LEGISLATIVE COUNCIL

Tuesday 3 June 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:18 and read prayers.

SUMMARY OFFENCES (DRUG PARAPHERNALIA) AMENDMENT BILL

His Excellency the Governor's Deputy, by message, assented to the bill.

STATUTES AMENDMENT (REAL PROPERTY) BILL

His Excellency the Governor's Deputy, by message, assented to the bill.

SERIOUS AND ORGANISED CRIME (CONTROL) BILL

His Excellency the Governor's Deputy, by message, assented to the bill.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:21): I move:

That standing orders be so far suspended as to enable the sitting of the council to be continued during the conference with the House of Assembly on the bill.

Motion carried.

PAPERS

The following papers were laid on the table:

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

Regulations under the following Acts—

Legal Practitioners Act 1981—Fees.

Motor Vehicles Act 1959—Drink Driving and Drug Driving—Demerit Points.

Road Traffic Act 1961—Drink Driving and Drug Driving—Expiation Fees.

Rules of Court—

Magistrates Court—Magistrates Court Act 1991—Warrants under the Road Traffic Act 1961.

Rules under Acts—

Legal Practitioners Act 1981—Ethics and Professional Responsibility.

Directions to the Commissioner of Police—Police Act 1988.

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

Reports, 2006-2007—

Natural Resources Management Council—Volume A.

Natural Resources Management Council—Volume B.

SA Water Depot Land at Thebarton—Report pursuant to section 23 of the Adelaide Park Lands Act 2005.

Regulations under the following Acts—

Building Work Contractors Act 1995—Revocation of Advisory Panels.

Environment Protection Act 1993—Fees and Levy.

Liquor Licensing Act 1997—Dry Zones—Mannum.

Plumbers, Gas Fitters and Electricians Act 1995—Revocation of Advisory Panels.

By the Minister Assisting the Minister for Health (Hon. G.E. Gago)—

Regulations under the following Acts—

Controlled Substances Act 1984—Poisons—Administration of Drugs of Dependence.

SOCIAL DEVELOPMENT COMMITTEE

The Hon. I.K. HUNTER (14:22): I bring up the report of the committee on NHMRC: Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research 2004, revised.

Report received and ordered to be published.

CHILDREN IN STATE CARE

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:23): I lay on the table a copy of a ministerial statement relating to an apology to children in state care made earlier today in another place by the Premier.

SECURITY INTELLIGENCE SECTION

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:23): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: The Police Act provides that any direction given to the Commissioner of Police must be published in the *Government Gazette* and laid before each house of parliament. The activities of the Security Intelligence Section (formerly known as the Operations Intelligence Division) of the South Australia Police are managed in accordance with ministerial directions issued by the then minister for justice on 1 July 1999 and with the concurrence of the then minister for police. Although those instructions have served well executive and operational requirements, experience in the contemporary environment indicates a need for an update to provide for the efficient and effective application of timely and appropriate counter-terrorism strategies and obligations relating to the protection of information.

The existing directions also no longer accurately reflect SAPOL's current nomenclature and organisational structure. The current directions are cumbersome and are counterproductive to efficiency, particularly given the restructuring that created the Security Intelligence Branch. Shortcomings of the current directions include:

- an outdated definition of terrorism;
- difficulties arising from differentiating between intelligence, information and library information;
- the need to consider the impact of changes in the security environment, including the partnerships between government and non-government agencies;
- the need to update the nomenclature; and
- the need to reflect the current structure of the Protective Security Service.

The current directions specifically refer to the 'Agreement of 1982' between the Australian Security Intelligence Organisation (ASIO) and SAPOL which was approved by the Governor in Executive Council in September 1982.

This agreement requires updating, as the existing definitions do not reflect current federal legislation, and many recently enacted federal terrorism laws are not included in the agreement. Since 1989 there has been significant change in government structures. Various functions and essential services have been privatised, while other government services are now provided through partnerships with private business. Both the telecommunications industry and airports have seen substantial deregulation.

Government departments such as the commonwealth Department of Immigration and Citizenship (DIAC) and the Department for Correctional Services (DCS) use private contractors to assist in the running of detention and corrections facilities. Much of the state's critical infrastructure is now owned, managed or operated by private companies.

Other commonwealth agencies have been created to deal with security issues, including the Department of Transport and Regional Security (DOTARS) and the Attorney-General's Security and Critical Infrastructure Division (SCID). In addition, Emergency Management Australia (EMA) and Defence have more substantial roles in national security and deal directly with the states in a number of areas, for example, border protection command.

Apart from the obvious need to update the names of the agencies listed, the directions and determinations need to address the issue of releasing intelligence and information outside of government in the current terrorism and security context. The ministerial instructions, as currently constructed, have served their intended purpose over a significant period of time. However, since the most recent amendments to the instructions during 1999, the contemporary terrorism

environment has changed immeasurably. It is therefore appropriate that the instructions are amended to ensure their continuing relevance and practical workability in line with law enforcement requirements. These directions will provide for more efficient and effective functioning of the State Protective Security Branch.

Pursuant to section 6 of the Police Act 1998, I have therefore tabled directions to the Commissioner of Police relating to the control and management of South Australia Police.

TASERS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:27): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: In the past decade, police in Australia have largely limited their use of electronic control devices, known commonly as tasers, to highly trained elite response officers. South Australia has been no different, with STAR Group trialling these electronic devices for high risk situations.

Recently, Western Australia Police issued these taser devices to front-line officers, while Queensland has also announced a 12-month trial of tasers by first response officers. Little more than two weeks ago, New South Wales Police announced a rollout of tasers to senior front-line police. Against this backdrop, the Rann government welcomes the weekend decision by Commissioner of Police Mal Hyde to trial the use of electronic control devices for general duties when STAR Group is not available. This government has repeatedly stated that the Commissioner of Police is the person best placed to determine both the type of equipment to be used by our officers and the appropriate allocation of those resources.

