. That date will certainly be aimed at.

The Hon. K.T. GRIFFIN: Is it proposed that, in respect of that proclamation, an*y* part of the Bill will be suspended from coming into operation? If so, will the Minister indicate which parts?

The Hon. ANNE LEVY: As I understand it, there is no plan to delay any of the clauses by proclamation. If it were possible to have some of them proclaimed before 1 January, that would be welcome. But, certainly, there is no suggestion that any of the clauses will not be proclaimed from the earliest possible time.

The Hon. K.T. GRIFFIN: Has any consideration yet been given to draft regulations and, if so, could they be made available? In conjunction with regulations, will the Minister indicate whether it is proposed to expose the regulations for comment before they are promulgated?

The Hon. ANNE LEVY: I understand that some preliminary work has been done on draft regulations but that they have not yet reached the stage where they can be considered by the board of WorkCover. The normal procedure is that regulations are considered by the board before being recommended to Government, and they are certainly not yet advanced enough for that to occur. Obviously, WorkCover is, very properly, waiting until the legislation is through the Parliament.

The Hon. K.T. GRIFFIN: That is quite a proper position for WorkCover to take, but I gather from the statements that have been made on the Government side and by the Australian Democrats that it is probably a foregone conclusion. Will the Minister answer the other question I raised: that is, whether the draft regulations will be made available for public comment before being promulgated?

The Hon. ANNE LEVY: That is a matter that would need to be considered by Cabinet and, as yet, no formal consideration has been given to that. Of course, such a procedure would delay the introduction of the legislation, and there is no wish for that to occur. From everyone's point of view, the aim is to have the legislation up and running as soon as possible.

The Hon K.T. GRIFFIN: It is not uncommon for regulations to be circulated by the relevant Ministers for comment even before they go to Cabinet. I must say that I am surprised that Cabinet should be involved in a decision as to whether or not these should be made available for consultation and comment before they even get to Cabinet. I merely put on the record that there are a number of parts of this Bill in which regulations are referred to, and I will be identifying those during the Committee consideration of the Bill. They are regulations that will have a substantive effect on the way discretion are exercised, particularly by review officers. I should have thought that, in fact, they should be subject to some reasonable level of consultation before being promulgated.

The Minister has said that it is not intended to delay the implementation of the Bill when it passes both Houses. I want to raise one issue at the moment which I will raise further at a later stage when dealing with the transitional provisions of the Bill. It is pertinent, though, to raise it now because it does relate to matters of delay. In my second reading speech I said that at least one instance had been drawn to my attention where there had been agreement reached between WorkCover and an injured worker for payment of a lump sum in settlement of the claim but that it had been delayed pending the passing of this legislation, in consequence of which the amount would be reduced. In his reply the Attorney-General said that if the name of the injured worker was available or some other identifying feature could be made available the matter would be checked.

Since I raised that issue the day before yesterday I have had other representations made to me by legal practitioners acting for injured workers who in the past two or three months have come up against a number of excuses for matters not being dealt with quickly. One lawyer told me that in several cases he has been told that the files had been lost. In another case there has been an indication from WorkCover that it is not possible to make a determination because more medical reports are required, when in fact on all the information available that is not so. There was another case in which WorkCover challenged the jurisdiction of a review officer to make a determination, which was a delaying tactic. Can the Minister indicate whether Mr Lew Owens or any other staff within WorkCover Corporation has made any request of staff at WorkCover to delay any claims processing and the making of determinations, pending the passing of this legislation?

The Hon. ANNE LEVY: I understand that Mr Owens has given no such instruction at all, and this was checked with him as late as last night. The honourable member said there were several cases where legal practitioners were suggesting that this was occurring; they may, of course, be biased in their judgments. But I can assure the honourable member that if he would care to provide the names and some necessary identification each of those cases will be checked in the manner that was promised in relation to the previous case that he raised.

The Hon. K.T. GRIFFIN: My question was not whether Mr Owens had given any instruction but whether Mr Owens or any other member of staff had made any request, informally or formally, to other staff to delay the processing of claims pending the passing of the legislation.

The Hon. ANNE LEVY: The answer is 'No'. The board itself asked Mr Owen whether there was any suggestion of delay and received the same response—that there had been no requests for delay.

The Hon. K.T. GRIFFIN: Clause 2(2) provides:

> Section 3 will be taken to have come into operation at 4 p.m. on 30 September 1987.

Section 3, which I presume is section 3 of this Bill, relates to section 4 of the principal Act which deals with the computation of average weekly earnings. The amendment in clause 3 of the Bill, which will become section 3 when it is enacted, provides:

> Any contribution paid or payable by an employer to a superannuation scheme for the benefit of the worker will be disregarded.

What effect will the retrospective application of that clause have by virtue of its retrospective operation? Does it mean that current claims might be reduced as a result of the retrospective application? Does it mean also that payments already made on the basis of those contributions actually being taken into consideration have to be refunded?

The Hon. ANNE LEVY: I understand that this puts beyond doubt what has virtually been the case: that, in general, no account has been taken of superannuation in determining average weekly earnings. There has been one test case where the decision went the other way and that—

The Hon. K.T. Griffin: That is in favour of including it?

The Hon. ANNE LEVY: Yes. There has been one test case in favour of including it. That particular individual, and perhaps a small handful of other individuals, will have had that superannuation included in a calculation of average weekly earnings. These very few individuals will not be required to repay anything, and this clause will put beyond doubt what had been intended and understood from 4 p.m. on 30 September 1987.

The Hon. K.T. GRIFFIN: I appreciate the Minister's response that no-one will have to make any refund. Are any of those small group of cases to which she referred continuing matters where, as a result of the passing of this provision, their payments will now be reduced because no longer will that contribution be taken into account in calculating their entitlements?

The Hon. ANNE LEVY: I am afraid I do not have the advice here at the moment about all the individual cases. It is thought that a number of them have returned to work, anyway, but we will need to check whether some cases are still receiving benefits. If there are any still on benefits, whether these benefits will be affected or not I understand will depend on legal considerations in the light of the transitional provisions which occur at the end of the Bill.

The Hon. K.T. GRIFFIN: I think the honourable Minister will know that I have some concerns about removal of existing benefits and the retrospective removal of benefits, whether it is under WorkCover or anything else. I have not got an amendment on file to deal with this because I must confess I presumed that it would not have any adverse effect. Would the Minister be in a position to give any undertaking on behalf of WorkCover that, if there are some cases who may still be receiving benefits and will be adversely affected by this provision, WorkCover will do all that is reasonably possible to ensure that they are not retrospectively deprived of those benefits?

The Hon. ANNE LEVY: I can give an undertaking that the Minister will take up the matter with the WorkCover board. As the total WorkCover board is not here, obviously I cannot speak for them. However, I am given to understand that the board does look sympathetically at cases such as this.

The Hon. K.T. GRIFFIN: I would certainly hope that it does. I suppose, from my point of view, the proper thing to do is seek to amend the clause because it is an important issue. It runs through the whole of the Bill, particularly in the context of the transitional provisions, which I will address when I get to them, as there are some substantial areas of concern in relation to those because of the prejudice to existing rights which occur as a result of those transitional provisions. I have made the point and I accept what the Minister has said: that these sorts of difficulties are likely to be sympathetically viewed in the context of this amendment.

In relation to subclause (3), can the Minister indicate what is likely to be the impact of the backdating of the operation of clause 16(a), which I would think (although I am not sure) relates to the amendment to section 54?

There has been a renumbering of the later clauses with clause 15a becoming clause 16 and clause 16 becoming clause 17. I am not sure whether this provision refers to the new clause 16(a) or the old 16(a). The old 16(a) refers to the delegation to exempt employers relating particularly to sections 42a and 42b. The present section 15(a) relates to basically the common law and non-economic loss. I am wondering to what it refers and, once we have done that, we can indicate what will be the effect.

The Hon. ANNE LEVY: I understand that there has been a clerical error on the part of the House of Assembly and that it should now read 'clause 18'.

The CHAIRMAN: To put it in context, it is clause 2(3) and refers to 'Section 16(a)' which now becomes 'Section 18'.

The Hon. K.T. GRIFFIN: Is it really a clerical error?

The CHAIRMAN: We have had advice from Parliamentary Counsel that it was a clerical error made in the House of Assembly.

The Hon. K.T. GRIFFIN: Has the House of Assembly notified that to you?

The CHAIRMAN: It has not indicated it to us, but we put it to Parliamentary Counsel, who confirm that they consider it a clerical error.

The Hon. K.T. GRIFFIN: I would have thought that, if it were a clerical error, the House of Assembly would have notified that, because the Bill that we received from the House of Assembly clearly has section 16(a) in it, and I worked on the basis that it had something to do with the delegation to the exempt employers, rather than dealing with the question of costs.

The CHAIRMAN: To put it in its right context, when amendments are made that alter the numbers of the clauses, it is for the House where the Bill originates to alter the clause number. It has been drawn to our attention that all clauses from 15a should be renumbered. Clause 15a becomes clause 16 and 16 becomes clause 17 and so on. We have picked that up through parliamentary Counsel's good office; we have not picked it up through the House of Assembly; and the House of Assembly has verified it to us now.

The Hon. K .T. GRIFFIN: I just express concern about it, but I will not do much more than that.

The CHAIRMAN: I take the Hon. Mr Griffin's point. This could be something vital to the Bill and I feel that the House of Assembly should confirm with us what has happened. This is a major matter. The Hon. Mr Griffin is talking about 16(a) in clause 2, and all of a sudden he is told it is clause 18(a). My view is that it should be confirmed by the House of Assembly before we enter into any debate, even though parliamentary Counsel are probably right. I do not think we have that latitude on something as major as this.

The Hon. K.T. GRIFFIN: I take it from that that the clerical correction will not be made until it is confirmed by the House of Assembly. With respect, I think that is the proper course.

The CHAIRMAN: I agree with you completely.

The Hon. K.T. GRIFFIN: I am comfortable with your decision, Sir, and it may well be that, before the end of the Committee stage if we get that confirmation from the House of Assembly, you could intimate that to the Committee.

The CHAIRMAN: There is another major problem, and we have had confirmation from the House of Assembly. Again, that was picked up by parliamentary Counsel. Previous clause 21 is now clause 22, and we consider it rather vital and will make an announcement about it. In subclause (1)*(b)*(ii), where it provides 'no claim for compensation' it should be 'a claim for compensation'. To my mind, that was a very major misprint. That has been confirmed. It was picked up by parliamentary Counsel. Evidently, another reprint was done. I will have my Clerk convey to the Clerk of the House of Assembly the concern of this Committee.

The Hon. ANNE LEVY: In reply to the previous question, I understand that the purpose of the clause is to put beyond doubt that the tribunal can award costs. The 1991 amendment was to enable the tribunal to award costs, but there have been legal contradictions, with some tribunal people feeling they did not have the power to award costs and others feeling that they did. In consequence, this clause is to put it beyond all doubt. There will be no difference one way or the other in terms of costs to WorkCover.

The Hon. K.T. Griffin: What about costs to the litigants?

The Hon. ANNE LEVY: It will make no difference to the costs to litigants, because it is back-dated to when it was intended that costs could be awarded.

The Hon. K.T. GRIFFIN: Except if there is a difference of view between tribunal officers; some have said they have no jurisdiction to award costs and therefore they will not award costs. Does that not raise the possibility that a party may seek to have that decision reviewed on the basis that the tribunal officer said he did not have power to award costs and the party said, 'parliament has now said you have, retrospectively'? Will that not mean at least a potential for some deliberations to be reopened upon the application of a disenchanted party and have the issue of costs now resurrected?

The Hon. ANNE LEVY: I understand that there are no such cases. There has been only the one case where a judge of the tribunal did not award costs on the supposition that he did not have the power to do so. That case was not appealed and there are no other cases. So, this amendment will put everything completely beyond doubt and have no financial implications at all retrospectively.

The CHAIRMAN: We have had advice from parliamentary Counsel that the copy he has certified in the Lower House does take care of clause l6a and does make it clause 18. So, that is now official: clause 16a becomes clause 18. There was some renumbering.

The Hon. K.T. GRIFFIN: Does that mean that the Bill the Legislative Council received was not certified by parliamentary Counsel when it was received from the House of Assembly? Does certification come at a later stage?

The CHAIRMAN. It comes at a later stage for us. The one that went into the House of Assembly was certified. The Legislative Council gets it and it is certified by the Clerk of the House of Assembly on its Bill. Parliamentary Counsel's certified Bill, when it was introduced in the House of Assembly, shows that the then clause 16(a) referred to in clause 2, is now clause 18(a).

The Hon. K.T. GRIFFIN: I think that it needs a bit more examination, because even the Bill which was printed and which came to us as reported with amendments from the House of Assembly contains clause 16a, and it does not *have* the later clauses renumbered. That suggests to me that, if the Bill has come from the House of Assembly as reported with amendments, 'Report agreed to and passed remaining stages 27 October 1992', and does not have those changes in it, that is the Bill we have, If the certification comes at a later stage, I think that there is something wrong with the procedure, with respect. We must act on the Bill that we receive. We had this argument about the form of a Bill we receive in another context earlier this year, in relation to the gaming machines legislation and messages. I think that if the Bill has been certified after it has been received by us and amendments have been made that were not necessarily made in the House of Assembly, there is something wrong with the system.

The CHAIRMAN: We will draw it to the attention of the Clerks. Our Clerk will take it up with the Clerk in the House of Assembly and express our concern about the matter.

The Hon. L.H. DAVIS: This question may need to be taken on notice, During the second reading stage I raised my concern and disappointment that the actual benefits flowing through to employers in the form of reduced premiums as a result of the amendments contained in this legislation had not been detailed in the second reading explanation. As the Minister will remember, on more than one occasion I have made the point that there should be a financial impact statement associated with legislation, particularly with legislation of this magnitude

which has such far reaching consequences impacting on some 68 000 businesses in South Australia. That detail was not contained in the legislation, and I hope that we may be able to have some clarification about this important point today.

Having said that, I do accept that last evening there was tabled in this Chamber a list of proposed benefit changes and costings from the WorkCover Corporation, which were prepared by Tillinghast, which 23 or 24 page document sets out the estimated savings from the proposed changes to the WorkCover benefit structure as a result of the proposed amendments. The letter had been addressed to Mr Owens, the Chief Executive Officer of the WorkCover Corporation, dated 2 November. I am not sure whether the Minister can translate the dollar benefits that are contained in this report into percentages and express them in terms of what they will mean for the average level of premiums.

When we last debated major amendments to WorkCover legislation in this Council in April this year (some seven months ago), as I noted in my second reading contribution, the Minister of Labour Relations and Occupational Health and Safety (Hon. Bob Gregory) very generously made available the services of senior executives of the WorkCover Corporation to assist the Liberal Party in costing its proposals. As a result, I was able to advise the Council what savings would flow from Liberal Party amendments, if they were successful.

As a member of the select committee that has been meeting now for some two years reviewing the operation of WorkCover (along with the Hon. Mr Gilfillan and the Hon. Terry Roberts), I have become used to the very efficient way in which WorkCover has been able to project the estimated benefits that will flow from the amendments recommended by the select committee. I would be pleased if the Minister could respond to this question: I know that it will touch a number of clauses in the Bill. It may well be that the Minister will prefer to take the question on notice and provide an answer subsequently, but it would be of benefit both to the Council and to the business community if she could quantify the benefits for each of the amendments the Committee is now debating.

The Hon. ANNE LEVY: I understand that a document containing the WorkCover Corporation proposed benefit changes and costings, which gives many of the costings and savings to which the honourable member referred, was tabled in this Chamber last night. With it was another page, an additional document, on which percentages are calculated. The two documents were tabled at the same time. The document finishes up by saying that the average levy rate will be 2.72 per cent, compared to the current 3.5 per cent. So, the percentage is indicated on that sheet.

The Hon. L.H. DAVIS: I am sorry: my colleague the Hon. Mr Griffin inadvertently withheld that other piece of information from me, and I now have that document. The point still stands that it would be useful to the Council if the breakdown of the individual benefits flowing from the various amendments can be given in percentage terms. We are talking about the amendments reducing the levy rate from 3.5 per cent currently down to 2.72 per cent, a major reduction of some 22 per cent or 23 per cent.

The Hon. ANNE LEVY: Those figures are not available at the moment, but I can assure the honourable member that the calculations will be made and provided at a later time.

Clause passed.

New clause 2a—'Interpretation.'

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

Page 1, after line 15—Insert new clause as follows:

2a. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of 'journey';

(b) by striking out from the definition of 'unrepresentative disability' in subsection (1) 'a journey, attendance of temporary absence' and substituting 'an attendance'; and

(c) by striking out from subsection (4) 'or a journey between the worker's residence and the place of pick-up (whether to or from the place of pick-up)'.

Essentially, this relates to the abolition of journey accidents from coverage by the legislation. The Liberal Party has had a view for a long time, and we have moved similar amendments on a number of occasions—I think even as far back as the consideration of the principal Act—to abolish the obligation of employers, and thus WorkCover, to cover the compensation which flows from entitlement which, under the Act, flows to workers who might be injured on the way to or from work.

As I said at the second reading stage, if one looks at the matter objectively, an employer has no control over a worker on his way to or from work. The worker can drive carefully or catch a bus, and can slip over getting up the step of a bus or a tram; the worker is not required to comply with any requirements as to the way in which he or she should behave, as he or she is so obliged in the workplace in relation to occupational health and safety, and other obligations to the employer and other workers. There is no nexus therefore between the journey to work and the worker's responsibilities at work or any nexus between what happens on the way to work and the obligations of the employer. I know that some of the accidents which might occur as a result of a motor vehicle accident may be compensable under the compulsory third party bodily injury insurance scheme and recovery can be made by WorkCover, but that I think is a mere incident of the principle whether or not workers should be covered by this scheme, and even the previous scheme, on their way to or from work.

We in the Liberal Party hold a very strong view that, because there is no statutory link between the employer and the employee on the way to work, it is both illogical and unreasonable for the employer to have to carry the responsibility for injuries which might occur on the way to or from work. That is the essence of the argument which we put in the context of our proposition to reduce the liability of the employer and to put people who go to or from work in no different a position from other citizens who might be injured on the way to some activity in which they are involved but which is not necessarily an employer/employee relationship, or even a contractor/principal relationship. We feel very strongly about this. There are other amendments which are consequential upon this; quite obviously their fate will depend upon the fate of this amendment. We certainly intend to push this issue hard, and if we are not successful on this occasion we will keep trying.

The Hon. ANNE LEVY: The Government opposes this amendment. Journeys to and from work have been part of workers compensation legislation long before WorkCover was ever dreamt up. It goes back decades.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: I would be quite happy to agree that it probably was not in any nineteenth century legislation, but we are not interested in going back to the nineteenth century. As the honourable member said, a substantial part of the compensation that is paid under this provision is recoverable by the corporation from the compulsory third party scheme and the cost to WorkCover is not a significant one. I can quantify that for recent years: in 1991-92 journey claims amounted to only 4.4 per cent of total claims. In terms of cost, the journey claims represented approximately 8 per cent of total claim costs, but 75 per cent of this is recoverable from third party insurance. The effect is a net cost of 2 per cent of the total claim costs, on 1991-92 figures.

The Hon. I. GILFILLAN: The Democrats oppose this amendment. I shall speak briefly to it and then I will make a general observation about the way we will address the Committee stage. We believe that the journey which is an obligation on an employee to get to and from work should be subject to workers compensation cover. It is excluded from the employers' bonus penalty structure and it needs to be policed so that the abuses are kept to a minimum, but in principle we believe that were that person not employed that particular hazard would not be part of their work exposure to risk. So we oppose the amendment.

In order to save time in Committee, I would like to observe that we do not intend to get involved in debate on the various amendments. As indicated in the second reading debate, the Democrats believe that this Bill is urgently needed as relief to the employers in South Australia for levies. Through circumstances beyond our control, were this Bill to be amended and returned to the House of Assembly there is a very real risk that it would not pass and would not then have effect for relieving levies, and that would be for an indeterminate time. It is anyone's guess. I postulated in my second reading speech that, if it were on the whim of the Speaker, that could be any time within 12 or more months.

The Democrats have made the deliberate decision that we will not put this legislation at risk in this way. So it is our indication, even though some amendments may have deserved more consideration during the Committee stage in this place on their merits, that we are choosing not to amend the Bill in any form, so that the process of levy reduction and the other reforms in this Bill will go through. That therefore is not an excuse; it is an explanation for us not going into detailed explanations as to why we oppose the amendments, as they are moved one by one by the shadow Attorney-General. It is to facilitate the process. I indicate that that is purely and simply the reason for our choice to not be involved during the Committee stage in voting and extensive debate on the amendments.

The Hon. K.T. GRIFFIN: There really is no obligation for people to go to work, as the Hon. Mr Gilfillan suggests, but their obligation, if they turn up for work, is that they perform the duties that are required of them. It is a quite ridiculous proposition to argue, in opposition to this claim, that it is part of the worker-employer relationship. One could take that to some quite ludicrous extremes if one applied the reasoning that the Hon. Mr Gilfillan has applied to his opposition to this amendment.

I note the way he will handle this Bill. I think partly it is a defence against having to argue against some important issues of principle, particularly later in the Bill where amendments deal with questions of retrospectivity. It quite conveniently means that he does not have to get on his feet and rationalise the support for breaches of some fairly important principles.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: I am sorry. I may have misunderstood the Hon. Mr Gilfillan. I understood that he was not going to say anything, that he was indicating now that he was opposed to all the amendments and was not going to let it go through.

The Hon. I. Gilfillan: I could be induced to make the odd contribution, but I don't want get into exhaustive debate.

The Hon. K.T. GRIFFIN: I hope that on a lot of these issues he will. The way I interpreted his first remark, one could see that it would save him the difficulty of having to rationalise a point of view on important issues of principle, particularly those which remove some existing rights and benefits retrospectively. I do not accept (and I will argue this at a later stage, and I have argued it during the second reading stage) that the risk of sending the Bill back to the House of Assembly means that no amendments will go through. I do not want to repeat the procedural logic by which I drink one can see quite easily that that is not likely to occur.

The fact is that some changes to the scheme will go through, and if amendments are moved that will still be the case. I do not think the motivation is to get something through just so that the levy can be reduced: I think it is to avoid the threat which the Speaker of the House of Assembly has made about an election—a threat which I suggest is still there on one interpretation of what he had to say, and that is that the Trades and Labour Council did not support the amendments which he made and which he his supporting in this Bill. If he is true to his word (on one interpretation of what he had to say) there will still be an election early next year, but after yesterday's performance I do not think that that will occur.

In any event, I am disappointed that the Hon. Mr Gilfillan is not prepared to address and support any of the amendments which I propose, but I certainly intend to explain them adequately.

The Hon. ANNE LEVY: I do not wish to comment too much. Certainly, the Government will not accept any amendments. In the interests of not spending an inordinate amount of time on this Bill I will be limiting my comments to the amendments. The only comment I would make on the lengthy contribution of the Hon. Mr Griffin a few minutes ago is that I am very surprised that someone with his background, which in some ways one might describe as Calvinistic or puritan, should take the view that people do not have a duty to work. It raises philosophical questions of great interest which I would be delighted to discuss with him at some time. However, I suggest that amendments to the Workers Rehabilitation and Compensation Act is not the occasion to do so.

The Committee divided on the new clause:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy (teller), Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese.

Pair—Aye—The Hon. R.I. Lucas. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

New clause thus negatived.

The CHAIRMAN: I advise that the Clerk has verified with Clerk of the House of Assembly that in clause 2 it is section 18*(a)*. The renumbering has been approved and certified by the House of Assembly Clerk as follows: 15a becomes 16; 16 becomes 17; 17 becomes 18; 18 becomes 19; 19 becomes 20; 20 becomes 21; and 21 becomes 22. It is definite and has been certified that clause *22(b)(ii)* is a claim'.

Clause 3—'Average weekly earnings.'

The Hon. K.T. GRIFFIN: Mr Chairman, I would like to make an observation on your last statement. I think that we should try as much as possible to ensure that this does not happen again. It is confusing for members as well as officers. I am not blaming anyone at the table or in the Chamber, but I think it is not satisfactory, it ought to be resolved and we should make sure that it does not happen in the future. I must say that I have tried to work out exactly what it was doing, and I could have saved myself some time.

Clause 3 deals with the calculation of average weekly earnings in amending section 4. That is the basis for a calculation of weekly compensation. The Liberal Party has had the view for quite a long period of time that overtime should not be part of the calculation. At the moment, the reference to overtime in the principal Act means a somewhat complicated calculation and can mean both an under payment on the one hand or an over payment on the other when calculations are being made. The mechanical difficulties are not the principal reason for moving this amendment. The view of the Liberal Party is that overtime should not be a component of determining earnings and ultimately weekly compensation. I therefore move:

Page 2—Leave out all words in these lines after 'amended by' in line 20 and substitute 'striking out paragraph *(a)* of subsection (8) and substituting the following paragraph:

(a) any component of the worker's earnings attributable to overtime will be disregarded;'.

The Hon. ANNE LEVY: The Government opposes this amendment, which would remove all overtime from calculations of average weekly earnings, and this is certainly in complete contradiction to the intention of the Act which is to provide, by way of average weekly earnings, what the worker could reasonably have expected to earn had he or she not been injured. So, this amendment would disadvantage those workers who are required, as part of their conditions of employment, to work regular amounts of overtime which clearly forms part of their expected weekly income and their average weekly earnings. I suggest that the amendment is part of a package which would change this from being a workers compensation scheme to being a workers temporary subsistence scheme.

Amendment negatived.

The Hon. K.T. GRIFFIN: I should indicate that I will call for a division on some of these amendments but, if I lose on the voices for some, I will not do so. I am conscious of the time that is available for consideration of this matter. It is important but there will be some occasions where the fact that I do not divide does not suggest any less significance or weight being given to the amendment by me: it is merely a recognition of the time factor involved.

Clause passed.

Clause 4—'Compensation of disabilities.'

The Hon. K.T. GRIFFIN: This is consequential on the journey accident amendment, and therefore I no longer propose to move my amendment.

Clause passed.

Clause 5—'Compensation for property damage.'

The Hon. K.T. GRIFFIN: Clause 5 removes the rights of a person injured at work to recover compensation for damages to a motor vehicle; that principal section is section 34, which deals with property damage. I suppose one could envisage a situation where a worker is driving a motor vehicle, has an accident and that accident does not involve another motor vehicle. One might presume that the motor vehicle is insured and that the damage is recoverable from the comprehensive insurer, but that may not necessarily be so. There are a lot of vehicles around that are not insured, either comprehensively or covered by third party property damage insurance. Can the Minister give some indication as to the likely savings and in how many instances this may be likely to be a saving if enacted?

The Hon. ANNE LEVY: I understand that to this stage there probably has not been any, or much in the way of, payment in this regard. The amendment is being made to put beyond doubt that a motor vehicle is not to be classed as a personal effect or as a tool of trade. The case arose where a company director damaged his BMW and was attempting to claim that the BMW was a tool of trade and that WorkCover would have to pay the cost of fixing his BMW. That was not accepted but, to put the matter beyond any doubt, this amendment is now before us.

The Hon. K.T. GRIFFIN: My statements now will put the lie to the Minister's earlier statements that I have a Calvinistic or puritanical view about aspects of obligation and duty, because I can quite readily concede that the claiming of one's BMW as a tool of trade is a very far-fetched claim.

The Hon. ANNE LEVY: You are back to being Calvinistic.

The Hon. K.T. GRIFFIN: I suppose that is probably right. We will not embark upon a philosophical debate. Basically, it is a question of principle and propriety to which one has to adhere. Putting all the philosophical arguments to one side, I think it is unreasonable that the sort of claim to which the Minister referred should have gained any substance. I was thinking more of the tradesperson who used a motor car to take his or her tools of trade to work: maybe a person who does not drive anything other than an old ute that may not be insured either comprehensively or against third party

property damage and who uses that old ute for the purpose of going to and from work with his tools of trade.

It may be that excluding this may create some hardship, but that was the end of the scale at which I was looking rather than at the top end of the scale. I understand the difficulty that, if you do it for one, you have to extend it for another. It may be in the end that, if the Minister says that there has been only one case, there is nothing to worry about. It was the lower end about which I was concerned more in what I would regard as the traditional workplace environment than company directors driving their BMWs. Not all company directors drive BMWs; many drive Australian-made motor vehicles, some of which are secondhand, and in small business the majority of them would probably be unable to drive anything particularly flamboyant or ostentatious.

The Hon. ANNE LEVY: The honourable member is quite correct in that the amendment will eliminate the lower end as well as the top end of the motor vehicle scale. I understand that there has been one case where a motor vehicle was comprehensively insured, but a claim was made for the excess as a personal effect rather than under tools of trade. There is a limit of $1000 in the legislation for personal effects, but the amendment will not only remove the BMWs and Porsches but also will certainly have an effect on potential claims for excess on an insured vehicle under personal effects.

Clause passed.

Clause 6—'Weekly payments.'

The Hon. K.T. GRIFFIN: I move

Page 2, after line 26—Insert new paragraph as follows:

(ab) by striking out from subsection (1)(a) 'one year' and substituting 'three months';

Two different matters are dealt with in this package of amendments. I will take it in two separate groups. First, paragraph *(ab)* deals with section 35 of the principal Act and seeks to introduce a more limited regime of weekly payments so that they are not 100 per cent for a period of one year but for the first three months and limited thereafter in subsequent paragraphs *(af)* and *(ag)* to have a steadily declining proportion of weekly earnings paid by way of compensation for a more limited period of time. One of the major concerns of employer groups has been the extent to which full weekly payments are made equivalent to 100 per cent of average weekly earnings.

A lot of information indicates that that is the most generous in Australia and the generosity of the scheme provides no inducement to return to the workplace. One of the reports received by the Liberal Party from some consulting actuaries referred particularly to culture and behaviour having its impact on claims record and this cup (which does not want to be identified but which, nevertheless, I assure the Minister is a group of consulting actuaries from interstate) makes some observations about culture and behaviour as follows:

The crucial ingredient which cannot be legislated nor easily managed is the attitude and behaviour of those making up the complex system—workers, employers, doctors, lawyers, union advisers, scheme managers etc. There is a major difference in costs between at the extremes systems seen as generous and a soft touch where resources are spent maximising worker entitlements and the legal framework seems to be weighted towards the worker, and systems seen as offering relatively modest benefits and with stringent administration where decisions are rarely disputed and the legal framework enables strong administrative control.

The overall assessment of the South Australian scheme by this group was that, compared with other compensation schemes around Australia, it is clear that South Australia has quite generous benefits, especially weekly benefits for loss of earnings. The group states:

The legal framework of determining and administering entitlements and dealing with disputes is probably more favourable to the worker than in most other jurisdictions. The consequence, perhaps an inevitable one, is that the basic forces are those which lead to high compensation costs.

The incentive effect to which I have referred is further elaborated upon in the following terms:

If the average rate of weekly benefit payable to claimants was reduced by 10 per cent, one would expect the total cost of weekly benefit claims to also reduce by 10 per cent. In practice the cost reduction is usually more than 10 per cent because the the number of claims and average duration of claims also tends to reduce. We refer to this further change as the incentive effect. The incentive effect arises when claimants find it economically desirable to pursue some other course of action rather than to continue receiving weekly benefits, but can only arise if it is possible as well as economically desirable. The claimant must be physically able to take the action and the option must be available. The main alternatives are return to work either full-time or part-time, perhaps in a less demanding job than previously, but often in the same job, transfer to social security benefits noting the range of entitlements in addition to weekly payments.

How great is the incentive effect? This can vary widely depending on the legal and administrative arrangements, the compensation culture, the number of marginal claimants in the system, etc. Empirical evidence of the incentive effect is far from complete and in any given situation is hard to predict. Various estimates have been made of additional savings arising from the incentive effect, which range from under 50 per cent to over 100 per cent of the original benefit reduction. So, for example, a 10 per cent reduction in the average rate of weekly benefit might produce total savings of 15 per cent to 20 per cent in the cost of weekly benefits—l0 per cent from the direct rate reduction and a further 5 per cent to 10 per cent from the incentive effect.

The proposition which is in the first amendment, in conjunction with the other amendments to which I have referred earlier, is to try to develop a greater incentive effect and incentive benefit to the operation of the scheme by bringing about a reduction of the benefits at an earlier stage.

The other matter which is the subject of an amendment to add paragraph *(ac)* relates to the second year review and I propose that I would regard the vote on paragraph *(ab)* as a test for all the amendments relating to those series of reductions in benefits and that we deal with that first and move it separately, and then I will address some remarks on the second year review, partial incapacity, and regard the vote on paragraph *(ac)* as a test for all those amendments which relate to the second year reviews That will facilitate the discussion by the Committee on that issue.

For the benefit of the Minister, those parts which are relevant to the second year review and the Zelling decision are amendments to add paragraphs *(ac), (ad), (ah),* and *(ai),* and then there are some to later clauses of

the Bill, and I can address some remarks on those once we have disposed of this issue of reduction in benefits in the period for which benefits are paid and what percentage which, as I say, will depend on the vote upon paragraph *(ab)*.

The Hon. ANNE LEVY: The Government opposes this whole bunch of amendments strongly indeed. I will limit my remarks to the concept of the reducing benefits at this stage. The honourable member is talking about reducing the level of weekly payment. I would suggest that what he is proposing is incredibly draconian, that the comments he quotes from interstate are obviously from the advisers to Jeff Kennett and that, when he talks about incentives, he is really talking about starvation. What he is proposing would deal seriously injured workers a double injury, and just as important is the fact that he is removing all incentive from employers to lift their occupational health and safety performance. If there is no incentive for them to improve working conditions, they will not do so, and his discussion about incentives completely left out that aspect, namely, that there should be incentives to improve occupational health and safety records on the part of employers.

I should point out that there have been significant improvements in WorkCover's financial performance over the past two years, and they definitely show that these amendments are not required. The corporation has demonstrated that the improvements in the rehabilitation process and the imposition of penalties on poor employers are amongst the matters that have significantly reduced the number and costs to WorkCover, and this has been achieved without draconian starvation incentives, so called, by reducing workers' benefits, as suggested by the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: I can say that the actuaries' report did not come from actuaries advising Mr Kennett. The proposals—

The Hon. ANNE LEVY: He is even worse, is he? He is down to 60 per cent after six months; if that is not a starvation incentive I do not know what is.