These matters traditionally and appropriately fall within the domain of senior police, who are in the most informed position to make such operational decisions. The issuing of tasers has never been a question of dollars; rather, it has been a matter of best determined by the considered judgment of the Commissioner of Police.

Unlike the opposition, which in April criticised senior SAPOL officers on the appropriate choice of semiautomatic weapon to replace the standard issue revolver, I believe these crucial decisions are best left to experts. It is appropriate that police officers asked to protect the community against violent thugs be provided with an opportunity to take part in a trial of this technology.

The deployment of taser devices provides another option for police that may, in some circumstances, avoid the need to resort to lethal force. These devices are a less than lethal option, which can be used by police to subdue dangerous offenders and resolve volatile situations, making the streets safer for South Australian families.

Taser devices used by STAR Group were used on 21 occasions in a variety of circumstances in which a person was armed with a weapon. The tasers assisted police to resolve these situations safely. However, it was also found that in 10 per cent of the cases they were not effective due to the limitations of the devices in some situations. They were best used in a controlled team approach where other tactical options were available as a backup.

The trial announced at the weekend by Commissioner Hyde is to be conducted in a six-month period in two metropolitan local service areas (Elizabeth and South Coast) and at Port Augusta. The trial will involve deploying the devices with appropriately trained police officers in a number of designated patrol vehicles which can respond with other police to high-risk situations. The tasers are to be limited to safely dealing with situations involving persons armed with a weapon that pose a risk of serious injury to themselves or others.

The trial of tasers, which deliver a painful electric shock to the body causing muscle spasms and temporary paralysis, is expected to provide sufficient information for police to fully assess and analyse the risks and benefits of these devices. It is important the police establish that the equipment on trial is the most effective, while continuing to ensure the safety of both police and members of the public.

The state government also hopes this six-month trial will reduce the number of assaults on police in South Australia. In protecting our community, police officers often have to defend themselves against violent offenders. In the past 10 months more than 860 assaults on police

officers have occurred across the state. This is totally unacceptable in a civilised society. We have had 860 incidents of assault on police in a 10-month period. In 2006, in an effort to reinforce the message that assaults on police are unacceptable, the government proclaimed harsher penalties for violent assaults against police officers.

These laws automatically increase the maximum penalty for crimes when aggravated factors are involved, including knowing the victim is vulnerable because of the nature of his or her job. The upgraded penalties for aggravated offences include: intentional serious harm, 25 years' imprisonment; intentional harm, 13 years' imprisonment; reckless serious harm, 19 years' imprisonment; unlawful threats to kill or endanger life, 12 years' imprisonment; and unlawful stalking, five years' imprisonment.

People who attack police officers deserve no sympathy. I hope these tougher penalties and this taser trial will make these thugs think twice before targeting police. I am confident the strict guidelines and training in taser use will ensure that these devices provide greater safety for our police and the South Australian community.

MARBLE HILL

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:32): I seek leave to make a ministerial statement.

Leave granted.

The Hon. G.E. GAGO: I rise to inform the chamber of an agreement that will see the former summer residence of South Australia's governors, widely known as Marble Hill, restored to much of its former glory, having been severely damaged by fire in 1955. This is a significant win for South Australia's built heritage.

On 16 May this year I signed a heads of agreement with Dr Patricia Bishop and Mr Edwin Michell regarding their intention to purchase Marble Hill and restore the building, whilst maintaining the heritage value of the site. The heads of agreement stipulate that work will now proceed on a detailed proposal for restoration.

Dr Bishop and Mr Michell intend to invest in Marble Hill's restoration in consultation with a heritage architect and the Department of Environment and Heritage. Most importantly, they have agreed to guarantee public access to the site on at least seven days a year, and construct a small museum as part of the restoration. Both Mr Michell and Dr Bishop have longstanding connections with the Marble Hill area, so it is fantastic to see locals who are prepared to embrace their heritage.

Importantly, I am also told that the proponents are keen to explore the ongoing involvement of the Friends of Marble Hill—a dedicated and passionate community group, in my experience. I would like to acknowledge the incredibly valuable work that the Friends of Marble Hill have done over many years: I acknowledge the value of that work on that site, and their long association with Marble Hill.

If the purchase proceeds, registration on the title of a heritage agreement will make public access, conservation, maintenance and restoration requirements enforceable by a court, while preventing any future subdivision of the land. I would like to use this opportunity, on behalf of the government of South Australia, to thank Dr Patricia Bishop and Mr Edwin Michell for the generous public spirit they have shown in their commitment to buy and restore Marble Hill to its former glory, whilst ensuring that public access to this important historic site will continue.

The agreement has been well received by many in the community. In fact, long-serving local federal member Alexander Downer praised the move and was quoted in the *Southern Argus* newspaper as saying:

> Mr Michell and Dr Bishop's enthusiasm for the project is simply inspiring. Their commitment to the full restoration of Marble Hill completes an unfinished chapter of the history of the Adelaide Hills.

He goes on:

> I can guarantee that the local community will be following the restoration with enthusiasm.

These sentiments were shared by the National Trust of South Australia which, through its newsletter, recently wished Dr Bishop and Mr Michell the best of luck on the project. The National Trust goes on to suggest that this agreement will provide a source of funds in order to make the

house habitable again. Making the house habitable will give it a use and purpose, thus encouraging its continuing maintenance and upkeep. The trust further states:

> ...there are two fundamental objectives in relation to Marble Hill. These are to ensure that the building and its grounds are properly conserved and that the house remains accessible to the public. The heads of agreement clearly envisages that these objectives will be permanent conditions binding on all future owners (and) will be legally enforceable...

It goes on:

> ...provided the heritage agreement can ensure that all future owners must maintain the property and provide public access and there are strong and legally enforceable sanctions should the owner default, the process can only be to the benefit of the community and the house itself.

A response quoted in the *Courier* from one of the many volunteers more closely involved with the site in recent years, the secretary of the Friends of Marble Hill and president of the Cherryville Residents Association, Malcolm Dallwitz, also states:

> Most people are looking forward to Edwin and Patricia making it into a beautiful home again.

The sale price of the property will be set after independent evaluation. This government has been able to reach an agreement that will see Marble Hill brought back to life after 53 years for all South Australians, and I am proud of that achievement.

KINGSTON, CHARLES CAMERON, EXHUMATION

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:37): I lay on the table a copy of a ministerial statement relating to the exhumation of Charles Cameron Kingston made earlier today in another place by my colleague the Attorney-General.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:37): I lay on the table a copy of a ministerial statement relating to the Women's and Children's Hospital study made earlier today in another place by my colleague the Hon. John Hill.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:40): I move:

> That standing orders be so far suspended for this sitting week as to enable the Workers Rehabilitation and Compensation (Scheme Review) Amendment Bill and the WorkCover Corporation (Governance Review) Amendment Bill to have priority in respect of government business on the *Notice Paper* and for the bills' remaining stages to be concluded by 6pm on Thursday 5 June 2008.

I will be brief in moving this procedural motion because, after all, its purpose is to ensure the maximum amount of time for the discussion of the bills on WorkCover. During the second reading stage, we had some of the longest speeches in the history of this place, and I think that it has become clear to all members that, unless we have some reasonable cap on the debate of these bills, other important government business, including Supply, will be delayed.

For that reason I move this procedural motion and point out that the government has indicated to all members of this council that it is prepared to sit until midnight this evening, tomorrow evening, Wednesday morning and Thursday morning, which means that over 20 hours will be available for private members' business and the consideration of these two bills. I believe that that should be more than enough time to complete them.

Unfortunately, the reason I believe that we need a cap of 6pm on Thursday is that it is clear that some members have indicated their intention to filibuster. While the government accepts that members have the right to vote whichever way they like on particular pieces of legislation, it is important that, like any parliament, this Legislative Council allows the government the right to have its legislation considered within a reasonable time frame. Consequently, I move this motion.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:42): I move to amend the motion, as follows:

> Leave out all the words after '*Notice Paper*' and insert 'and for the council to continue sitting until the bills' remaining stages have been concluded'.

Like the minister, I will be brief. Three weeks ago, when this bill was debated, we saw a willingness from members present to sit beyond 6pm on Thursday night to complete the important second reading stage. It was a very late and long evening. We see no reason to curtail the debate on Thursday night at 6pm, given that members were prepared to sit later three weeks ago. We see it as quite reasonable that we deal with the remaining stages of the bill this week and conclude it after 6pm on Thursday.

We can then move on to the other important bills and business the minister highlighted in his letter to us—namely, important priority bills and the Supply Bill—in the remaining sitting weeks of June.

The Hon. M. PARNELL (14:43): I oppose this motion unless it is amended, but not amended in the way the Leader of the Opposition has stated. I move:

Delete all words after '*Notice Paper*'.

In other words, I wish to delete the reference in the motion to the bills' remaining stages to be concluded by 6pm on Thursday 5 June 2008 and to leave it open-ended.

The first part of the motion is fairly inoffensive. It invites us to accept that the WorkCover bills are the government's priority. We need to ask ourselves why it is going down this path to tell us what its priorities are. The reason is that its normal method of allocating priorities has completely failed. It failed for the three weeks when a different bill was listed as the priority. We were told that it was the serious and organised crime bill on 28 February, 12 March and 4 April. It was only after Gouger Street that we were told that this WorkCover bill was a priority.

The question for us is: whom do we believe? Do we believe the Leader of the Government in this place? Do we believe the Attorney-General, or do we believe the Treasurer? I can understand why the minister wants to put it on the record that WorkCover is now the No. 1 priority. I can accept that that is the case. I think we did the right thing as the Legislative Council to take matters into our own hands and take the government at its word with those three memos and prioritise the serious crime bill over WorkCover. However, now we are into WorkCover.

This motion sets a terrible precedent in relation to the debate on bills in this place. It is absolutely a precedent. I asked some researchers to go back through 50 years of parliamentary records to try to find out whether a time limit had been set in the Legislative Council for the conclusion of a debate. No record could be found, going back to 1958.

I believe this motion also highlights the hypocrisy of the government, because we had senior ministers—the Treasurer and others—telling us we had to sit 24/7. They were telling us we had to sit over the weekend, that we needed to sit on Mothers Day, if you remember, to get their WorkCover bill through. This council has taken a sensible approach and decided not to include extra sitting days when members were overseas, because it would have been very unfair for people who had relied on the *Notice Paper* to be dragged back for extra sittings.

I also remind members of the video clip found by the CFMEU (people may have seen it on the television news) of the Premier speaking on the steps of Parliament House 13 years ago. The Premier, the then leader of the opposition, had this to say:

> You people ask today for a commitment from the Labor Party. Well, I'll give you a commitment. I will give you a commitment, and that commitment is that every single Labor member of parliament will vote against every single clause of the bill.

That sounds to me like his promise was for a thorough committee debate—and we will, perhaps, give members of the Labor Party the opportunity to vote in favour of every single clause of this bill when we get it into committee. The motion also—

The PRESIDENT: I remind the honourable member that each speaker has only five minutes.