The Hon. K.T. GRIFFIN: The amendments are not unreasonable. The Minister talks about incentives for employers under occupational health and safety legislation, but anyone who has to deal with occupational health and safety legislation knows that there is the ultimate sanction of very substantial penalties imposed upon employers who do not get their act together and develop safe systems of work. Those penalties are quite heavy and will have and are already having the effect of ensuring that a workplace is much safer for workers. So, it is not for this Act to create incentives; they are already in the occupational health, safety and welfare legislation. In fact, there are substantial sanctions if safety is not a priority. However, if we talk about incentives, one has only to look at some of the problems that WorkCover's own administration and application of its own powers has created within the workplace and for employers. It may be that it is starting to get its administrative act together, but there are still substantial difficulties in administration.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, R.I. Lucas, R.J. Ritson, J.F. Stefani.

Noes (9)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy (teller), Carolyn Pickles, R.R. Roberts, G. Weatherill, Barbara Wiese.

Pairs—Ayes—The Hons Bernice Pfitzner and Diana Laidlaw. Noes—The Hons C.J. Sumner and T.G. Roberts.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 2—insert new paragraph as follows:

(ac) by striking out from subsection (l)(a)(ii) 'is earning or could earn in suitable employment' and substituting 'is earning (in any employment) or could earn in suitable employment (whichever is the greater)';

I will indicate that the amendments I have just lost, I will not move them, and those that relate to second year review I will not move, if I lose this. There has been much debate about the concept of a review at the end of the second year of the weekly payments that are being made. The select committee gave some consideration to this issue and unanimously agreed that there should be some more specific provision in the Act which authorises the review and which provides for the extent of a review of weekly compensation at the end of the second year.

As a result of Supreme Court judgments, there is a concern that there is no effective review in relation to partial incapacity and that the scheme will become a continuing social security alternative, an alternative to what the Commonwealth pays under its social security legislation. At the time the select committee reported, the Minister of Labour Relations and Occupational Health and Safety (Hon. Mr Gregory) agreed with the proposition that this should be limited in the way in which I am proposing in my amendments.

It is also interesting to note that in the report of the deregulation adviser, which was tabled two days ago, there is an examination of the number of impediments to business, and one of them is WorkCover. That document noted the recommendations of the select committee and made the observation and recommendation that all the select committee's recommendations ought to be enacted. Obviously, the Government has not acted upon that recommendation, because under this Bill it does not propose to address all the amendments proposed by the select committee.

Incidentally, that report from the deregulation adviser was dated August, although it was tabled only two days ago so, obviously, there was a three-month delay, for what reason I do not know. It talks not only about WorkCover but also about other issues of importance to business. Basically, I want to reflect amendments that take the principal Act, if enacted, back to what the parties believe was agreed by the Parliament in 1988, and to provide that there shall be a review in the circumstances set out in the amendment. Of course, there is the two year period within which, if a person is partially incapacitated, he or she will be presumed to be totally incapacitated unless the corporation establishes that suitable employment for which the worker is fit is reasonably available to the worker. There is then a reference to the sort of work that might be reasonably available and the factors that must be taken into consideration: the nature and extent of the worker's

incapacity for work; the worker's level of education and skills; the worker's experience in employment; and the worker's ability to adapt to new employment.

As from the end of the two year incapacity, it will be conclusively presumed that suitable employment is available to a partially incapacitated worker, and at that point an appropriately reduced compensation to compensate for the total/partial incapacity is available. My amendment seeks to implement that decision of the select committee, which was agreed to, as I say, by the Minister in the other place as well as by the other parties, which, surprisingly, is not in the Bill and from which the Minister has withdrawn. I move that amendment and indicate that it will be a test for other consequential amendments dealing with this issue.

The Hon. I. GILFILLAN: I will be voting against this amendment. It is very similar to an amendment that I had been prepared to move and, in fact, had moved in an earlier debate and which I have argued steadfastly should be an amendment to the Act. I believe that it will eventually be introduced into the Act, although perhaps not in the words of the exact amendment the Hon. Mr Griffin is moving. There needs to be closer scrutiny of the actual implication of those words, particularly of their implication prior to the two year period. However, I want to put on the record that I believe this is an area of the current Act that demands further attention. As I have said before—and I do not intend to be goaded into idiotic discussion about it—I am practically realistic enough to know that I want what reforms we can get quickly and that to persist with this is totally irresponsible and would scuttle the whole ship of the reforms.

The Hon. K.T. GRIFFIN: I do not believe that it will scuttle the whole thing. The Hon. Mr Gilfillan has acknowledged that he is supportive of this amendment but that he will vote against it. I should have thought that, if he is supportive of it and if it is in almost identical terms to that which he successfully passed in this Council during the last session, we should give it a fly and have a conference to see whether we can work it out, if the honourable member is so confident that eventually something like this will be in the legislation.

The Hon. ANNE LEVY: The Government opposes this amendment, and the subsequent amendments. It is very clear that there have been great improvements in WorkCover's financial performance without this measure. There have been great improvements in the rehabilitation process, and that is undeniable. There has been the offering of subsidies to encourage the placement of long-term claimants and the work resulting from the establishment of a special long-term claims unit within WorkCover has shown that all these measures acting in concert have significantly reduced the number and costs of long-term claimants, which is to the financial benefit of WorkCover and suggests that no further action need be taken, given the remarkable improvements which have occurred under existing legislation.

The Hon. K.T. GRIFFIN: Will the Minister say whether there has been assessment by WorkCover as to the likely costs that might be saved if an amendment such as this were to be enacted? Surely some assessment must have been done following the select committee's report. Further, can the Minister also say how many injured workers are likely to be affected by such an amendment?

The Hon. ANNE LEVY: I will have to take those questions on notice. Some actuarial work has been done in this area but the details are not available here at the moment, and further work may be necessary before the question can be answered. The officers here do not have the exact figures, but it would be in the region of 3 000 to 4 000. They cannot be more specific than that without further checking.

The Hon. K.T. GRIFFIN: When the Minister says that this is subject to checking, does that mean that that will be this afternoon or will that be in a few days time?

The Hon. ANNE LEVY: We will certainly try to get the latter figure this afternoon. We may be able to reply to the first question this afternoon also, but we are not promising.

The Hon. J.F. STEFANI: I will not take up too much time of the Committee, but I have a couple of points to raise. The Minister has inferred on a number of occasions that WorkCover's financial position has improved dramatically because of various controls and improvements within the administration. I just want to focus on the very important fact that a lot of the levies have been doubled, and that is one of the reasons why WorkCover has picked up substantial levy payments, in terms of—

The Hon. Anne Levy: The penalties having an effect.

The Hon. J.F. STEFANI: Yes, and also levies. For instance in the building industry the levy has gone from 4.5 per cent to 7.5 per cent, so that is almost a doubling of the levy rate.

The Hon. Anne Levy: It is cheaper than they had before.

The Hon. J.F. STEFANI: No it is not. I argue that, because that levy rate does not take into account the first week that the employer has to pay and also does not take into account any penalty that may accrue in the formula that has been established designating levy rates, bonuses and penalties. One has to really be a non claimant—literally make no claims—in order to derive any benefit from the bonus scheme. If one happens to have a small claim in relation to a payroll, then that claim may well throw them into an area where there is a zero effect, and therefore they pay the levy rate as designated.

However, coming back to the point of review, I ask the Minister whether she can identify whether WorkCover has had substantial difficulties in getting long-term claimants to a position of review? I understand that a lot of the rehabilitation agencies are having extraordinary difficulty in arranging for those people to come to the table and talk about their injuries. They set up times and quite unexpectedly the injured worker does not show up, and there is no mechanism that we can now enforce into the system to make that situation come to pass. Will the Minister advise whether any difficulties have been experienced?

The Hon. ANNE LEVY: I understand that, under the existing procedure, if they do not cooperate with the rehabilitation process their benefits are suspended.

Progress reported; Committee to sit again.

[Sitting suspended from 12.58 to 2 p.m.]

PARKLANDS

A petition signed by 83 residents of South Australia praying that the Council request the immediate return of the vacant State Transport Authority area at Hackney now occupied by a building known as Tram Barn A and that it direct the Government to order the demolition of this building to make way for parklands was presented by the Hon. I. Gilfillan.

Petition received.

QUESTION REPLIES

The Hon. BARBARA WIESE (Minister of Transport Development): I seek leave to insert in *Hansard* a ministerial statement that was made by the Deputy Premier in another place.

Leave granted.

The member for Newland recently asked me to report on answers to a number of questions without notice. Status of the relevant answers is as follows:

A full up-to-date report from the State Bank on Pegasus—answer tabled in *Hansard* on 13 October 1992.

The State Bank's harsh treatment of the Lovering family on Kangaroo Island—answer tabled in *Hansard* on 17 November 1992.

A full report on any State Bank Group sale deal including the Henry Waymouth building—answered by a ministerial statement delivered on 21 October 1992.

The Treasury's revenue estimates before and after the change in stamp duty legislation—an answer will be provided incorporating the most recent amendments.

Full details of the $53.5 million paid to the Tax Office in respect of Luxcar Leasing and the. status of Federal Police inquiries-answer tabled in *Hansard* on 17 November 1992.

A report on any gaming machine monitor licence—answer tabled in *Hansard* on 11 November 1992.

Full details of the deposit of unused indemnity money paid to the State Bank—answer tabled in *Hansard* on 17 November 1992.

The total write-off and current provisions for the Remm-Myer Centre—answer tabled in *Hansard* on 17 November 1992.

PROWSE, MR BERT

The Hon. BARBARA WIESE (Minister of Transport Development): I seek leave to make a ministerial statement.

Leave granted.

The Hon. BARBARA WIESE: In the light of the State Bank Royal Commission report, the former Under Treasurer, Mr Bert Prowse, has offered his resignation from the boards of the State Bank of South Australia, SGIC, Enterprise Investments and various subsidiary companies and committees associated with these bodies. The Government has accepted Mr Prowse's resignations with some regret. Mr Prowse had a long and distinguished career in public service as a university teacher, a senior public servant in various departments of the Commonwealth and Executive Director of the International Monetary Fund and, of course, as Under Treasurer in this State from 1985 to his retirement in May 1990.

There is no doubt that Mr Prowse's appointments to the boards of the State Bank and the SGIC around the time of his retirement were seen by all concerned as a strengthening and broadening of those boards. There is equally no doubt he has served extremely well as a member of those boards. That is consistent with all the advice available to us.

It needs to be emphasised that the Government's decision to accept Mr Prowse's resignations is based entirely on his assessment of the correct thing to do following the commission's report. There is in no way any adverse reflection on his performance as a member of these boards. As I have indicated the opposite is the case. The Government acknowledges Mr Prowse's commitment in public service over a long period and wishes him well.

QUESTIONS

YEAR 12 EXAMINATIONS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about the year 12 mathematics examination.

Leave granted.

The Hon. R.I. LUCAS: I refer to media reports last tonight and in today's press that a mistake in a year 12 maths exam paper has resulted in more than 5 000 exam papers now having to be doubled marked. The article in the *Advertiser* quotes the Director of the Senior Secondary Assessment Board of South Australia, Dr Gary Willmott, as saying that the mistake in the paper was caused by an oversight which resulted in a minus sign being inserted into an equation when it should have been a plus sign. Such a maths problem was not in the maths syllabus and, as a result, the question stumped most students.

However, last night the media was told by SSABSA that the mistake was due to a typographical or printing error. I have had a number of calls this morning from parents and teachers taking issue at the media reports and the excuses being offered by SSABSA. One caller, a maths teacher, disputed SSABSA's claim and said the question had deliberately been framed in the manner it had because the people who set the question were unaware of the maths syllabus.

Another maths teacher has suggested that the question was a direct take from a Victorian examination paper which had not been thoroughly checked a against the South Australian syllabus. One teacher who rang my office also alleges that he rang SSABSA shortly after 9 a.m. yesterday to advise that he had discovered the error in question 12 in section B of the maths 1S paper and was told by SSABSA staff that the phone had been running hot at SSABSA since about 8 o'clock that morning.

If this is so, it poses a serious question about the confidentiality of the maths exam papers. As I am informed by SSABSA, it advises schools that exam paper

packages are only to be opened in the examination room in front of students just prior to their undertaking an exam, which is normally at 9 a.m. Also, SSABSA asks schools to select teachers for supervising an exam from outside the subject area in which the students are sitting: in other words, schools should not have maths teachers distributing maths exam papers to students sitting that subject.

A lot of concern has also been expressed to me about SSABSA's proposed method of resolving the problem, that is, double marking the papers once with the wrong question and once without. For example, many students such as Brighton High School student Ben Victory quoted in the *Advertiser* this morning have complained that because they spent so much time on this question or were unsettled by it they did not perform well in or complete the other questions. My questions to the Minister are:

1. Will the Minister order an urgent independent investigation into this debacle?

2. Will the Minister indicate exactly how this error occurred?

3. Will the Minister investigate the claim that SSABSA received a number of calls between 8 a.m. and 9 a.m. yesterday highlighting the error in the paper?

4. Will the Minister indicate how students whose performance in other questions was affected by the error in question 12 will not be disadvantaged by the error in question 12?

5. Will the Minister indicate the additional cost involved in having 5 000 exam papers double marked?

The Hon. ANNE LEVY: I will obviously refer those questions to my colleague in another place. As I understand it, it is a question not of marking a paper twice but of the results of the marking being adjusted, one lot of marking with results from question 12 included and the other lot of marking ignoring the marks for question 12 and adjusting the totals accordingly.

The decision has been made that the higher of the two marks achieved in this way will be taken as the mark for the student concerned, so that students can only benefit from this procedure and no student should be disadvantaged. For a more detailed response, I will refer the questions to my colleague in another place.

STATE BANK

The Hon. K.T. GRIFFIN: My question is directed to the Minister of Transport Development and Acting Leader of the Government in the Legislative Council. Does the Government accept the finding of the State Bank Royal Commissioner that 'during September 1989 Treasury's more explicit concern and criticism about the bank was indeed brought to the Treasurer's notice but languished for lack of attention. The political exigencies of the forthcoming election held on 25 November 1989 diverted the attention of the Treasurer and the Government.'?

The Hon. BARBARA WIESE: I cannot speak for the former Treasurer as to what occupied his mind at any particular point during the lead-up to the information becoming available generally that the State Bank was in grave financial trouble. I am not in a position to make a judgment whether or not that finding as it relates to the Minister responsible for the State Bank is or is not correct.

During the debates both in this place and in another place yesterday very many of the issues concerning the State Bank Royal Commission report were canvassed at very great length. I think members representing the Government during the course of the debate have indicated that very generally we accept the findings of the royal commission with respect to the term of reference upon which the Commissioner was reporting, although we probably have some difference with the Royal Commissioner as to the emphasis on and the way in which some issues may have been treated.

The position of the Government generally has been that we must accept the Royal Commissioner's report, although we would suggest that he may not have taken some matters or some evidence that he received into consideration as carefully as he might. However, I am not in a position to make any judgments about how well or badly the Minister responsible for the State Bank was concentrating on matters relating to the State Bank in the latter part of 1989.

The Hon. K.T. GRIFFIN: In the light of the Minister's response that she is not able to make any observation in respect of the former Treasurer's position, can she indicate whether the Government accepts the finding in respect of the Government, that is, that the political exigencies of the forthcoming election held on 25 November 1989 diverted the attention of the Treasurer but in this case more particularly the Government? Is she able to say whether or not the Government accepts that finding?

The Hon. BARBARA WIESE: I am not able to speak on behalf of the Government on this matter. We have not actually been through clause by clause the State Bank Royal Commissioner's report to determine a position on every conclusion that he has made. All I can say is that from my recollection of events very few issues came before Cabinet for consideration, so I would be very surprised to learn that there were matters which may have come before Cabinet and which otherwise were diverted due to election commitments during that latter part of November 1989.

The fact is that with all these statutory authorities and other Government departments there is always a Minister who has responsibility for being involved with decision making as appropriate or monitoring the performance of the organisations which report to the individual Minister. The Government as a whole did not play that role. I am not aware of any matter which was not brought to its attention or which otherwise would have been brought to the Government's attention but which, for the sake of the election, was not. As I said earlier, I am not in a position to judge, because I have no knowledge of the activities of the responsible Minister at the time to make judgments about whether or not he was diverted from matters relating to the State Bank during the period in question.

RAIL SERVICES

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport

Development a question about South Australia's rail rights.

Leave granted.

The Hon. DIANA LAIDLAW: A letter from the former Minister of Transport, Mr Blevins, to the Commonwealth Minister of Land Transport, Mr Brown, on 28 February this year reveals that the Prime Minister's promise of $115 million this financial year to standardise the Adelaide-Melbourne rail line persuaded the South Australian Government to withdraw its opposition to the closure of the Blue Lake passenger train from Adelaide to Mount Gambier.

The Minister will recall that on 8 July last year Arbitrator Newton ruled that the Commonwealth may not terminate the Blue Lake passenger service between Adelaide and Mount Gambier. Subsequently, Mr Brown, the Federal Minister, said the Commonwealth would abide by the arbitrator's decision, and Mr Blevins said that the decision to retain the service was binding. But all these commitments were broken following the Prime Minister's One Nation standardisation promise in February this year. Following that promise Mr Blevins wrote to the Federal Minister on 28 February stating in part:

> Given the disruption to services that will be caused during construction of the Adelaide-Melbourne rail link and the longer term implications for the broad gauge network, it is impractical to insist on adherence to the arbitrator's decision. Accordingly, I wish to advise that the South Australian Government reluctantly withdraws its opposition to the closure of the Blue Lake passenger train.

Now that the Federal Treasurer has withdrawn funds earmarked to standardise the Adelaide-Melbourne rail link this financial year—and thereby broken a commitment to this State—has the Minister considered withdrawing the State Government's earlier 'reluctant commitment' not to insist on the Federal Government's adhering to the arbitrator's decision in respect of the Blue Lake passenger train? If not, why does the State Government continue to refuse to seek to enforce, through the courts, the State's rail rights under the rail transfer agreement and as confirmed by Arbitrator Newton?