The Hon. M. PARNELL: I reckon I have a minute or two left, thank you. I will be very brief.

The PRESIDENT: I will decide how long you have left.

The Hon. M. PARNELL: Thank you, Mr President; I am watching the clock. If this motion goes through, every time a government is embarrassed about legislation, every time it would rather not have a thorough debate in the community—and, in particular, in this parliament—it will bring down the guillotine. The government did it this week last year when I was gagged from talking about greenhouse gases—and the Leader of the Opposition groans with the memory of that occasion. So it has become deja vu; it has become common practice.

It is inevitable that the WorkCover bills will pass, but the debate will come to an end in the fullness of time. It will come to an end when we have asked all the questions and the minister has answered them. It will come to an end when we have moved our amendments and have tested the will of the parliament. However, I do not believe that we, as a Legislative Council, should allow the executive to tell us when we have had enough debate on government legislation. If it says that we are holding up Supply, it can bring the Supply Bill on and we can get it out of the way; but let us not hold the Legislative Council captive because of the government's mismanagement of its business. I urge members to support my amendment.

The Hon. SANDRA KANCK (14:48): I am very concerned at the precedent the government is creating with this proposal, so I will be supporting the Hon. Mark Parnell's amendment. If that does not pass, I most certainly will not be able to support the motion in its original form.

I consider that this is part of the role of the Legislative Council. What we are seeing from this government is a case of 'Do as I say and not as I do', because I remind members of the government that when they were in opposition they held up the then Liberal government's legislation for five months—

Members interjecting:

The Hon. SANDRA KANCK: Sorry; I have 500 days. It was that long. Eventually, as a consequence of the Legislative Council being able to conduct a proper investigation to look at all the issues, the legislation got through in an amended form—and in an improved form. We have seen time and again in this place that when the light is shone by the Legislative Council onto legislation there are almost inevitably government amendments or acceptance of some of the opposition or cross-bench amendments, because they improve the bill. I am almost willing to bet that the same thing will happen in the process of dealing with the amendments that have been tabled in this particular case. I believe it would be an absolute travesty to cut short the debate on this bill.

The Hon. D.G.E. HOOD (14:49): Family First supports the motion as amended by the Hon. Mr Ridgway. If one calculates how many hours that would allow us for the committee stage of this bill, it is approximately 31 hours, that is, if we are to sit until 5am, as we did a few weeks ago. We are prepared to do that on Thursday if that is what it takes, but we do not believe that the committee stage should go on forever. If 31 hours is not enough time to thoroughly explore the ramifications of a bill, what is enough time? There is other business of this place that needs to be dealt with at some stage. Family First says that 31 hours is plenty of time to fully explore the ramifications of the bill, so we support the motion as proposed to be amended by the Hon. Mr Ridgway.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:50): It is not the government's intention to in any way curtail debate on this bill other than to ensure that it finally comes to a finish. We cannot have a situation where members can filibuster on bills so that legislation is never considered. That is potentially always possible under the standing orders of this place. It has not happened before, but we saw at the end of the last sitting week the first attempts at that.

Given the amendment moved by the opposition, which at least puts in a finite cap, and given the numbers, I will not divide on the government motion. I will be happy to accept the opposition amendment, because at least it makes the point that one way or the other we will conclude the debate on WorkCover at the end of this week, whether it be late on Thursday, Friday or Saturday, or whenever. So, I will not divide on my original motion.

The council divided on the Hon Mr Ridgway's amendment:

AYES (18)

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

NOES (3)

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

Majority of 15 for the ayes.

Amendment thus carried.

The PRESIDENT: I put the question: that the motion moved by the Minister for Police and as amended by the Hon. Mr Ridgway be agreed to. Those in favour say 'aye' and those against 'no'.

The Hon. Sandra Kanck: No.

The PRESIDENT: Because at least one member said 'no' to the question, there must be a division.

The council divided on the motion as amended:

AYES (18)

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

NOES (3)

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

Majority of 15 for the ayes.

Motion as amended thus carried.

QUESTION TIME

CLIPSAL SITE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:00): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the rezoning of the Clipsal site at Bowden.

Leave granted.

The Hon. D.W. RIDGWAY: Last July it was announced by the owners that the Clipsal site would be for sale. In fact, I think that Colliers International was engaged to sell that site. Of course, the owners wanted the site rezoned from industrial use to residential use of some nature. I am also aware that the local council, the City of Charles Sturt, was supportive. In fact, the council wrote a letter to the minister very supportive of the rezoning. My understanding is that the rezoning was consistent with this government's current agenda of transport-orientated developments; indeed, we realise that in fact two railway lines are very close to that particular site. It also represented an opportunity for some higher density living close to the city, and people could walk into the city area.

The site is not only adjacent to the Parklands but would also give rise to an opportunity for some affordable housing opportunities—another issue which has been very much part of this government's agenda. Speculation has been rife in this little town of Adelaide over the past few weeks about a budget announcement in relation to a tram extension along Port Road. The opposition has also become aware that the government has been considering transport infrastructure development levies, whereby developments would be levied to provide the transport infrastructure, for example, that would perhaps go down along Port Road. My questions to the minister are:

1. Why will he not sign off on the rezoning?

2. Is he waiting until after the budget announcement to impose transport development levies upon this development site?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:02): The answer to the latter

question is no. In relation to the Clipsal site, the honourable member is quite correct: it is very important because of its location. It is one of the few bits of land, probably in Australia, which is so close to a city and fronts a park but which is actually an industrial site. Of course, as the honourable member suggested, it does provide a wonderful opportunity for some higher density development. As well, adjacent to that site is a significant amount of land that was old gas company land, which I think Origin Energy now owns. That land is highly degraded.

If he looks (as I have recently done) at some of the wonderful things they do in Western Australia in relation to transit-orientated development, the honourable member will see that there they use the opportunity to redevelop highly-degraded sites. In fact, if one looks at Subiaco Central and the Midland railway sites one can see the sorts of things that can happen. Whereas the government certainly supports some rezoning and a building of transport-orientated development in relation to the Clipsal site, we believe it is also important that we consider the use of the adjacent sites which are owned by Origin Energy and which are highly contaminated.

I will be contacting the Charles Sturt council very shortly. As I said, I discontinued this particular development plan amendment because it considered just this one site. However, what I will be discussing with the Charles Sturt council is progressing rapidly that rezoning. However, we do need also to have a look at what happens on that degraded Gas Company land now owned by Origin Energy, because if we do not do anything about that it may have an impact on what activities can occur on the adjacent site. It is important with transit-orientated developments that you use the maximum amount of land available to have a properly integrated development and not just particular bits and pieces that do not fit together. That is the only reason for the hesitation.

I had a meeting with the owners and proponents of the site some time ago. I know that they keep in regular contact with the government. Obviously, it is important that the Clipsal site relocation happens fairly quickly. I will be, as I said, contacting the council in the very near future in relation to progressing the matter and ensuring that the adjacent land, which is the contaminated former gas company land, is also considered as part of any future work in that region.

CLIPSAL SITE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:06): I have a supplementary question. If the site is offered by the current owners with the existing zoning in place, will the government consider purchasing that land through the vehicle known as the LMC?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:06): Of course, this is one of the options to make transit-orientated development work. The government has a key role in making these sites work through land assembly. My understanding is that the Land Management Corporation has had and may still be having discussions with the owners of the site in relation to that particular land. I will take that part of the question on notice, because, as I said, the LMC is the responsibility of another minister, but I am certainly aware that there have been some talks about that matter.

CLIPSAL SITE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:07): I have a further supplementary question. Given that the minister has indicated that the LMC could be a purchaser of that land in the current zone's state, will the minister consider rezoning that parcel of land once the government is the owner? Given the rezoning and the windfall gain in values from the property, will that all be invested in affordable housing?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:07): That is really a hypothetical question. The honourable member is talking about windfall and zoning. I will not comment. I know that consideration has been given to the matter, but it would be quite inappropriate for me to discuss the details of any negotiations that might be under way. The honourable member should know that.

NATURAL RESOURCES MANAGEMENT

The Hon. J.M.A. LENSINK (15:08): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about natural resource management.

Leave granted.

The Hon. J.M.A. LENSINK: I have been advised that the Murray Darling NRM Board has sought an increase of its 2008-09 levy rates of over 60 per cent. The minister has, indeed, approved that. Can the minister give the reasons for such a massive increase, and can she advise whether there are any other boards which have applied for increases in their levy rates for 2008-09 of greater than 5 per cent?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:08): I thank the honourable member for her question. Indeed, the work that our NRM board does in terms of natural resource management and planning is critical. As we know, the NRM board is an amalgam of a number of past boards that we consolidated into one natural resource management board to improve its efficiencies. It has a significant environmental function in terms of natural resource management. It is involved in water catchment management, soil and pest management, management of the prescription process of water allocation planning around that, and many other vital functions for the ongoing sustainability of our environment.

The NRM board is funded through a levy structure, which has been historical. Again, we have combined those levies into one levy structure to simplify it. The setting of those levies is established through a statutory process that requires a period of consultation with that local community.

The NRM boards are made up of members of the local community. They are people of the community, from the community, who indeed work for the community. The levy structures or levels are set by that board in accordance with the statutory requirements which include, among other things, a statutory consultation period with the local public.

The aim of the Adelaide Mount Lofty board, is to equalise the levy structure throughout the council regions. An anomaly occurred when the old levy structures applied in that different council regions had been applying different levy structures. Some did not have a water levy, some did or did not have a soil levy, so there was a wide range of past practices and it was very hotchpotch. The boards have implemented a strategy in an incremental way to bring all those council areas into harmony so that they are all paying consistent rates.

I do not have with me at the moment the actual detail of that particular board's levy structure. I know that it sets out the principle of equalisation across council regions and it seeks to enforce that. If one looks at what that board has done and compares it with the trends of other boards across other years, one sees that the Adelaide Mount Lofty Ranges board has, indeed, been very responsible in its levy management and the establishment of its particular rates.

In terms of the process, the levies are required to be considered by the Natural Resource Committee. As that committee has not yet completed its function, the decision for the setting of levies for the next financial year has not been finalised. We obviously need to allow that democratic process to be completed. It has full involvement, including parliamentary involvement (which includes members of the opposition on that very same committee): that is how even-handed, open and democratic we are. The committee ensures that the setting of the NRM levies or that part of the process would go to the boards for consideration under certain conditions—and it will do so. We need to let that process be completed before any final decisions of levy structures are signed off.

AIR-CRANES

The Hon. S.G. WADE (15:13): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about air-cranes.

Leave granted.