The Hon. BARBARA WIESE: My understanding is that the Federal Government is abiding by decisions that it has made with respect to funding for rail in South Australia, so the line of questioning does not apply. I know that my predecessor was placed in a rather difficult position earlier this year with respect to the Blue Lake line when offers were made by the Federal Government for a new funding package for rail purposes, and his decision to withdraw opposition to the closing of that line was given with some reluctance.

The Hon. Diana Laidlaw: Funding came this financial year.

The Hon. BARBARA WIESE: My latest information from the Federal Government is that the $30 million which was promised as a first step in funding is still to be applied in South Australia and that the total of $45 million is to be applied in South Australia. So, the basis upon which the decisions were made to withdraw opposition to the closure of the line are still in place.

The funding for rail works will be made available as decisions are taken concerning work that can take place between South Australia and Victoria on the standardisation project. But as I have indicated earlier, this matter has been complicated in recent weeks by the fact that the new Victorian Government has indicated that it will withdraw the $50 million which had been committed at a State level by the previous Labor Government towards the standardisation project.

The Hon. Diana Laidlaw: Not the main line. You are misleading.

The Hon. BARBARA WIESE: I am not misleading at all, because part of the negotiation that was going on with the Federal Government related to the route for the standard gauge line, and branch lines were part of the discussion that was taking place with respect to the route. No agreement has been reached on that matter yet, as I understand it, and that, of course, has held up decisions about when work might commence on the various parts of the project.

The fact is that whether these matters can be resolved in time for all of that funding allocation to be spent in this financial year, or whether some of it is spent this year and some of it postponed for expenditure in the following financial year, it does not in any way change the conditions upon which funding is being made available.

For that reason, I cannot see that there are new grounds to enable me to reverse the decision that was taken by my predecessor concerning the Blue Lake line. I might say that one of the issues which was taken up by my predecessor, and which I will be pursuing further, is a recommendation that he made to the Federal Government that investigations should be made about whether or not it is possible to keep alive some smaller lines that are not available or are not supported by Australian National by being rather more creative in determining who may or may not be in a position to operate those lines.

The Federal Government has indicated that it is prepared to participate in such research work. If we can pursue that matter further, it may be possible for the State Government to make suggestions or encourage either local government or commercial organisations to look at some of the smaller lines in South Australia such as the Blue Lake line as an opportunity for keeping open a line and enabling freight and other things to be transported within South Australia. That is not an unreasonable idea and, although it has been put forward before, I do not think much real research work has been put into the economics of such a proposition. If we can achieve assistance from the Federal Government in undertaking such research, we may be in a position to keep alive the idea of maintaining lines such as that in the South-East.

DISTINGUISHED VISITORS

The PRESIDENT: I acknowledge the presence in the Gallery of the members of the Commonwealth Parliamentary Association Study Tour. They consist of two members of each of the Parliaments of the Solomon Islands, Kiribati and the Cooke Islands. I welcome the delegates on behalf of this Chamber and trust that they find their visit to South Australia informative and enjoyable. I invite members to make their acquaintance if they have the time.

GOLDEN GROVE PRIMARY SCHOOL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about school crossings.

Leave granted.

The Hon. M.J. ELLIOTT: I recently received correspondence relating to the need for a school crossing across the Golden Way at Golden Grove. The new Golden Grove Primary School will open on Bicentennial Road, Golden Grove, at the start of the 1993 school year. The school's administration, including a council, is already in place and has been negotiating with the former Road Transport Department about a crossing. The departmental policy is that it does not install crossings until a head count of students crossing the road can be done. In fact, I have a copy of a letter written by the manager of Traffic Engineering Services making plain that it wants to measure traffic flows before installing crossings.

The criterion for a crossing is 50 children needing to cross and 200 vehicle movements past the particular location per hour. The Golden Way is a major road and easily exceeds 200 vehicle movements per hour. The school, on the enrolments already received for next year, can show that at least 90 students will be living on the other side of the Golden Way to the school and within walking distance, while a further 70 are expected to alight from an STA bus on the Golden Way, having travelled from Greenwith further into the development and will need to cross the road once a day. A survey undertaken by the police, of which I also have a copy, and provided to the school indicates a high number of vehicles speeding past the crossing point, and a fatal accident has already occurred farther along the Golden Way.

The children who will be attending the school next year belong to families who have either just moved into the area or are planning to move over the next few months. Enrolment numbers are continuing to increase as more blocks of land are sold to families wanting to move into the area. A kindergarten will also be opening on the Bicentennial Road site next year, as will the Pedare Junior School. Residents already in the area and the school administration are alarmed that the evidence they have amassed is not enough and that children will have to negotiate the road unaided in order to prove that a crossing is needed. My questions to the Minister are:

1. Why is the policy on school crossings so inflexible so as to deem that one cannot be installed to prevent a dangerous situation? Why are they provided only when a dangerous situation has already developed and accidents have already occurred?

2. Will the Minister undertake to personally review the situation for the prospective students and parents of the new Golden Grove school? I will give the Minister copies of all letters. I hope that she will give an undertaking and that we do not have to wait for a death before action occurs.

The Hon. BARBARA WIESE: The question relating to school crossings is appropriately directed to me and I will undertake to have the school crossing situation to which the honourable member refers examined and will bring back a report on the matter.

STATE BANK

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Acting Leader of the Government a question about the State Bank.

Leave granted.

The Hon. L.H. DAVIS: The first report of the Royal Commissioner into the State Bank of South Australia highlighted the magnitude of the debacle of the $3.1 billion loss by the State Bank of South Australia, by far the biggest loss in Australia's corporate history. The State budget of 1992-93 reveals that at least $175 million in interest will be required to fund this loss in 1992-93. This represents 11.5 per cent of total State tax receipts budgeted to be collected in 1992-93 and, if the interest cost on the $350 million in the Government bail-out of SGIC is also taken into account, it can be' seen that almost 13 per cent of State taxation receipts (or $1 in every $7 or $8 collected in State taxation in the current year) will go to meet interest costs for those two institutions—principally of course the State Bank. As the Minister would be aware, interest costs will continue to be payable beyond 1992-93 for the State Bank. My questions to the Minister are:

1. In view of this ongoing and massive debt burden, does the Minister accept that privatisation of the State Bank of South Australia represents a serious option for the Arnold Government?

2. Following its past opposition to privatisation, will the Minister advise the Council whether the Labor Party in South Australia is now prepared in principle to at least seriously examine the possibility of and need for privatisation of the State Bank at some time in the future?

The Hon. BARBARA WIESE: Certainly, we all acknowledge that the amount of money required to service the debt related to the State Bank is lamentable and we would rather not have to deal with it in our budget. Prior to the problems with the State Bank, the State Government had been enormously successful in the previous decade in bringing down the debt ratio and it is a tragedy that the good record of this Government in the management of State finances has been affected by the incompetence of people running the State Bank in South Australia, because it certainly has made a big impact on our capacity to manage our budget situation.

As to the future of the State Bank, the matter is under review as far as the Government is concerned. It was previously made clear that the first aim of the Government was to ensure that the State Bank's problems could be brought under control and that we should do whatever was possible to assist the State Bank to arrest the decline taking place in its financial situation and get it back on track.

As I understand it, with the arrangements that have been made to remove the poorly performing loans to be managed separately by the Government, the operations of the State Bank have improved significantly, showing an operating profit. The business of the bank has been reduced very significantly to bring it back to having a concentration on its core activities and getting out of some of the higher risk activities that it had previously been involved with. As to whether the next step should be to privatise the bank is not for me to say. I am sure

that the Treasurer in particular, working with the premier, is monitoring very carefully the performance of the State Bank under the new arrangements and the scaling down that is taking place and, at the appropriate time, decisions will be made. As to whether the bank continues along the current path or whether there needs to be some other way of operation considered is a matter for the future.

The Hon. L.H. DAVIS: As a supplementary question, will the Minister advise the Council whether she now favours the principle of privatisation in appropriate circumstances?

The Hon. BARBARA WIESE: My personal views are not particularly relevant with respect to this matter or any other. As a Minister in this Government, I will support whatever decisions are taken by the Government with respect to the management of Government affairs.

MINISTERS' STAFF

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking you, Sir, a question about facilities for ministerial advisers.

Leave granted.

The Hon. R.J. RITSON: Yesterday some professional officers were brought in by the Government to assist with a Bill. They were brought in early in the afternoon and the Bill did not come on until 11 p.m. and, in the end, they were not required, but they spent about nine hours or more confined to this building. I will not comment on whether that represents good management of the business by the Government, but it presented particular difficulties for these officers. At one stage they occupied the interview room and were attempting to get on with other work which they had to do within sound of the loud speakers, in case they were called on through some capricious variation of the program by the Government. They were ejected from that room by a member who required it, and they later installed themselves in the long lounge and proceeded to work away there.

I required the use of the long lounge to rest my weary frame, as that is the only place where we can have some privacy and remain near the Chamber. My initial reaction was to displace these senior public officers from the lounge, but it immediately became obvious that they were in a terrible bind. They were imprisoned, as it were, in this building on an indefinite sentence, not knowing when they would be required and, in the event, they were not, but they had to get on with some of their other work.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. R.J. RITSON: They are highly paid professional persons—

The Hon. Anne Levy: Like us.

The Hon. R.J. RITSON: —whose work is very valuable (more so than yours), and they serve the policies of the Government of the day to the best of their considerable ability. It seemed that they deserved to have some facilities to get on with their work. In accordance with—

The Hon. Anne Levy interjecting:

The Hon. R.J. RITSON: Belt up. In accordance with joint House orders and rules, I realised in my sympathy for them that I could have them as my guests and in that way legitimise their presence in that lounge, which I did, but my question is this: in view of the rules regarding the inner lobbies, will you have discussions with Ministers in respect of not keeping these people hanging around unnecessarily for hours on end in the parliament? Will you discuss the possibility of Ministers making working space in their office for public servants so detained by their orders?

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. R.J. RITSON: If not, can some other working space be provided for them in some part of the building that is within sound of the speakers or in which space a speaker can be situated? Will you report to the Council in due course on the results of your discussions with the Ministers?

The PRESIDENT: I can do better than that; I can report now. It was drawn to my attention on Tuesday and also on Wednesday that these people were occupying the conference room. I asked whether there was a member of parliament out there with them, and I was advised that there was not. So, I sent out word that they were not to occupy the conference room unless they had a member of parliament with them. They indicated that they would vacate it and they asked where they could go, so I gave them permission to use the Legislative Council lounge on the assumption that they were guests of the Minister whom they were serving. So, they went out there knowing that there was a speaker there and that they could use the long lounge with my authority.

There are absolutely no rooms in parliament House of which I am aware that can be made available to them. I cannot see that any Minister can make their rooms available because, as members in this Chamber know, between debates, Ministers interview groups and consult various people, so to have their room occupied is not on. However, what I am prepared to do (and no more than this) is circulate the honourable member's question to the Ministers so that at least the difficulty of having such people around for two days while not being used could be avoided. All I will promise to do is circulate the honourable member's question to the Ministers.

MULTIFUNCTION POLIS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister representing the premier a question about potential racial and domestic violence in the NiFP.

Leave granted.

The Hon. I. GILFILLAN: I have been alarmed by a recent police submission dated 20 March 1992 on the draft environmental impact statement for the proposed multifunction polis at Gillman/Dry Creek. The submission, signed by the Deputy Commissioner of police, raises concerns about racial violence involving Asian inhabitants of the MFP. The submission states in part:

> Members of adjacent communities, such as parts of Port Adelaide and Enfield, areas of multiple disadvantage, may resent the residents of the MFP, leading to polarisation of communities and, perhaps, resulting in the need for police intervention.

An honourable member interjecting:

The Hon. I. GILFILLAN: The police: this is an official police submission. I will make a photocopy available. This came into my hands through the diligent search in freedom of information by my colleague the Hon. Mr Elliott.

Members interjecting:

The Hon. I. GILFILLAN: They did not mention the National Front. The document continues:

> There is the potential for existing anti-Asian movements within South Australia, such as the National Action Front, to increase their activities.

The submission is highly critical of the EIS because, as it states:

> The potential for racism and community polarisation against residents of the MFP is not addressed...It is therefore suggested that police intervention requirements for the area will focus on interactions between the existing community and MFP inhabitants rather than MFP inhabitants alone.

The police recommend the involvement of relevant police personnel in the early stages of establishing the MFP community, stating that:

> ...this would enable police involvement in the reduction of racially motivated incidents...

The police submission also raises problems concerning the administration of the law in what it clearly sees as a separate community based upon a strong multicultural mix, and states:

> The law as it pertains to South Australian society and the potential residents of the NIFP community will be perceived differently depending on the culture of the resident...Consideration should be given to the extent to which criminal law should accommodate the cultural values, beliefs and customs of minority communities in South Australia..

The final area touched on in the police submission involves domestic violence as a result of a trend toward houseworking in the MFP. The submission states:

> ...the EIS deals with the social and psychological effects of developing a new urban environment which envisages a high degree of living, learning and working at home.

It backs up its concerns by quoting Forester (1991) of the South Australian Health Commission, stating:

> Those who do try working from home are likely to run into increased family conflict and a series of psychological problems.

Again, the police submission is critical of the EIS, adding:

> The EIS did not provide any insight into the likely extent of the problems which may result from houseworking.

My questions to the Premier through the Minister are:

1. Does the Premier accept the concerns expressed by the police for potential racial violence involving MFP residents and, if so, what measures will be taken to minimise those concerns?

2. Does the Premier believe that consideration should be given as suggested in the police submission to administering South Australian laws differently for MFP residents and, if so, in what way?

3. Does the Premier accept the concerns of police and Mr Forester of the South Australian Health Commission that an increase in houseworking in the MFP will lead to an increase in domestic violence?

The Hon. BARBARA WIESE: My understanding of the concept of the MFP is to incorporate the most modem urban community dwellings and to encourage investment and, possibly, migration from other parts of the world in order to—

Members interjecting:

The PRESIDENT: Order! The Chamber will come to order. The honourable Minister.

The Hon. BARBARA WIESE:—develop the MFP concept and to bring wealth and benefit to South Australia. I am sure that the aim is not to create a community in isolation from the rest of Adelaide, and I would be very surprised if there were any plans at all to suggest, first, that somehow the community should have a fence drawn around it and that different rules should apply within the MFP community from those that would apply in other parts of metropolitan Adelaide. Certainly, that would not be the aim of the Government but, as to the particular issues that have been raised by the Deputy Commissioner of Police, I will refer those to the Premier for his more detailed consideration and comment.

INC SCHEME

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health, Family and Community Services a question about the Intensive Neighbourhood Care scheme.

Leave granted.

The Hon. J.C. BURDETT: I am sure that all members of the Council are aware of the excellent Intensive Neighbourhood Care scheme, a scheme whereby young offenders may be placed with families by the courts and where, more recently, some other young persons who are in need of care may be placed. The families are very carefully selected and intensively trained, and I must say that when I was formerly Minister of Community Welfare (which has now become Minister of Health, Family and Community Services) I had the privilege of meeting a number of INC parents, going into their homes, seeing the children and seeing the work that they were doing. I consider them to be the salt of the earth.

They care for the children, they are dedicated to that purpose and, because of the children they are taking into their care, they and their families, their homes, domestic furniture and equipment are subjected to some risk yet, nonetheless, they do it. At present, they receive payment from the department of $34.60 per day, which payment has been the same for some years. I am not quite sure of this, but the rumour is there and I ask the question in order to be certain: a number of the district officers have recently informed INC parents that, whilst the pay of $34.60 per day is not to be reduced, they will be asked to pay out of that the sum of $80 per week to the INC children placed in their care for the purpose of meeting certain expenses these children will have. So, the payment effectively will be reduced by $80 per week. My question to the Minister is simply this: will the Minister confirm whether or not this is the case or, if there is some other mutational variation of it, will the Minister say exactly what the situation is?

The Hon. BARBARA WIESE: I will refer the question to my colleague in another place and bring back a reply.

WAITE INSTITUTE

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Primary Industries a question about the relocation of funds from the sale of Northfield Research Centre.

Leave granted.

The Hon. PETER DUNN: I note that a group has been set up within the primary industries portfolio called the Organisational Development Review Committee, which is reviewing the quite significant funding of the department. Today's *Stock Journal* carries an article about this, and it brings forward a couple of disturbing facts. The report notes that the proposed building to house the State Chemical Laboratories and the Central Veterinary Laboratories at the Waite Agricultural Research
Institute should not proceed.

Mr Scholz, the President of the South Australian Farmers Federation, has said that the funds proposed to go to the Waite Agricultural Research Institute from the sale of the Northfield Research Centre should not be put into Consolidated Revenue as indicated by the Minister of Primary Industries in this article. He says that those funds should be kept aside, as research is very important for primary industry in South Australia. Primary industry is one of the few industries bringing in export dollars to this nation, and if we cut back on the research dollar then, Mr Scholz says, it is likely that our export dollar will drop along with it. My questions to the Minister are:

1. Will the Minister quarantine the funds from the sale of the Northfield Research Centre that are planned to be used for the chemical and veterinary laboratories at the Waite Agricultural Research Institute?

2. Will the funds from the sale of Northfield to be used at the Waite, for whatever purpose, not go into Consolidated Revenue?