The Hon. S.G. WADE: On Monday 26 May, the government announced that funding for aerial firefighting will increase from an estimated $5.942 million in 2007-08 to a budget allocation of $6.795 million in 2008-09. This represents an increase of $850,000. The Premier indicated in his press release on that day that the allocation will enable a type 1 helicopter, such as the Erickson air-crane, to be based in South Australia over the fire danger season. On 11 December 2007, Treasurer Foley said on radio FIVEaa that air-cranes cost $250,000 a day. My questions to the minister are:

1. What change in the air-crane service will result from the funding announced by the Premier?

2. Will the minister confirm that last fire season South Australia shared an air-crane with other jurisdictions and that, as a result of the $850,000 funding, South Australia will continue to share the same air-crane with other jurisdictions; the only change will be that that vehicle will be based in South Australia?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:14): I thank the honourable member for his question. The honourable member has got it all wrong, I am afraid—entirely wrong. The difference, of course, in the announcement that has been made pre-budget is that South Australia will have its own air-crane, its own type 1 helicopter, here in South Australia. We have tendered for one, and it will be based here in South Australia rather than sharing that resource, as we have done in the past. I would have thought that members opposite would have seen what has happened with the climatic change in the last two seasons right throughout Australia but, of course, in particular in South Australia.

As has been said, the 2008-09 budget provides for an additional $15.93 million over four years to increase aerial firefighting capacity in South Australia. What that actually means in terms of the air-crane support is a large capacity firefighting helicopter such as the air-crane to be based in South Australia during the bushfire season, an upgrade of fire retardant mixing infrastructure for aerial firefighting, additional staffing for the safe and effective management of air operations and the establishment of bulk water supplies at strategic air strips.

The large capacity helicopter will be in addition to the existing aerial firefighting fleet that we have here in South Australia. Just for the information of members opposite, in this last bushfire season (2007-08) South Australia's aerial firefighting fleet included: in the Mount Lofty Ranges, two fixed wing bombers, two medium firefighting helicopters and one surveillance helicopter; in the Lower South East, two fixed wing bombers and one fixed wing surveillance; in the Lower Eyre Peninsula, two fixed wing bombers and one fixed wing surveillance; and as a secondary response we had one fixed wing bomber, one fixed wing surveillance, access to the Adelaide Bank rescue helicopters and access to additional fixed wing bombers as required.

The large capacity firefighting helicopter will work in conjunction with our existing fleet. The fixed wing bombers provide rapid initial attack, while the large capacity helicopter is very effective in high risk urban bushland interface areas. As I said before, the bushfire risk to South Australia due to the continuing dry conditions we still see now. I know that those on the land are very much hoping to see another break.

Our conditions are very real. As I said, it was demonstrated during the 2007-08 season with significant fires on Kangaroo Island and at Belair, Williamstown and Willunga. The large capacity helicopter was brought across to South Australia for Kangaroo Island and provided effective assistance in each of these fires.

I place on the record that while aircraft are a valuable firefighting resource, they do not replace the need for firefighters on the ground. We are always indebted to our volunteers. Aircraft work with and support our volunteer firefighters. Firefighting aircraft are procured—I think we probably all now know—through a national tendering process, coordinated by the National Aerial Firefighting Centre (NAFC) to ensure value for money. South Australia, of course, sits on the board of NAFC, as do all other states.

What we saw in the past two bushfire seasons was money budgeted for aerial support but, of course, the actual amount was much larger than that. Indeed, in 2007-08 we estimate it to be about $6 million. The government always takes advice on the composition of its aerial firefighting fleet from the experts in the CFS. I do not decide what planes or helicopters we have. Those decisions are made at the operational level.

Over the past two fire danger seasons in South Australia we have seen dry conditions, an acute lack of rain, changing farming practices and land use and an early start and late end to the bushfire season in this state. We now commonly refer to it as climate change, of course. It does mean that we call on our volunteers to serve longer and for longer periods, and they have also been called to deal with larger, more intense campaign fires.

That does mean that the risk has increased. The government has responded to increases in the base fleet in the past two seasons, as I have mentioned. It has also availed itself of the shared resources as a member of NAFC. We have seen those climatic changes leading to the CFS chief officer to advise government that the risk profile of the state required a large capacity aerial firefighting helicopter to be based in South Australia for the entire length of the fire danger season.

Previously, the advice from the CFS was that accessing the shared resource from NAFC was appropriate. As we know, this has proved successful in the past. During the last season, we saw an air-crane based in South Australia. It came over for the Kangaroo Island fires and, from memory, stayed here until early April.

As I said, I have always accepted the operational advice of the CFS at the time. Now, with the drastic changes to our climate and the continuation of the drought, I accept the advice of the CFS that we need an air-crane permanently based here in South Australia, and I am sure that, rather than criticising us, members opposite will congratulate us on the decision we have taken.

ALCOHOL CONSUMPTION

The Hon. B.V. FINNIGAN (15:21): I seek leave to make a brief explanation before asking the Leader of the Government, as Minister for Police, a question about steps undertaken by South Australia Police to reduce the social harms of alcohol misuse.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. B.V. FINNIGAN: The consumption of alcoholic beverages is an important part of our social fabric. and obviously the alcohol industry plays an important role in our economy. Drinking alcohol is a familiar part of our traditions and customs, but its excessive use leads to intoxication and associated harms, including dependence and socially inappropriate behaviour. Will the minister inform the council of the steps taken by South Australia Police to reduce the social harms associated with the misuse of alcohol?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:22): I thank the honourable member for his question and for his interest in this subject. Just a few weeks ago, along with my parliamentary colleague the Minister for Substance Abuse (Hon. Gail Gago), I had the opportunity to attend the Ministerial Council on Drug Strategy. The main topic discussed at this gathering of our state and federal counterparts was the misuse of alcohol.

We are all aware that alcohol enjoys enormous popularity and special significance in Australian society. People use alcohol to relax, socialise and celebrate, and it must be recognised that alcoholic beverages play a significant role in the Australian economy by generating substantial employment, retail activity, export income and tax revenue. However, we also know that alcohol can impair motor skills and judgment and produce intoxication and dependence. It can cause illness and death and have other harmful effects on our daily social and economic life.

South Australia Police not only enforce compliance with the Liquor Licensing Act but also play a vital role in trying to reduce the incidence of alcohol-related violence. Groups such as Drug and Alcohol Services SA (DASSA), together with SAPOL, continue to work very hard to reduce the harm associated with alcohol misuse. Some of the initiatives currently undertaken by SAPOL include implementing alcohol incident data collection, as well as collecting and analysing data related to drink spiking.

This improvement in the collection of data will enable SAPOL to get a much better handle on the role alcohol plays in relation to crime than statistics have done in the past. In addition, they will inform police prosecutors about alcohol and other drug-related court referral programs. The Barossa Yorke Local Service Area recently completed a two-year youth alcohol referral network trial, which addresses risky patterns of alcohol use through the diversion of young people into health treatment and timely and appropriate health assessments.

Licensing enforcement branch personnel now undertake and provide liquor licensing enforcement training to general duties police officers. The licensing enforcement branch personnel, in conjunction with local service area and corporate police planners, actively encourage compliance with liquor licensing and appropriate management practices at public events by consulting event managers and making representations to the licensing authority.

Drug action team sergeants lead initiatives that respond to local alcohol-related issues of concern in both urban and regional local service areas using a partnership approach with local health and other sector representatives.

Local service areas, the Licensing Enforcement Branch, and the Office of the Liquor and Gambling Commissioner monitor compliance by licensees with requirements in relation to the promotion and advertising of alcohol which are prescribed by the mandatory code of practice. The Licensing Enforcement Branch collaborates with the Office of the Liquor and Gambling Commissioner to examine legal aspects of alcohol availability, including service to intoxicated patrons, the mandatory liquor licensing code of practice, and the expiation of liquor licensing offences. Finally, a SAPOL representative is a member of the Inter-governmental Committee on Drugs (IGCD) working group established to examine issues relating to the secondary supply of alcohol to minors.

These are just some of the actions taken by SA Police to try to reduce the harm associated with alcohol misuse. There are many more initiatives undertaken by other organisations, of course, such as Drug and Alcohol Services SA, the Aboriginal Health Council, and the Australian Hotel Association.

At last month's ministerial council meeting ministers agreed to fast track the development of the federal government's $53.5 million national binge drinking strategy. All jurisdictions agreed on the urgency of tackling alcohol abuse and instructed the Inter-governmental Committee on Drugs to provide an interim report at the July meeting of the Council of Australian Governments (COAG). This national approach aims to reduce the impact of alcohol abuse on the health system and the incidence of alcohol-related violence.

The council agreed that this national approach was required to build on the significant work already undertaken at state and territory level, and a key outcome was an agreement to establish a national framework for late-night lockouts of licensed premises based on analysis from existing lockouts. This framework is to be used to assist police to more effectively target binge-drinking hot spots. I should make it clear that lockouts do not prohibit licensed premises from operating should their licence conditions allow trade during these hours, but they provide an opportunity to reduce alcohol-related antisocial behaviour as patrons move between licensed venues.

SAPOL is currently consulting with city of Adelaide licensees, who are being asked to take part in a voluntary trial in the CBD. Lockouts are not new to South Australia and have successfully reduced alcohol-related antisocial behaviour in a number of areas across the state, including Glenelg, Hahndorf, Victor Harbor and Naracoorte.

The Rann government is committed to reducing incidents of alcohol-related violence and other harms associated with the misuse of alcohol. While we understand that alcohol enjoys enormous popularity and plays a significant role in the Australian economy, we must not ignore the harms caused by alcohol misuse—which includes death, injury, disease, crime, violence, unemployment and family breakdown. Developing a responsible drinking culture will, hopefully, produce healthier and safer outcomes in the community, and this will continue to be a high priority for this government.

I have covered here some of the initiatives of SAPOL. However, drug and alcohol driving is a particular issue for my colleague in this place, the Minister for Road Safety; and my other colleague, the Hon. Gail Gago, has a specific responsibility and will, indeed, be the South Australian government's representative overseeing progress in the development of further anti-alcohol abuse strategies.

STAMP DUTY

The Hon. D.G.E. HOOD (15:24): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Treasurer, a question about stamp duty relief for first home buyers.

Leave granted.

The Hon. D.G.E. HOOD: In its pre-budget submission, the Real Estate Institute of South Australia highlighted a matter I raised in this place on 27 March last year concerning stamp duty relief for first home buyers. In its submission the institute states, 'to improve affordability the concessions offered need to be reviewed and they need to be in line with the median house price.'

In the 2004-05 budget, the government raised the threshold for stamp duty relief for first home buyers from $130,000 to $250,000, Treasury stating that the median purchase price for first home buyers in South Australia was $175,000 (based on the 2003-04 first home owner grant data). So, the median price fell somewhere just below the centre of that threshold range at the time that

was announced. This offering to first home buyers was said to cost some $10.5 million recurrent per year.

Since then (and as you would know, Mr President) house prices have risen substantially—some 42 per cent in that time—and, therefore, South Australian families trying to buy their first home are now looking down the barrel of a median $260,000 first home purchase price, with the median price of houses overall at some $330,000. Stamp duty relief for first home buyers now cuts off at $250,000; this is below the median purchase price for first home buyers of $260,000. My questions to the Treasurer are:

1. Given that the assistance threshold cuts off below the median price, has the scheme announced in the 2004-05 budget actually cost $10.5 million recurrent as predicted?

2. In the budget years after 2004-05, why has Treasury failed to report in the budget papers how much this scheme has actually cost?