The Hon. ANNE LEVY: For a detailed response I will certainly refer those questions to my colleague in another place. I would, however, suggest to the honourable member that the considerable development that is occurring at the Waite Research Institute funded by the Government will require resources, which must come from somewhere.

HOUSING TRUST REPORT

The Hon. J.E. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Housing, Urban Development and Local Government Relations a question about the Housing Trust annual report.

Leave granted.

The Hon. J.F. STEFANI: A few days ago the annual report was tabled in Parliament on the Housing Trust's operation for 1991-92. I note with some interest that the provision for bad and doubtful debts has increased to $3.1million, an increase of $1 million over last year, and also that a provision for employees' entitlements has been made in the accounts for $10.6 million to cover the workers compensation claims. Will the Minister provide some details as to what the increased provision of $1 million for bad and doubtful debts will cover? Further, will the Minister also supply details of the workers compensation claims, both current and settled, in terms of the provision that has been incorporated in the accounts for $10.6 million?

The Hon. ANNE LEVY: I will happily refer those questions to my colleague in another place. I indicate, though, that there have been certain accounting changes throughout Government in the budget this year, and certain matters like superannuation provisions, maintenance payments, and so on, which previously were centralised for the whole of Government, have now been allocated out to all the different agencies. So there are items which appear in the budget for a particular agency which previously did not appear because they were dealt with centrally. But I cannot comment on whether the particular lines to which the honourable member refers come into this category or not. I make that as a general comment in understanding changes from one budget year to another. I shall ask my colleague to provide a detailed response.

ARTISTS

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about the protection of artists' moral rights.

Leave granted.

The Hon. DIANA LAIDLAW: The opening of the exhibition last night of work by Charles Bannon reminded me of the dispute earlier this year between two visual artists, Mr Bannon and 'Driller Jet' Armstrong, as to the use one may make of an original work of another. The dispute arose when 'Driller Jet' Armstrong exhibited in his name, as his work, what had originally been a work of Charles Bannon. He had overpainted the acrylic blue landscape on which Mr Bannon had endorsed his name, with white 'crop' circles and, without obliterating Bannon's name, had added his own. Bannon sought an injunction to prevent the work being exhibited or sold. The action was to test whether an artist had any personal or moral rights with respect to a work which he or she created, after its sale to another. In the event, the action was settled out of court.

According to the Law Society of South Australia, had the action proceeded Mr Bannon could not have established any personal right to his own work. However, had the same events occurred in almost any of the other civil law countries in the world Mr Bannon would have succeeded easily in any action he brought to protect his moral rights. Traditionally, common law countries, Australia included, have opposed moral rights protective legislation. Artists with whom I have spoken about the subject of moral rights argue passionately that Australian artists ought not to be disadvantaged compared to their European colleagues which the continuing denial of moral rights protection would ensure. Therefore, I ask the Minister: has either the South Australian Government or the Australian Cultural Ministers Council considered the introduction of legislative protection for the moral rights of artists, not only in the visual arts but in all areas of creativity?

The Hon. ANNE LEVY: The question of artists' moral rights is something which has been discussed at

meetings of the Cultural Ministers Council. The South Australian Government has certainly expressed its support for the concept of artists' moral rights which, as the honourable member says, goes further than just the rights of visual artists but includes the rights over the results of the creative process on the part of many artists. The Cultural Ministers Council was, I think it is fair to say, unanimous in its support for the principle of moral rights. There may not have been complete unanimity but there certainly was general agreement on the principle of moral rights.

The matter however was referred to the Attorneys-General conference because it is a legal matter and detailed legal work would have to be done to write into our law the principle of artists' moral rights and, as the honourable member indicates, this is apparently a pretty complicated legal conundrum in common law countries, such as Australia, while being readily incorporated into the law of most European countries which do not have common law tradition.

A further reason for passing the detailed examination of this question to the Attorneys-General was that at the time of the last Cultural Ministers Council meeting there were several Ministers for the Arts who were also Attorneys-General, and I refer to Mr Collins in New South Wales, Mr Kennan in Victoria and Mr Goss in Queensland—Mr Goss is not Attorney-General but he is a legally trained person. I understand that the matter has been considered at a meeting of Attorneys-General, but particularly in the light of the change in Government in Victoria the matter was not advanced further at the last meeting of Attorneys-General where it was discussed. Mr Kennan is no longer Attorney-General and Minister for the Arts in Victoria and the new Government apparently had a completely different approach at the meeting of Attorneys-General.

I will see, as I am sure will many other cultural Ministers, that the matter is raised again at the next cultural Minister's council. That will not occur for another five or six months, and I think this will need to be considered—

The PRESIDENT: Order! Time for questions having expired, I call on Orders of the Day.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That Standing Orders be so far suspended to enable me to complete the answer to this question.

The PRESIDENT: As we do not have an absolute majority of members in the Council, the Minister cannot suspend Standing Orders.

Motion negatived.

The PRESIDENT: Call on business of the day!

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 900.)

Clause 6—'Weekly payments.'

The Hon. J.F. STEFANI: As a result of the review process, how many times has WorkCover suspended payments when injured workers have not cooperated in relation to the process that it had set in train?

The Hon. ANNE LEVY: I do not have the numbers here, but I will make inquiries. I am assured that, if any, it would be very few because the possibility of suspension usually results in cooperation as to rehabilitation.

The Hon. J.F. STEFANI: Will the Minister obtain information as to the number of people who were actually suspended and those whom WorkCover had in some way to pressure into the review process by means of threatening suspension?

The Hon. ANNE LEVY: I would be very happy to provide information as to the first question, but no information would be available as to the second question. That is such a grey area that it would be absolutely impossible to categorise individuals prior to summing them.

The Hon. K.T. GRIFFIN: Was the Minister able to gain some answers to the questions I raised prior to the luncheon adjournment?

The Hon. ANNE LEVY: The first question asked by the Hon. Mr Griffin related to information of the cost impact of a successful second year review provision to remove the partial deemed total impact after two years. The actuary's report, which was tabled last night, contained that answer on page 11—it is approximately $2 million annually and approximately $11.2 million from the outstanding unfunded liability.

The Hon. Mr Griffin's second question related to how many claims beyond two years would be affected by such a provision. Completely accurate information about that is not available, but I am informed that approximately 3 500 current claims are beyond two years and so would be affected by such a provision.

The Committee divided on the amendment:

Ayes (7)—The Hons J.C. Burdett, Peter Dunn, K .T. Griffin (teller), J.C. Irwin, R.I. Lucas, R.J. Ritson, J.F. Stefani.

Noes (8)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy (teller), R.R. Roberts, T.G. Roberts, G. Weatherill.

Pairs—Ayes—The Hons Diana Laidlaw, L.H. Davis, Bernice Pfitzner. Noes—The Hons Barbara Wiese, Carolyn Pickles, C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: The following amendments to that clause are consequential either on that division or the earlier division which I lost. I do not therefore intend to proceed with those amendments.

Clause passed.

Clause 7—'Discontinuance of weekly payments.'

The Hon. K.T. GRIFFIN: We have dealt generally on clause 2 with the issue of regulations, but in this clause there are at least three references to the regulations. Clause 7 amends section 36 of the principal Act, which relates to the discontinuance of weekly payments. The first amendment is to subsection (3). Where a decision is made to discontinue or reduce weekly payments, the corporation must give notice in writing to the worker

stating reasons for its decision. That is to be deleted, and it is to contain such information as the regulations may require as to the reasons. Has the Government any outline of the regulations, or can the Minister identify the key matters which will be referred to therein?

The Hon. ANNE LEVY: I understand that work has not yet begun on that section of the regulations, so I am afraid I cannot give any detailed information. This change is being made because certain review officers were considering that the reasons given in particular cases might not be sufficient, without indicating what was felt would be sufficient, and in consequence it was felt that to specify what matters should be covered in reasons would be an appropriate way to proceed. It is likely to apply to matters such as medical evidence that is under certain sections of the Act, and so on, but to be more precise, rather than anything at all being potentially necessary.

The Hon. K.T. GRIFFIN: The second area where regulations are referred to is in paragraph *(b)* of proposed subsection (4a). If there are proceedings before a review officer that relate to a decision of the corporation, and those proceedings are adjourned, the review officer may order that weekly payments may be made for the duration of the adjournment, but on such terms and conditions as the regulations may prescribe. Has there been any consideration as to what the regulations may prescribe? Can the Minister indicate the sorts of matters that are likely to be included in those regulations as to terms and conditions?

The Hon. ANNE LEVY: Likewise, this has had very little work done on it at this stage, and it is a little early to indicate what may be prescribed, particularly as the WorkCover board has not yet given any consideration to this aspect. The desirability of having this provision is to ensure that there is uniformity between different review officers. The review officers are not judicial people and, unless some guide is given to them in the regulations, there is the potential for discrepancies in the results of reviews from different review officers. This is felt to be most undesirable, so guidelines will be prepared for the review officers.

The Hon. K.T. GRIFFIN: The third area in this clause in which regulations are referred to is paragraph (b), proposed subsection (5), which provides that, where on a review the corporation's decision is confirmed, any amounts to which the worker would not have been entitled but for the operation of two earlier subsections may, at the corporation's discretion but subject to the regulations, be recovered. Again, what limitation is likely to be imposed by the regulations upon the exercise by the corporation of its discretion?

The Hon. ANNE LEVY: This again is a matter on which only preliminary work has been done and no final decisions made. I could indicate some of the matters being considered without in any way wishing to imply that they will necessarily be incorporated into the final regulations—they are merely matters being put forward as matters for consideration on which decisions have yet to be made. It does cover such matters as the suggestion that over-payments must be raised within two years after the date on which the over-payment first occurred and that repayment may be by a lump sum or fortnightly and be between 5 to 10 per cent of the ordinary net income or a combination of weekly payments and a lump sum. It also includes suggestions that over-payments of less than $20 would not be recovered, that over-payments may be recovered from a deceased worker's estate, that perhaps if a debt is repaid within a certain minimum time there could be a remission of part of it as an incentive for early repayment and other matters such as this. I stress that none of these matters has been decided at this stage, but are merely suggestions being floated for consideration. The fact that I mentioned some examples does not in any way indicate that they will appear in the final regulations. That perhaps gives the honourable member an indication of the type of matters being considered for such regulations.

Clause passed.

Clause 8—'Suspension of weekly payments.'

The Hon. K.T. GRIFFIN: This clause seeks to amend section 37 of the principal Act dealing with the suspension of weekly payments and seeks to provide that, where the corporation proposes the suspension or reduction of weekly payments, it must give notice in writing to the worker stating the ground on which the weekly payments are to be suspended or reduced. That is to be amended to 'containing such information as the regulations may require as to the grounds'. Again, in the context of the questions I am raising about regulations, will the Minister give any indication as to the nature of the matters being considered for inclusion in regulations for this purpose?

The Hon. ANNE LEVY: As for clause 7, no decisions have been made on the content for such regulations. One of the matters being suggested there is a quotation of the provision of the Act being relied upon or the circumstances of the case which invokes the use of the provision of the Act being relied upon. Again they are only ideas being put up for consideration with no decisions having been made at this stage.

Clause passed.

Clause 9—'Economic adjustment to weekly payments.'

The Hon. K.T. GRIFFIN: Following the same theme, this clause seeks to amend section 39 of the principal Act dealing with economic adjustments to weekly payments. Where the corporation makes an adjustment in weekly payments pursuant to section 39, it must give notice in writing to the worker stating the ground of the adjustment. Instead of that the amendment proposes that the notice will contain such information as the regulations may require as to the grounds on which the adjustment is being made. Will the Minister indicate the nature of the information being considered for inclusion in those regulations?

The Hon. ANNE LEVY: It is very preliminary days with regard to this matter, but I understand that it is a similar response to that which I gave last time: the reference to the section of the Act being relied upon or the circumstances of the case which makes a section of the Act applicable.

Clause passed.

Clause 10—'Insertion of new division.'

The Hon. K.T. GRIFFIN: My first amendment is consequential on the second year review amendments, which I have not been successful in persuading the Committee it ought to support, and therefore I will not be moving it. Before I move my second amendment, I have a number of concerns about the attempt in proposed

section 42a to estimate income tax and deduct it from any lump sum which reflects a capital loss. There is some suggestion that this is not likely to be an option that will continue for an indefinite period because the Commonwealth may well take some action to amend its tax laws to cover this reduction.

Will the Minister indicate whether either the Government or WorkCover has had any consultation with or ruling from the Federal Income Tax Commissioner on this subject? In relation to the estimation of income tax that will be deducted from the calculation of capital loss, so that it is net of expected future income tax, will the Minister indicate what consultation the Government or WorkCover has had with the Federal Income Tax Commissioner? Has it sought and obtained any ruling from the Federal Income Tax Commissioner on this subject and, if so, what was the ruling?

The Hon. ANNE LEVY: At this stage, there has not been a ruling from the Taxation Commissioner, as he does not give rulings in hypothetical cases. There have obviously been discussions and, as soon as this Bill becomes law, he can be approached to formally provide a ruling, because it will then be not hypothetical but actual. I may say, of course, that this is apparently based on a clause in the Victorian transport accidents scheme legislation, on which there has been litigation in Victoria. In that case, it went to appeal, but the Taxation Commissioner lost his appeal and it is felt that that judgment is very relevant to the South Australian clause being considered.

The Hon. K.T. GRIFFIN: Will the Minister indicate whether it is proposed that a formal ruling should be obtained from the Federal Income Tax Commissioner before this clause is proclaimed to come into operation?

The Hon. ANNE LEVY: Certainly, applications will be made to the Taxation Commissioner as soon as the Bill has received assent and consequently is no longer hypothetical. It depends a bit on how long it will take to achieve a ruling, but there is a firm understanding on the part of WorkCover that the clause will not be put into operation prior to receiving a ruling from the Taxation Commissioner; even should the legislation be proclaimed before a ruling is obtained, the clause will not be put into effect until the Taxation Commissioner's ruling is available.

The Hon. K.T. GRIFFIN: Could I just clarify what the Minister means by not being put into effect? Presumably, if it is proclaimed it becomes law and presumably, if it becomes law, it will be applied by the WorkCover Corporation. Could the Minister give some clarification?

The Hon. ANNE LEVY: As I understand it, the commission does have discretion with regard to lump sums for loss of earning capacity, and it will be keen to ensure that no-one is disadvantaged.

The Hon. K.T. GRIFFIN: I would like to pursue that a little further in two contexts. The first is in that situation where there is no ruling, but there is an assessment of the worker's loss of future earning capacity as a capital loss. Am I to understand that at that point the corporation will comply with the provisions of this section? If the ruling of the Taxation Commissioner subsequently is that the scheme envisaged by the section is not approved, that is, it is not regarded as being consistent with federal law, will WorkCover then make an additional top-up, *ex gratia* payment, or is to be approached in some other way? That is one scenario.

The Hon. ANNE LEVY: As I understand it, it is at the discretion of WorkCover whether it provides a lump sum payment or whether it continues with weekly payments. Obviously, once this becomes law, if a lump sum payment is made, it would have to be made under these provisions, but it is at WorkCover's discretion whether or not it gives a lump sum payment. It would be keen to ensure that no-one was disadvantaged by an unfavourable ruling, so I would presume it would refrain from using the lump sun, provision until there is a ruling.

The Hon. K.T. GRIFFIN: The Minister said she presumes; will it be the case that there will be no assessments under this section until there is a ruling?

The Hon. ANNE LEVY: That would be the intention, with the exception that, if it were felt necessary to have a test case to test a ruling, one such case could occur so that it can be used as a test case, but not for other than that reason.

The Hon. K.T. GRIFFIN: But not to the disadvantage of the injured worker?

The Hon. ANNE LEVY: Obviously.

The Hon. K.T. GRIFFIN: One can presume that if there is a ruling from the Federal Income Tax Commissioner that will be the end of the uncertainty about the application of the provision.

The Hon. Anne Levy: Not necessarily.

The Hon. K.T. GRIFFIN: No, but generally, because one would expect that it would be the Income Tax Commissioner who would make an assessment in relation to an injured worker and, if that is inconsistent with a formal ruling, a different issue arises there. So, I think that that generally covers the area of my concern.

I suppose it is always possible that at some time in the future the Federal Government will seek to amend its income tax legislation to address this sort of scheme. In. those circumstances, can I presume that the Government and WorkCover would ensure that workers were not thereafter disadvantaged by changes to the Federal law and that we would see the matter back in Parliament at some stage?

The Hon. ANNE LEVY: I think one could presume that fairly safely. This would not be the only piece of legislation that would need to come back. A very large number of pieces of legislation deal with questions involving capital loss, and there would be a great raft of legislation that would need to be amended by this Parliament if the Federal income tax law were amended in the way in which the honourable member is suggesting.

The Hon. K.T. GRIFFIN: In relation to proposed subclause (2)(c), reference is made to a prescribed discount rate. What is that rate likely to be?

The Hon. ANNE LEVY: It has not yet been determined. Preliminary discussions suggest a figure of 5 per cent, but we would not like to be held to that figure as it may well change as discussions proceed.

The Hon. K.T. GRIFFIN: I now move to my amendment. I move:

Page 5, lines 28 and 29—Leave out paragraph (a).

This amendment is to that part of proposed clause 42a that provides that certain decisions of the corporation are

not reviewable. A decision of the corporation to make or not to make an assessment is not reviewable but an assessment is reviewable, so there is a fine distinction. The corporation may, as it has an absolute discretion, determine whether or not it will make such an assessment. If it does, the actual assessment is to be reviewable. I believe that even the decision whether or not to make an assessment ought to be the subject of review. I see no prejudice in that from WorkCover's point of view. If the injured worker prefers to take compensation as a lump sum, then I believe in allowing individuals to exercise individual responsibility rather than being tied to the apron strings of anyone; in this case, the WorkCover Corporation. My amendment, therefore, seeks to ensure that the decision to make an assessment is also reviewable.

The Hon. ANNE LEVY: The Government opposes this amendment. It is interesting to note that the removal of this clause from the original Bill was supported by the Liberal Party in the other place.

The Hon. K.T. Griffin: We said that we reserved our position on all amendments.

The Hon. ANNE LEVY: You supported the amendment when it was in the other place.

The Hon. K.T. Griffin: The Labor Party opposed many of the amendments in the other place but will support them here.

The Hon. ANNE LEVY: I merely point out that in the other place the Liberal Party opposed this amendment whilst trying to have it both ways by reserving its position. The Government opposes this amendment.

The Hon. K.T. GRIFFIN: At least, as I indicated during my second reading contribution, in the House of Assembly we indicated that we were prepared to allow the Hon. Mr Peterson's amendments to be carried but that we would make the final assessment of them before they were dealt with in the House of Assembly. We have done that, and the position that I am now indicating is what is being supported. As my colleague the Hon. Mr Lucas said, in the House of Assembly the Labor Party opposed many amendments and did not even qualify its opposition. Now we have a situation in which it will be voting very much against its deliberations in the House of Assembly.

The Committee divided on the amendment:

Ayes (7)—The Hons J.C. Burdett, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, R.I. Lucas, R.J. Ritson, J.F. Stefan.

Noes (7)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy (teller), T.G. Roberts, R.R. Roberts.

Pairs—Ayes—The Hons L.H. Davis, Diana Laidlaw and Bernice Pfitzner. Noes—The Hons Carolyn Pickles, C.J. Sumner and Barbara Wiese.

The CHAIRMAN: There being an equality of votes, I cast my vote with the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: Mr Chairman, I do not intend to proceed with the other amendments to this clause. They are consequential on earlier amendments upon which I have not been successful. I have two other questions, again relating to the general issue of regulations. At page 6, proposed section 42b(5) provides:

If any proceedings for a review officer under this section are adjourned, the review officer may, on such terms and conditions as the regulations may prescribe, order that one or more payments be made to the worker during the adjournment.

Can the Minister indicate what terms and conditions are in contemplation for the regulations at this stage?

The Hon. ANNE LEVY: Again, only preliminary consideration has been given to this matter, but obviously such an order can only be made where proceedings are suspended for at least one day and the order must be made within seven days of the proceedings being adjourned. That is the sort of thing which is being

considered in this situation—with no commitment, I repeat, at this stage.

The Hon. K.T. GRIFFIN: To save the Minister from having to repeat the qualification, I take it as part of her observations in relation to all of these questions that I ask on regulations that there is no unequivocal commitment that this is what will happen. However, I just want to get an appreciation of the sorts of things that are in the minds of those who are going to be responsible for the regulations. The next area in relation to regulations is on page 7, where subsection (10) provides:

If a review officer decides in favour of the corporation, the corporation may, at the corporation's discretion (but subject to the regulations)—

(a) recover any amounts paid...from the worker as a debt; or

(b) set off any amounts...against liabilities of the corporation to make payments to the worker...

Will the Minister indicate what sorts of restraints on the discretion of WorkCover Corporation are in contemplation?

The Hon. ANNE LEVY: It is exactly the same matter being considered as I indicated previously, on clause 7, where there had been an overpayment.

Clause passed.

Clauses 11 and 12 passed.

Clause 13—'Review of weekly payments.'

The Hon. K.T. GRIFFIN: This relates to section 45 of the principal Act, which deals with the review of weekly payments. I have another question about regulations. Is the Minister able to indicate what sorts of information is likely to be required by the regulations as to the grounds for the review?

The Hon. ANNE LEVY: It is the same matter being considered as I indicated in response to an earlier question. The sort of thing is the quotation of the provision of the Act which is being relied on, or the circumstances of the case which invokes the use of the provision of the Act being relied on.

Clause passed.

Clause 14—'Incidence of liability.'

The Hon. R.J. RITSON: I have a list of questions that I want to ask the Minister. In relation to subsection (8b), when a claim is made by a worker to the WorkCover Corporation, is it correct that the employer can wait until he is notified of a requirement to pay, and is that notification an irrevocable undertaking, as it were, that the corporation accepts the liability? Is it a watertight guarantee?

The Hon. ANNE LEVY: The answer is yes.

The Hon. R.J. RITSON: When an employer commences payment, in response to that notification, is there a stage where the administration of WorkCover

Corporation catches up with the delay between the claim being made and the acceptance of the claim and begins to pay the worker direct, or is it always that the employer pays and seeks reimbursement at a later date, even through a chronic disability of a year or more?

The Hon. ANNE LEVY: Yes, unless the employer seeks exemption under new subsection (8c)(a). The honourable member's latter proposal is correct: that, when notified by WorkCover, the employer makes regular payments and is reimbursed by WorkCover indefinitely unless he makes application under new subsection (8c)*(a)* that the situation be changed. It would seem to me that if it was an ongoing situation exemption would be granted by WorkCover.

The Hon. R.J. RITSON: It seems we have a hysteresis phenomenon which will only be caught up when the claim is finalised. So, indefinitely throughout the course of that claim until it is finalised there is a delay due to a decision to make a claim; and then the claim is put in by the worker and may be put in some time after the injury. Some workers are a little reluctant to make a claim that might be trivial, particularly in these recessionary times. Patients of mine refuse a three day WorkCover certificate for a minor injury. So, a claim could go in, say, three weeks after the commencement of a disability. What is the expected length of time between receipt by the corporation of that claim and the receipt by the employer of a notification of liability?

The Hon. ANNE LEVY: I am informed that, for a very large number of claims made on WorkCover, notification is made to the employer within 10 days, although some cases take very much longer—where further medical opinions have to be sought and a very detailed consideration made. While some cases can be lengthy, the majority are clear cut and obvious, and the notification goes out within the 10 days.

The Hon. R.J. RITSON: I guess 10 days or perhaps 14 days is about the time that exists between lodgement of a claim for medical expenses and the doctor's receiving reimbursement. So, I guess we can expect something of that order with the notification of liability. The next step in the chain is the employer applying for reimbursement. What is the expected hysteresis between the employer applying for reimbursement and receiving a cheque?

The Hon. ANNE LEVY: I understand that this question has already been considered by the WorkCover Board and that it will be recommending to the Government that the regulations prescribe that reimbursement be made within 15 business days of the corporation being notified of the request.

The Hon. K.T. Griffin: Three weeks.

The Hon. ANNE LEVY: Normally it would be three weeks, but 15 business days as a maximum.

The Hon. R.J. RITSON: Financial institutions such as insurance companies with a big cash flow of payments in and out consider it very important to have actuarial calculations of the effect of late payments. For instance, if everyone paid their housing loan five days late or their premiums 10 days late, that might result in some pressure being placed upon the statutory reserve or require overnight borrowing. So, even though the individual financial transactions are small the collective effect on the institution of a delay in payments can be quite enormous.

Doubtless the WorkCover Corporation has done actuarial calculations as to the effect on WorkCover's capital base if it gets a honeymoon period on that money of what would seem to be a minimum of a month (from the answers to questions today) from the time that the worker is unable to work until it has to make the reimbursement. I do not know how many claims per month WorkCover has and how much money that is, but I have noticed that there is no provision in the Act for interest on that up-front money. It must have a multi-million dollar global effect on the capital base, and I am sure that the corporation as an insurer has carefully calculated that on an actuarial basis, as do all other insurance companies. The Minister should be able to tell me, in millions of dollars per month, the effect of this legislation on its capital base.

The Hon. ANNE LEVY: WorkCover has not done the calculation to which the honourable member refers. There is certainly a penalty to WorkCover. If it does not pay within the 15 days it must pay interest, and that is its penalty. However, the interest loss is that which is being made by the employer waiting for his reimbursement. WorkCover will certainly do its utmost to make the payments before the 15 days, and I remind the honourable member that the WorkCover board has on it six employers who are obviously keen to see that these payments to employers are made as rapidly as possible.

The Hon. R.J. RITSON: I make the observation that on the surface it appears as if it will have the global effect of being a substantial interest fee overdraft facility for WorkCover. It may be that that benefit will flow back to employers through reduced premiums. I am not declaring war over it but it is worth discussing in passing.

With regard to the review process, I notice that the hardship provisions are appealable from the corporation to the board and that the board has very wide discretion as to how it hears and determines a decision. With a large employer—perhaps not quite large enough to be an exempt employer, but with a very large payroll—there could be a fair bit at stake. The board has discretion about the manner of the hearing and about whether or not to allow legal representation. While the board and the corporation are two legally separate entities, it has the appearance of their being as separate as Caesar and Mrs Caesar. I am not familiar with the larger area of law, but I wonder whether the review provisions, as laid out in this clause, mean that no decision of the board in this matter is appealable in any other forum or in any court?

The Hon. ANNE LEVY: I understand that legal dvice would be required to answer the honourable member's question with certainty, but the advisers feel that there would be an appeal, possibly to the Supreme Court, in terms of natural justice or some such criterion. Again, I say that accurate legal advice could be sought on this, but I think Calphurnia's case is probably covered.

The Hon. R.J. RITSON: Looking at clause 14(8i), it seems to me that there is an ambiguity. The clause deals with the question of payments made by an employer in anticipation of a claim.

The Hon. Anne Levy interjecting:

The Hon. R.J. RITSON: I point to an apparent ambiguity in the words of the two phrases 'the claim' in subclause (8a) and 'the claim' in subclause (8b). The

claim is made within three months after the date of payment. What claim is that? Is that the employer's claim for reimbursement or the worker's claim for compensation?

The Hon. ANNE LEVY: In subclause (8j)*(a)* 'the claim' is the employer's claim. In (8j)*(b)* 'the claim' is the worker's claim.

The Hon. R.J. RITSON: I find that quite unsatisfactory. The judiciary are not able to refer to *Hansard* to discover what you have just told me is the intention of it, and I am not sure that the plain words of the Act, without that explanation, make clear whose claim the words 'the claim' means. The Minister has told me that the two words 'the claim' in each of those lines mean different things, but they are the same words. If it is necessary to ask the question and necessary for you to explain it, then, if this clause is not defeated, the Minister should seriously look to a little bit of drafting to refer more clearly 'the claim' by the employer for reimbursement and 'the claim' by the employer for compensation, so that we know what the words 'the claim' mean.

The Hon. ANNE LEVY: Not being a lawyer myself I can see the logic of what the honourable member is saying. It may well be that lawyers could view it differently. The moral of the story is that we are likely to have workers compensation amendment Bills before the Parliament every year for the next X years as more and more legal fun is had with the wording.

The Hon. R.J. RITSON: Where an employer, either voluntarily out of his own generosity makes payment in anticipation of a claim or, as is very likely, the union movement and industrial pressures are brought to bear to make sure that where a worker declares his intention to claim pressure will be on for the boss to come up with the cheque on day eight, and the claim is subsequently refused because of further evidence that comes to WorkCover's notice, I would expect. that there would be a percentage of claims that turn out to be, once they are looked at, quite different from what they are said to be at first. What is WorkCover's obligation to reimburse those claims where they have not sent a notice accepting liability—where the boss has simply started to pay in anticipation and then the claim is refuted?

The Hon. ANNE LEVY: The Act is very clear on this. There is no liability on WorkCover to reimburse the employer in that situation.

The Hon. R.J. RITSON: It is very important legislation, and I am sure that extensive consultation took place. Could the Minister indicate the reaction of, first, the Employers Federation, and, secondly, the UTLC to the discussions which must have occurred over the question of the non-reimbursability of moneys paid in anticipation of a claim?

The Hon. ANNE LEVY: I am informed that there was a great deal of discussion within WorkCover itself on this issue—

The Hon. R.J. Ritson: But no consultation?

The Hon. ANNE LEVY:—where there is a large number of employer and UTLC representatives. They were all involved in these discussions. My advice is that, whilst there was a lot of discussion, there was not acrimony over it at all—it is purely discretionary on the part of the employer as to whether or not he makes the payments. The section is there so that where it is very clear that it is an injury for which a claim will be accepted the employer can begin paying straight away and be confident that he will be reimbursed. There will always be some cases where it is not sure whether or not a claim will be accepted. In those cases as in all other cases it is at the employer's discretion whether he pays. It is to allow for the case where it is so obvious that a claim will be accepted that the employer does have the ability to begin payments as part of the normal pay cycle and be confident that he will be reimbursed later.

The Hon. K.T. GRIFFIN: I intend to oppose the clause but want to pursue several issues in relation to regulations. Proposed subsection (8c)*(b)* refers to 'any other prescribed circumstance' in the context that:

> An employer is not bound to comply with the corporation requirement to pay an employee if the employer satisfies the corporation that to do so would be unduly burdensome or it is otherwise unreasonable to expect the employer to make the payments to the worker or in any other prescribed circumstance.

Will the Minister explain what other prescribed circumstance is in contemplation?

The Hon. ANNE LEVY: At this stage none are contemplated.

The Hon. K.T. GRIFFIN: In proposed subsection (8h) at the top of page 9 (the Minister has made some observations on this as did the Attorney last night in his reply), the employer in certain circumstances is entitled to reimbursement by the corporation and, if the regulations so provide, interest at the prescribed rate. That is tentative and not absolute. Will the Minister give a commitment that a regulation will provide for interest to be paid and, if so, can she indicate what the interest rate presently is likely to be?

The Hon. ANNE LEVY: Whilst I cannot give an absolute commitment that interest will be paid as it is a Cabinet decision, it is expected that there will be a Cabinet decision that interest will be paid. The prescribed rate is likely to be the prime bank rate for the financial year, again without commitment that that will be the rate.

The Hon. K.T. GRIFFIN: To clarify the issue of the prime bank rate, the Minister said 'for a financial year'. The prime rate varies throughout the year and there would need to be some formula to level out the peaks and troughs. It may all be a trough. What did the Minister mean by that?

The Hon. ANNE LEVY: The current regulations under the Workers Rehabilitation and Compensation Act define prime bank rate as 'for a particular financial year means the rate expressed as a percentage per annum fixed by the State Bank of South Australia at the commencement of that financial year as its indicator lending rate'.

The Hon. K.T. GRIFFIN: I have indicated that the Liberal Party opposes the clause for a number of reasons. If one looks at the structure of the proposed amendments, one finds that they are very much matters at the discretion of the corporation or the board and very much loaded in favour of the corporation rather than the employer. We have an immediate conflict of interest because the corporation has a vested interest in not paying out any more than it has to and, by the operation of this clause, would not be acting as an insurer but rather as an indemnifier at some stage later in the piece. I

know that insurers are indemnifiers, but they tend to pay up front. If one looks at proposed subsection (Sc), an employer is not bound to comply with the corporation requirement to make weekly payments if the employer satisfies the corporation that to do so would be unduly burdensome on the employer. That is an assessment to be made by the corporation and is not subject to review.

If an employer fails to satisfy the corporation that it would be unduly burdensome to require the employer to pay it, the employer may apply to the board for a review of the matter. As the Hon. Dr Ritson said, that is a bit like appealing from Caesar to Caesar's wife or *vice versa.* The board is the corporation for all practical purposes and is the body that implements or decides the policy and makes the decisions implemented by administrative staff. It is not an effective right of review.

Under proposed subsection (8f), the review is to be conducted in accordance with procedures determined by the board, so it has control of the procedures. I know that there are other provisions in the Act that are similar, but they are equally offensive as this one. The board has an absolute discretion on whether it will permit the employer or a representative of the employer to be heard orally on the review, which I suggest is a denial of all the principles of natural justice which should apply to something like this, even if it is the board undertaking the review. On the review, the board may confirm, vary or rescind a decision of the corporation. All of that is, I suggest, a mass of conflicts of interest.

A number of employer groups have made representations to us, as I suspect they have made representations to the Government, and some made representations to the joint select committee, opposing this proposition. The South Australian Employers Federation states:

> The potential financial burden on a small employer could be catastrophic. Whilst we fully support the need for the injured worker to retain his link with the workplace, a factor which is encouraged by receiving payments from his employer, an amendment such as this must take into account the size of the employer, the number of claims for which the employer is paying income maintenance and the financial circumstances of the employer.

The Motor Trade Association makes the observation that:

> This section's amendment is draconian in measure and the employer should at all times be allowed to be heard on the same basis as the corporation and the employee. We reject this proposal most strongly.

The Law Society went somewhat further, stating that it will seriously hit employers, particularly those in smaller business, in several ways. The society states:

> In addition to paying WorkCover levies, employers must now make initial income maintenance payments of about $17 million per month and carry interest commitments.

It does not say they must do it, but it is a very strong possibility that they will. The Law Society continues:

> If they fail to pay, or underpay employees, they will be hit by very steep fines. If they overpay employees they will have no right of recovery of any overpayment. If they don't make separate application for recoupment of payments within the specified period of three months, they will not be reimbursed ... similarly, reimbursement will not be made unless the claim is determined in the worker's favour. The actual calculation of the amount to be paid to an injured worker is complex and varies after periods of time. Should WorkCover delay or be unable to reimburse employers for, say, a period of six months, not farfetched on present experience, employers could be lending an additional $102 million in payments advanced by them instead of by WorkCover, together with consequent interest loss and cash flow problems.

One of the lawyers who wrote to me about a number of issues related to the Bill, not as the *Advertiser* reported to lobby against aspects of the Bill because of the work they would lose, states:

> This proposal requires employers to make weekly payments themselves and subsequently apply for reimbursement from the corporation if and only if the employer makes that claim within three months after payment and the claim is determined in the worker's favour. There are some exceptions to this general rule. Also, the ability to apply to the board for a review is a process which is in itself cumbersome. Generally speaking, employers are not entitled to any interest on reimbursement of weekly payments they make. I cannot see any justification for requiring as a matter of general practice employers to pay weekly payments. The calculation of weekly payments under the Act is an extremely difficult one. Many large employers, let alone small employers, simply do not know how the calculation is made. If they overpay they have no right to reimbursement for the amount which is overpaid. In any event, the corporation is in a position of an insurer. The employers have paid their levies to the corporation in good faith. Employers already have to pay the first week of income maintenance. The levies have been paid in anticipation of the corporation deciding whether or not the claim should be accepted and, if it is, making payments to the worker. I believe this proposal is principally a mechanism to enable the corporation to hold onto its money for longer and obtain the advantage of the money market in the meantime. Furthermore, this new proposal will clearly be an administrative nightmare.

They are just an extract from a number of submissions which have been made to the Liberal Party in respect of this clause and, for all those reasons, as well as those that I have explained of my own volition, we oppose the clause. I indicate that, if we are not successful in opposition, at the end of Committee I will be seeking to recommit for the purpose of reconsidering some aspects of the clause.

The Hon. BARBARA WIESE: I certainly will not attempt to respond to all the points that have been made by the honourable member. I simply want to reiterate the purpose of this provision, which is to continue to maintain the relationship between the employer and the worker in a situation where a worker is injured, because it is believed that this will assist in the process of getting a worker back into the work force. As I understand it, almost 50 per cent of employers are already direct paying and, if this were extended, it is believed that the relationship between employers and their work force will be enhanced.

The Hon. K.T. GRIFFIN: The Minister has mentioned 50 per cent; is that 50 per cent of those who are actually registered with WorkCover, or does that include those who are self-insurers?

The Hon. BARBARA WIESE: That is only employers who are registered under WorkCover, and it is a very approximate figure. The exact figure could be obtained later, if desired.

The Committee divided on the clause:

Ayes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Noes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, Bernice Pfitzner, R.J. Ritson, J.F. Stefani,

Pair—Aye—The Hon. C.J. Sumner No—The Hon. R.I. Lucas.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 15—'Determination of claim.'

The Hon. K.T. GRIFFIN: I have another question in relation to regulations. What sort of information will the regulations require to be contained in the notice?

The Hon. BARBARA WIESE: The same information indicated as being required under clause 7 will be required under this clause.

Clause passed.

Clause 16—'Limitation of employer's liability.'

The Hon. K.T. GRIFFIN: This clause is opposed. This is the principal clause relating to the abolition of common law rights. I hope that, as a result of my second reading contribution and my contribution on the procedural motion to give an instruction to the Committee to split the Bill, members opposite have had time to contemplate this clause and will have changed their minds. I will not repeat at length the arguments I have now used on two occasions in relation to this debate. I merely repeat what I said on those two previous occasions: that the abolition of common law rights will create injustice. The abolition of those rights is contrary to the position that the Labor Party has traditionally held and is certainly opposed to the views of the United Trades and Labor Council.

I might remind members opposite that it is an issue that their colleagues in the House of Assembly were not prepared to support. We have made observations about the political dilemma in which they now find themselves as a result of the precipitate action of the Speaker in the other place.

I hope that they may now have had 24 hours within which to think of the merits of the argument I am putting and will support me in opposing the removal of these common law rights for non-economic loss, on the basis that that question should subsequently be referred to the joint committee.

The Committee divided on the clause:

Ayes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Noes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson,

Pair—Aye—The Hon. C.J. Sumner. No—The Hon. J.F. Stefani.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 17—'Delegation to exempt employers.'

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

Page 9, lines 29 to 31—Leave out paragraph (a).

This clause relates to the delegation which may be made to exempt employers. It amends the principal Act by inserting sections 42a and 42b, those two provisions in clause 10 of this Bill relating to compensation for loss of earning capacity, so that exempt employers have an opportunity to use those provisions to award a capital loss. In the past, the Government has sought to fetter the discretion of exempt employers, and we have been able to resist that.

There seems no valid reason why, in relation to the exercise of their discretion under sections 42a and 42b, that discretion ought now to be fettered. They have demonstrated a very significant level of competence in dealing with the rehabilitation of injured workers and the administration of workers compensation. They service a significant number of employees in South Australia, and there is no reason at all why their discretion ought to be fettered.

The Employer Managed Workers Compensation Association has written to me and indicated that subsection (3aa) contradicts subsection (3), because it provides:

Subject to subsection (3a)—

The corporation shall not overrule or interfere with a discretion of a exempt employer, may in the exercise of delegated powers or discretions...

There is no argument in favour of that limitation on their discretion. The Employer Managed Workers Compensation Association Inc. says:

Proposed subsection (c)(3aa) and *(b)* severely restrict the powers and discretions already delegated to exempt employers. In other words, either we have delegated authority or we do not.

It is another important issue upon which I will be dividing if I lose on the voices, and after that there will be several questions if I do lose it.

The Hon. BARBARA WIESE: The Government opposes this amendment because it would unconditionally delegate to exempt employers the right to negotiate lump sum settlements under section 42a, for loss of earnings and capacity, and direct workers to undertake a medical examination for the purposes of assessing lump sums under section 42a. The Government holds the view that these powers should be subject to approval of the WorkCover Corporation to ensure that workers' rights to proper compensation are not bargained away, as occurred under the old system. The same objections apply to the proposal to include section 42b. The concern is that these powers should not be used capriciously by employers and, therefore, we prefer the Bill as it stands and reject the amendment.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: What criteria will the WorkCover Corporation apply to exempt employers in

determining whether or not they should be able to exercise discretion under new sections 42a and 42b?

The Hon. BARBARA WIESE: As I understand it, the policy that will apply to the WorkCover Corporation in these circumstances has not yet been developed, but it is intended that that policy will also be used by exempt employers.

The Hon. K.T. GRIFFIN: Does that mean that this policy will provide for a general form of consent, or is it proposed that in the administration of the policy exempt employers in every case will be required to submit a proposal in respect of an injured worker to WorkCover for approval? Is it a blanket policy and consent so they are left to exercise their discretion, or will WorkCover be involved in each and every case?

The Hon. BARBARA WIESE: As I indicated earlier, the thought on this matter is at a very preliminary stage. No policy has yet been adopted. However, it may be the case that in the early stages the WorkCover Corporation would want to be involved in each case. However, there is a recognition that it is undesirable to be overly bureaucratic in these matters, and after a period of time, once the system has been in place for a while, there might be a move to a practice whereby perhaps a class of workers might be able to be dealt with on a pro forma basis of some sort or another. However, I emphasise that these thoughts are very preliminary thoughts and quite a lot of work is yet to be done on this matter.

The Hon. K.T. GRIFFIN: Will the policy be developed in consultation with exempt employers, or is this something that will imposed?

The Hon. BARBARA WIESE: Exempt employers have a representative on the board, so there will certainly be representation at that level. But it is intended that there will be consultation with exempt employers in the development of the policy.

Clause passed.

New clause 17a—'Preliminary.'

The Hon. K.T. GRIFFIN: I move to insert the following new clause:

17a. Section 65 of the principal Act is amended by striking out from subsection (1) the definition of 'remuneration' and substituting the following definition:

"remuneration" includes payments made to or for the benefit of a worker which by determination of the Corporation constitute remuneration but does not include—

(a) any contribution paid or payable by an employer to a superannuation scheme for the benefit of a workers;

(b) any amount paid or payable to a worker as severance, retrenchment or redundancy pay on the termination of employment, except to the extent (if any) that the amount is attributable to unpaid wages, or to any annual leave or long service leave entitlement;

or

(c) any other amounts determined by the Corporation not to constitute remuneration.

It has always caused concern that WorkCover itself should have the power to determine what should or should not be in the definition of 'remuneration'. We recognise that we have lost that battle. That is the reason why in paragraph *(c)* of my amendment to the definition of 'remuneration' we leave in the 'any other amounts determined by the corporation not no constitute remuneration'.

The difficulty has always been, if one looks at this objectively, that the corporation has a vested interest, and therefore a conflict of interest, in making the determination as to what should or should not be in remuneration. However, for the purposes section 65 of the principal Act, we are seeking to ensure that certain matters are not included—contributions to a superannuation scheme, and severance, retrenchment or redundancy pay—on the termination of employment. If I lose this on the voices, it is not one of those issues upon which I will seek to divide.

The Hon. BARBARA WIESE: The Government opposes this amendment. The WorkCover board has already taken administrative action to exclude severance, retrenchment and redundancy pay. Accordingly, that part of the amendment is unnecessary. The exclusion of superannuation payments is a long-term goal of the WorkCover Corporation when its funding position allows. Accordingly, this amendment should be rejected at this stage and the decision left with the corporation to determine the timing of the exclusion of superannuation payments from the payroll base used for raising WorkCover levies.

The loss of revenue for a narrowing of the levy base by excluding superannuation would be approximately $20 million per annum. As WorkCover is required to set levy rates which will achieve full funding, the removal of superannuation contributions will require WorkCover to lift its average levy rates to compensate. This will impact on smaller firms in the main as large firms will be the major beneficiaries from the removal of superannuation contributions. In other words, the amendment will shift the burden of cost from large to small firms, and the Government opposes that.

The Hon. K.T. GRIFFIN: I do not agree that it will shift the burden. The basic principle is that in terms of weekly payments superannuation is not taken into consideration. Therefore, it seems illogical to include superannuation payments in the calculation of the levy. I do not accept that this will have the impact that the Minister has suggested.

New clause negatived.

Clause 18 passed.

Clause 19—'Employer information.'

The Hon. K.T. GRIFFIN: The Liberal Party opposes the clause, which allows the corporation to disclose information in relation to any employer registered under the Act. This is in breach of the Government's information privacy principles and contrary to its stated view that information of this nature about individuals and corporations should not be disclosed for all and sundry to become aware of.

It is an offensive piece of blackmail and for that reason it is opposed. I suggest that it will not achieve anything, except a lot of ill feeling between WorkCover and not just a particular employer who might be identified, but all employers. It will be a sword constantly hanging over the heads of many employers who are making genuine attempts to upgrade safety and comply with the Occupational Health, Safety and Welfare Act. That is the Act that ought to apply to issues of safety in the workplace, not workers rehabilitation and compensation legislation.

I suggest that, whilst it could be used in a blackmail context, it will not have any beneficial effect in improving relationships between employers and employees and safety in the workplace. As I said, it is contrary to the general principles of information privacy that the Government has been so proudly promoting over the past couple of years, most recently in relation to the privacy debate. For that and other reasons we oppose the clause.

The Hon. BARBARA WIESE: Workers compensation costs the community about $217 million per year, and the Government believes that the community has a right to know which employers are contributing disproportionately to the cost of WorkCover. We can see no problem in having information about the record of employers made public. Those who have a good record can be proud of it; those who have a poor record should be exposed. As a community we should be doing all we can to reduce the workers compensation payout.

The Hon. R.I. LUCAS: This is a matter that I addressed in the second reading debate. I asked the Hon. Mr Gilfillan, as a representative of the Australian Democrats, to put on the public record why he had changed his position in this particular matter. As I indicated then, the Hon. Mr Gilfillan, for many years now, has supported the retention of the confidentiality provisions in this legislation. On a number of occasions he has voted to ensure that this safety record material and information would remain confidential, and he has indicated by way of comment and debate his preparedness to continue to support that proposition.

In the second reading stage I indicated and quoted from a recent example (in 1990, from recollection) where, again, the Hon. Mr Gilfillan indicated his view that this information should remain confidential and should not be publicised or published in any way. I challenged the Hon. Mr Gilfillan during that second reading contribution to indicate in Committee why he was now going back on his view, and his word, expressed on previous occasions in this Chamber. Now that we are debating this clause, I challenge the Hon. Mr Gilfillan again to stand up in this Chamber and indicate why he is supporting the Government position on this matter when it was not a recommendation of the select committee, of which he was a member, or of the WorkCover board. It was an amendment which was cooked up between Kevin Purse from the UTLC and Norm Peterson and the UTLC and which was included in this package of amendments, which is now known as the Peterson package.

I am pleased to see that the Hon. Mr Gilfillan will take the opportunity to try to justify why he is about to vote with the Government and against the position that he has laid down on this issue on so many occasions and in so many votes over recent years.

The Hon. I. GILFILLAN: I am pleased to have the opportunity to enlighten the Leader of the Opposition—who, apparently, has investigated my past voting record on this matter far more diligently than I have. I would be very interested to see the statistics on which he bases this assertion that on many occasions and many times—

The Hon. R.I. Lucas: Are you denying it?

The Hon. I. GILFILLAN: It is a flight of somewhat hysterical fancy at the end of a very long session. I repeat: very simply, the Democrats are not entertaining any amendment to this Bill at all, because we believe that the results of this Bill must flow through to reduce the levies to the employers in South Australia as soon as possible. That overrides the minor matters of the tinkering or the adjustments to the Bill that could have been done in the Committee stage. I might say that I am not sure how the Leader of the Opposition believes he has inside and accurate information as to all that was discussed in the select committee, because I certainly do not know any channel that should feed it to him. This matter has been discussed in the select committee, so it is a nonsense to say that it has not been discussed.

The Hon. R.I. Lucas: I said it wasn't a recommendation.

The ACTING CHAIRPERSON (Hon. Carolyn Pickles): Order!

The Hon. I. GILFILLAN: If the interjection reflects the pain of the Leader being wrongly represented, I apologise, because I was not privy to what he was saying when I came down in the lift. Unfortunately, I could not hear him while I was in the lift. That is why I spent a lot of time in the lift. The position is that this measure was thought up and devised for one purpose—to make the workplace safer so that there are fewer accidents and so that the cost of the workers compensation system is lower.

The Hon. .1.C. Irwin: How does it make it safer?

The Hon. I. GILFILLAN: The question is, 'How does it make it safer?' We have employers in this State—and I am sure that no-one here would have anything to do with them—who have a careless indifference to the safety in their workplace. If a measure can be used to lift the degree of safety in those workplaces, it is absolutely essential that this place, including the Opposition, consider it seriously. It is not a question of the fine tuning of confidentiality: it is a question of the priorities and what we want as a result of legislation. This measure should be considered further.

Members interjecting:

The ACTING CHAIRPERSON: Order! The Hon. Mr Gilfillan has the floor.

The Hon. L.H. Davis interjecting:

The ACTING CHAIRPERSON: Order, Mr Davis.

The Hon. I. GILFILLAN: I am getting interjections from three places at once, and that is more than I can handle—particularly from immediately in front of me.

Members interjecting:

The ACTING CHAIRPERSON: Order! The Hon. Mr Gilfillan has the floor, please.

The Hon. I. GILFILLAN: That is right. It is a bit hard to hold, at the moment. The select committee is continuing to sit and is feeding out reports. There will be an ongoing process of refining and adjusting WorkCover. The Opposition is so ready to interject or bay at my contribution. Will it say—

The Hon. L.H. Davis interjecting:

The ACTING CHAIRPERSON: Order! The Hon. Mr Davis will come to order. The Hon. Mr Gilfillan has the floor.

The Hon. I. GILFILLAN: It is hopeless—he does not. However optimistic you are, Madam Chair, it just does not happen.

The Hon. G. Weatherill interjecting:

The ACTING CHAIRPERSON: Order!

The Hon. I. GILFILLAN: I do not intend to go on for long, because it upsets members on this side of the House. I reiterate that at no stage is this legislation considered to be fixed beyond amendment and refinement, and that is why the select committee is continuing to sit—

Members interjecting:

The CHAIRMAN: Order! There is too much conversation and interjection in the Chamber. The Hon. Mr Gilfillan has the floor.

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order! The Hon. Mr Davis will come to order. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I think I have run out of patience in expecting to be listened to in any rational objective way. It is the end of the day and the audience is tired. I have indicated our position. The Democrats consider that aspects of this Bill need to be considered in the fullness of time. We do not endorse every dotted 'i' or crossed 't'. How many times do I have to say it? The priorities clearly include safer workplaces. If this measure employer. Does the employer make more money from an works to do it, we will all benefit, including the unsafe workplace? No. Secondly, we reduce the levies for employers who are bled dry through employer levies. If we can make substantial reductions in that, it is a top priority for the Democrats at this stage.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: I find the recent contribution from the Hon. Ian Gilfillan shameful, inconsistent and quite outrageous. The Hon. Ian Gilfillan and I have served on a WorkCover select committee for some two years, and members opposite will recall that in April we looked at WorkCover amendments in detail. The Liberal Party put up the same package of amendments as it is putting up today and, on that occasion, the Hon. Ian Gilfillan was on record as saying that he would not support anything other than that which the select committee had agreed to. Those two major amendments, which he supported, to his credit, at that time, were amendments to the definition of 'stress' and to the provisions of the second year review.

He was, as he said proudly, shoulder to shoulder with the Liberal Party on those two amendments. He certainly went out of his way to say, 'The select committee hasn't considered or voted in favour of journey accidents, amending benefit levels: I will not support these; I will stay with the select committee recommendation; that is what we have a select committee for; that is the appropriate course of action.' What do we see today? The Aeroplane Jelly Party.

The Hon. K.T. Griffin interjecting:

The Hon. L.H. DAVIS: Well, exactly! He has owned up to it; he has a different speech for a different circumstance. Today is November, and he has the threat of an early election hanging over him because, if this Bill, according to the Speaker in another place, is amended in any way, there will be an early election. So what we have is the Australian Democrats giving their definition of 'consistency' to the world—their definition of 'consistency', of course, is something that the Liberal Party cannot accept. On this occasion the Hon. Ian Gilfillan is supporting an amendment which has not been considered, recommended, or even discussed, to my knowledge, in the select committee on WorkCover, and he has the hypocrisy and the gall to support this, and why has he had the hypocrisy and the gall to support it—because it has been recommended—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS:—by the Speaker in another place. That is the guts of this; let us not beat around the bush. Who is keeping the bastards honest in this place is certainly not the Hon. *I*an Gilfillan. I cannot stomach this hypocrisy. It is just extraordinary to see this vacillation, to see the Aeroplane Jelly Party wobbling through the Legislative Council—a shame, a disgrace, an hypocrisy.

The Hon. T.G. ROBERTS: The frustration is certainly starting to show in the last clause when the members opposite are frustrated that the Democrats have not moved any amendments to date that have put the Government at risk. It is pretty clear that the last contribution is a desperate attempt to intimidate the Democrats into changing their position, and that is quite clear. The position stated—

Members interjecting:

The CHAIRMAN: Order!

The Hon. T.G. ROBERTS:—by the Hon. Mr Gilfillan makes sense. It is an honest approach to the prevention of accidents in the community and, if the names of those employers who are abusing the Act are posted in the public arena, that is a way of applying peer group pressure to those employers or organisations that are not doing the right thing. This has been a matter of discussion and debate in the committee. It might surprise Mr Davis (and he is not listening to this contribution at the moment) that this has been a subject—

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order! The Hon. Mr Davis will come to order.

The Hon. T.G. ROBERTS:—of evidence brought before the committee and of discussion informally, but no formal position has been adopted. If the challenge from the Hon. Mr Davis is that we take this matter, after it has passed in this Council, back to the select committee for the recommendation to be adopted—

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. T.G. ROBERTS:—then I am sure that the wisdom of the committee will lean that way. I am quite confident that the majority position in this place will be reflected in the committee at some future time. If we were waiting for the Hon. Mr Davis's position to be endorsed by the select committee, we would have to wait until perhaps half way through next year, because the committee itself, as I explained in my second reading speech, has been running for two years now.

We have already put out and interim report on some matters. We are looking at a further report, and I suspect at the end of the day we will be looking at some other matters that may need attention. Yet the Liberals get up

on the last clause at the last hour of the last day of the Bill being presented before this place and castigate the Democrats for their hypocrisy on this position. That position is consistent with the Democrats' position of trying to bring about prevention and a program that brings about rehabilitation. Other members on the committee have been trying to achieve the same aims, and I see this as being quite consistent with their contributions on many other matters on the select committee.

The Hon. T. CROTHERS: I was not going to enter into this debate, but I rise because of the reference by the Hon. Mr Davis to the hypocrisy of the Democrats—in particular, Mr Gilfillan.

The Hon. R.I. Lucas: You could speak for a long time about that, T.C.

The Hon. T. CROTHERS: I could certainly speak for a long time about hypocrisy, but I am not so sure at which area opposite I would direct it.

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order!

The Hon. T. CROTHERS: I do not want what I have to say to reflect on members opposite, but when they talk about select committees and hypocrisy they ought to be very careful about how far along that path they want us to wander. When this Bill was first introduced five or six years ago, it was calculated that the legal profession was receiving 22c in every dollar and the medical profession 10c in every dollar expended on workers compensation. To the best of my knowledge, no member on this side of the Council or of the Democrats (Mr Gilfillan or Mr Elliott) belongs to either of those professions. If any member on the other side who belongs to one of those professions was a member of the select committee, did they say that there was potential for them to have a conflict of interest or vested interest because of the fight which the legal professions put up over the past five or six years to protect their interests in workers compensation? Not one word from them! There is the hypocrisy! To my knowledge, there are five of them: three lawyers and two doctors on the other side of the Council. They are the people who are getting more out of workers compensation than anyone else, including probably many injured people. There is the hypocrisy: the absolute and utter silence with which my comments are greeted.

As I said, I do not particularly think that any of those five people would be involved in anything like that—I have considerable regard for them—but if members opposite want to talk about hypocrisy they should be very careful about what stone they turn over. That is the question I asked myself: did any of the five members opposite who participated in this debate say that they had the potential to have a vested interest? Members on this side have been accused in many contributions of being former trade union officials, which we are, but it has not stopped us from seeing the correct light on the hill when called upon to discharge our duty in respect of South Australia. It has not stopped us from doing that and we have not hidden under any rock what we are or where we came from. So, I commend the Hon. Mr Gilfillan for his lack of hypocrisy and his commonsense approach, and I condemn the Opposition for hiding what has the potential of being a vested interest under a rock of their own choosing.

The Hon. K.T. GRIFFIN: There are no vested interests that we have to protect. What we are trying to do is to see that there is some equity in the operation of the scheme. As I said, this clause is contrary to the Government's own information privacy principles, and it will not achieve the result that some very narrow-minded and short-sighted members opposite believe that it will. In relation to the Minister's response, the difficulty will be in determining who is a good employer and who is a bad employer in this area. Is a large corporation which employs 4 000 people and has 20 claims a good or a bad employer when a small business might employ 20 people and have two claims? Even if one accepts that the corporation should have this, the whole system is not conducive to equity and reasonableness. No criteria have been indicated and, even if they had, I would still object to the clause. I think it is likely to be an instrument of blackmail, and I find that offensive.

The Committee divided on the clause:

Ayes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Noes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson.

Pair—Aye—The Hon. C.J. Sumner. No—The Hon J.F. Stefani.

Majority of 1 for the Ayes.

Clause thus passed.

The Hon. K.T. GRIFFIN: Without speaking to any specific clause, can I just make a clarifying statement about one amendment that we have resolved? I must say that it came as a result of an alert *Hansard* reporter saying, 'Is this correct?' When we debated the amendments to clause 16—'Delegation to exempt employers'—the amendment which is in my name and which I moved was to delete paragraph (a) and that would have deleted the delegation of sections 42a and 42b. In fact, I never wanted to remove the delegation; all I wanted to do was remove the WorkCover involvement. I think those who check *Hansard* will see that all the debate on both sides was directed towards that limitation. As it will turn up on the *Hansard* record, it appears that I am even seeking the removal of the paragraph which provides for the delegation. It has been divided upon and is part of the record, but I wanted to clarify that for those who might want to read further than just that particular amendment that dealt with exempt employers. I suspect that the error occurred (and I should have picked it up) in the drafting because of the problems with the numbering of the clauses as a result of the Bill we got from the House of Assembly.

Clause 20 passed.

Clause 21—'Fourth schedule.'

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

Page 12—

Lines 24 and 25—Leave out 'the control and direction of' and substitute 'direction by'

After line 25—Insert subclause as follows:

(2) A direction by the Minister—

(a) must be in writing; and

(b) must be published in the committee's report for the financial year in which the direction was given.

My first amendment relates to the mining and quarrying occupational health and safety committee, which is not yet subject to the Minister's control and direction. This clause seeks to make it so. I want to remove the reference to 'control' and to allow the Minister to give a direction only, because the committee has a responsibility for the investment of trust funds. Presently, payments may be made by the committee only with the approval of the Minister, and this will turn it around and allow a direction to be given.

My subsequent amendment, which I will deal with at the same time in view of the Hon. Mr Gilfillan's previous intimation, is to ensure that any direction given by the Minister is published in the committee's report for the financial year in which the direction was given. But for the Hon. Mr Gilfillan's self imposed constraints, he might have supported me on that although, on the basis of his previous intimation, I suspect that he will not. It is not an issue upon which I intend to divide.

The Hon. BARBARA WIESE: The Government opposes both these amendments. With respect to the first, in view of the fact that this committee has responsibility for some $8 million worth of funds, it is considered by the Government to be appropriate for that committee to be under the control and direction of the Government. As to the second amendment, the Government believes that an amendment of this sort is unnecessary, although we feel that there is some merit in the proposal. However, such an idea can be implemented administratively, and I will undertake to raise that with the Minister in another place with a view to having such information published in the committee's report.

The Hon. K .T. GRIFFIN: Is there any direction presently in the contemplation of the relevant Minister with respect to the application of the funds of the committee?

The Hon. BARBARA WIESE: No.

Amendments negatived; clause passed.

Clause 22—'Application of amendments.'

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

Page 12—

Lines 30 to 35—Leave out paragraph (b) and the word 'or' immediately preceding that paragraph.

Line 36-Leave out '11'

Line 38—Strike out 'section 4' and substitute 'sections 2a and 4'.

Page 13, lines 1 to 7—Leave out subclauses (4) and (5) and insert—

(4) A liability at common law for non-economic loss of solatium that arose before the commencement of this Act is not extinguished by the amendments to section 54 of the principal Act.

What I seek to do is remove a significant element of retrospectivity by removing paragraph (b), which provides that the amendments affecting entitlement to or quantum of compensation apply in relation to a disability occurring before the commencement of this Act in relation to which no claim for compensation had been made under this Act as at the commencement of this Act; or a claim for compensation had been made under this Act but the claim had not been determined by the corporation or the exempt employer.

As I indicated in my questioning on clause 2 of the Bill, that does leave the way open for significant abuse of the system by WorkCover delaying the determination of claims. The Minister has declared that there is no practice on the part of WorkCover, and no request has been made formally or informally by Mr Owens in relation to the delay on claims, so they can be reduced as a result of this Act coming into operation.

Notwithstanding that, the Bill makes significant changes to the established rights of individual workers. I should have thought on this issue that the Hon. Mr Gilfillan and all members of the Labor Party would be very much with me, in that this will have a significantly detrimental effect and remove established rights retrospectively, so that what today an injured worker has a right to, tomorrow when the Bill is proclaimed figuratively speaking will not be a claim, and the right will be extinguished.

The Law Society has also made an observation about the fact that, where there is a common law right, unless a claim is made within a limited period less than the statutory period of limitation, the worker will miss out on that claim, and it has expressed concern about that. I think it is important for me to read its observations into *Hansard.* The author of the letter writes as follows:

I should also mention a very disturbing aspect which has emerged since the Peterson amendments have passed. Whilst there is a period of six to 12 months grace before liability at common law is extinguished, no such period of grace relates to assessments pursuant to section 43(3) of the existing Act. The effect of that decision means that, unless a determination is made by the corporation prior to the promulgation of the legislation, then the determination for permanent disability is to be made under the new Act and not under the old Act. Thus, workers stand to lose significant amounts of benefits if their claims are assessed under the new Act.

It has been increasingly apparent that WorkCover in recent months has not been making determinations, with the consequence that the affected workers will receive substantially less than if the determination had been made now. I am aware of one case where WorkCover, having indicated a determination in the order of $37 000, which was accepted by the worker, has nevertheless refused to pay the worker. He is now in the process of taking the matter before the review officer in order to get payment. I understand WorkCover's defence is that no determination has actually been made.

If that is the position, it is an appalling indictment of a Government agency. Certainly, as I indicated, the Minister has given an indication that there has been no request to delay, but there may be actual delay which might all be directed towards lowering the payments that have been made.

As a matter of principle, my amendments should be carried. That will resolve the problem and will, of course, remove any suggestion that WorkCover Corporation might be seeking to manipulate the system to advantage itself at the expense of injured workers. As I say, this will put the issue beyond doubt. I would urge all members to support my amendments as a matter of principle. If members opposite do not support them, all I can say is that that demonstrates an appalling double standard and, having been prepared to support clause 22

of the Bill, the removal of existing rights in the future presents no obstacle to them. They will do that riding roughshod over those established rights, whether they are rights enjoyed by injured workers or by any other citizen in the community.

The Hon. BARBARA WIESE: The Government opposes these amendments.

The Committee divided on the amendments:

Ayes (9)—The Hons J.C. Burdett, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Pair—Aye—The Hon. L.H. Davis. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

Amendments thus negatived.

The Hon. K.T. GRIFFIN: How many claims presently within WorkCover have not been determined by the corporation? I am trying to pin down the Minister. If she does not have the information at her fingertips, will she undertake to get it for me? The clause provides:

...a claim for compensation had been made...but the claim had not been determined by the corporation...

The reason I want it is obvious: I want to know how many now are undetermined so that we can perhaps ask, when the legislation is brought into operation, how many have been dealt with and how many people have been denied their established rights. That information may be helpful, if it is possible to obtain this information without a lot of difficulty, to identify the periods for which claims have not been determined since they were made.

The Hon. BARBARA WIESE: That is not information we have with us today, but I undertake to provide it as soon as possible.

Clause passed.

Title passed.

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

That the Bill be recommitted.

The Hon. BARBARA WIESE: I oppose the recommittal of the Bill. The Government does not intend to support the amendments that the honourable member proposes to move. These matters generally were considered at some length during the course of this debate and we can see no real good being served by recommitting the Bill at this time.

The Hon. I. GILFILLAN: The Democrats oppose the motion. We have indicated quite clearly our approach to the legislation, and I do not intend to extend the debate by going over that.

Members interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: We would not support the amendments and we see no point in taking up the time of the Committee.

The Hon. R.J. RITSON: The Minister who is presently acting for the Minister who would normally take this legislation has, within the past hour or so, replaced the Minister who previously acted for the Minister who would normally take it. When talking to clause 14, I raised the question of an obvious ambiguity in new subsection (8j) which provides:

...if—

(a) the claim is made within three months after the date of payment; and

(b) the claim is determined in the worker's favour.

On asking questions, the word 'claim' means two different things in each clause: one apparently means the claim by an employer for reimbursement and 'claim'—

The CHAIRMAN: Order! The matter in question is not under debate; it is whether we recommit the Bill. The debate relates to that.

The Hon. R.J. RITSON: My point is that that is something the Government would clearly want to clarify by slight amendment if it understood the difficulties it would create.

The CHAIRMAN: You are debating the issue.

The Hon. R.J. RITSON: No, I am saying that, because the person now sitting in the chair is not the person who was previously sitting in the chair, the Government ought to have the opportunity to consider what would clearly be a sensible thing to clear up.

The Hon. K.T. GRIFFIN: I am disappointed in the attitude of the Minister. It may be that the Government is not going to support my amendments. It may be that the Hon. Mr Gilfillan is not going to support my amendments. But no-one knows what my amendments are; they are not on the public record. My amendments relate to some significant changes to clause 14. I indicated to the Minister who was then handling the Bill at the time we were debating it that I would be seeking to recommit the Bill in respect of clause 14. In the normal course of things, one would expect that any member would have an opportunity to do that having indicated that at the time the matter was being considered.

It is not as though I am taking the Minister by surprise. I have a right to have my amendments on file and to have them explained and recorded in the *Hansard* so that people will know what I was seeking to do. What I was seeking to do was to provide some equity. I lost the division on clause 14 to defeat it, so it will be in the Bill. There was no procedural opportunity for me to move other amendments at that stage and have them considered or even debated. I indicated what the problems were with this clause and my amendments seek to deal with that. I intend to divide on this issue.

The Committee divided on the motion:

Ayes (8)—The Hons Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (9)—The Hons T. Crothers, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Pairs—Ayes—The Hons J. C. Burdett and L.H. Davis. Noes—The Hons. M.J. Elliott and C.J. Sumner.

Majority of 1 for the Noes.

Motion thus negatived.

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: The long Committee consideration of the Bill has brought about a predictable result. The Government and the Australia Democrats are running scared; they have decided to forsake all their principles and to support a very heavy handed piece of

legislation to avoid part of the risk that an early election will be called by the Speaker.

As I have already said, there is some doubt about what the Speaker actually threatened. He certainly threatened an election. But what was the basis for it? One of the reports indicates that the basis was that if the United Trades and Labor Council would not support the Bill he would then regard himself as being in a position ultimately to make a decision about the Government's future.

Well, that is one side. Another is that if this Bill in an amended form got back into the Assembly he would reject it—but he did not have power to reject it—and something was going to get through. So, it has all been something of a shambles, all for the sake of political expediency.

There are a number of issues of principle in the Bill, retrospectivity in particular. 1 think that all members opposite and the Australian Democrats should hang their heads in shame, because they are removing significant rights which have already accrued to injured workers.

The Hon. Diana Laidlaw: And leaving them with the State Bank debt.

The Hon. K.T. GRIFFIN: That is right, and then leaving the South Australian community with the State Bank debt, and those injured workers will be among the many South Australians who will have to pick up the tab for that for the next 10 years at least.

The community will have to wear the amendments. Undoubtedly the employers will be delighted that there is at least some prospect of getting a reduction in the levies being imposed upon them. There is certainly no guarantee that the administration of WorkCover will make its own contribution by becoming more efficient, although it has indicated that it is making changes to increase its efficiency, which will reduce the costs to employers.

However, it will undoubtedly cause a great deal of heartburn for injured workers and those who represent them, and it should cause a great deal of heartburn for those who are truly concerned about issues of principle and those on the other side who have been forced by their Party line to vote for matters in which I know in their own hearts they do not believe.

We will make judgments about the operation of this legislation as we go into the next year, which will undoubtedly be an election year. We will certainly be reviewing the operation of WorkCover in that period and when we get into Government.

Bill read a third time and passed.

ADJOURNMENT

At 6.20 p.m. the Council adjourned until Tuesday 24 November at 2.15 p.m.