3. Will the Treasurer actually raise the thresholds again so that they are at least above the median price so as to give genuine tax relief to struggling first home buyers?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:30): I will refer that question to the Treasurer in another place. In relation to the financial disclosure, I understand that part of the funding of first home owner grants is from the federal government, but I will refer the question to the Treasurer and bring back a reply.

YALATA POLICE STATION

The Hon. C.V. SCHAEFER (15:30): I seek leave to make a brief explanation before asking the Minister for Police a question about the Yalata police station.

Leave granted.

The Hon. C.V. SCHAEFER: It is well known that the Yalata police station burnt down some years ago. As I understand it, funds were committed in last year's budget for a rebuild of that station and, so far, nothing has happened. Will the minister inform the council as to when or if the construction of the replacement police station will commence, and can he confirm or deny that the funds committed for the building of the station at Yalata have in fact been deployed to the APY lands, as is the belief of local residents?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:31): In relation to the funding of police stations in our indigenous lands, we have been the recipient of some generosity on behalf of the commonwealth government, both the previous commonwealth government and the current federal government, which will significantly enable us to upgrade police facilities, particularly in the APY lands.

Unfortunately, the Yalata station was burnt down. I will see what progress has been made in relation to reconstructing that particular facility. It does need to be borne in mind by the council that all building works in the remote areas of South Australia take far longer than I think all governments would like them to take. Part of the reason for this is the shortages of labour in remote areas to construct these facilities. While the mining boom is very welcome for the increased wealth it brings to the state, one of the more unfortunate side effects is that it does, of course, compete for construction work within those more remote areas. Also, obviously before construction commences on these sites, there needs to be a very lengthy negotiation process with the Aboriginal communities concerned, and I am not exactly sure of the position relating to the particular facility mentioned by the honourable member. So, I will take the question on notice and bring back a reply.

COUNTRY FIRE SERVICE

The Hon. R.P. WORTLEY (15:33): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the recognition of service to the community by volunteer firefighters.

Leave granted.

The Hon. R.P. WORTLEY: There have been two significant events recently in Country Fire Service Region 2. I noticed that during National Volunteers' Week the minister presented CFS volunteers in Region 2 with national medals and clasps. Will the minister provide the council with

some information about this recognition of service, and what I understand was a recent significant event for the Balaklava CFS Brigade, which is also in Region 2?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:34): I was delighted to be asked to present national service medals and clasps to 62 Country Fire Service volunteers from Region 2 on Friday 16 May. I was privileged to be involved in a similar presentation to volunteers in the region in 2006. The evening provided an opportunity to acknowledge the outstanding achievement by volunteers in the region, and for their families and friends to celebrate this achievement. Sadly, three volunteers received their national medals posthumously.

I make special mention of Robert Buttery, Frank Hollands and Reginald Stewart and their families. One member received the first, second and third clasps, representing more than 45 years of service: Brian Mendadue of the Salisbury brigade. Seven members received their second clasp, representing more than 35 years of service, and 22 members received their first clasp, representing more than 25 years of service. I am told that award recipients collectively have committed over 900 years of service to community safety.

The national medal is a commonwealth medal presented to members of organisations that protect life and property at some risk to themselves. It recognises long and diligent service after 15 years with an organisation. Clasps are added for every additional 10 years service. This is one of the formal ways we acknowledge the dedication of emergency service volunteers. The presentation of the annual South Australian Emergency Service medals and ministerial commendations will be held in November, for which nominations are currently being called.

Our emergency services cadets were in attendance that evening, assisting with the smooth running of the function. I thank them and all others involved in the organisation of the evening. I also briefly mention that on Sunday 25 May members of the Balaklava CFS brigade celebrated the brigade's 60th anniversary, with family, friends and key members of the community. This is a vibrant brigade of 32 members under the leadership of Captain Kevin Julyan. The brigade responds to an average of 63 call-outs a year, in its Hino 24 and Isuzu 24 Pumper. I congratulate brigade members for their dedication and trust the cadets of its brigade will continue with the brigade to see it reach its next milestone.

PORT AUGUSTA LAND

The Hon. J.A. DARLEY (15:37): I seek leave to make a brief explanation before asking the Minister for Police, representing the Minister for Transport, questions in relation to the sale of public land at Port Augusta.

Leave granted.

The Hon. J.A. DARLEY: The Department of Transport, Energy and Infrastructure was reported to have recently sold a parcel of land of 58 hectares at Port Augusta for $550,000 after it was originally valued at $110,000. The purchaser then onsold it for $3.2 million inclusive of GST. I understand that the Valuer-General provided valuation advice about three years ago regarding the sale of the land. My questions to the minister are:

1. What was the date of the contract for sale at $550,000?

2. What was the settlement date for the sale at $550,000?

3. Were any conditions attached to the sale contract and, if so, what were they?

4. What other investigations and information were considered by the department or its valuers in arriving at the sale price of $550,000?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:38): I thank the Hon. Mr Darley for his questions and will refer them to the Minister for Transport in another place and bring back a reply.

CRIME PREVENTION UNIT

The Hon. R.D. LAWSON (15:38): I seek leave to make a brief explanation before asking the Minister for Police a question about crime prevention.

Leave granted.

The Hon. R.D. LAWSON: This government's commitment to crime prevention was best exemplified by the fact that it halved funding to crime prevention programs in its first budget and has not restored that funding. Within the Attorney-General's Department there was a crime prevention unit, which has subsequently been disbanded, but that unit was developing a state crime prevention plan, which had not reached finalisation at the time the unit was dismantled within the Attorney-General's Department. The police department has, however, taken some steps in relation to the development of that plan. The latest annual report of South Australia Police indicates (and I read from page 31):

> To maintain downward pressure on crime, SAPOL is reviewing its approach to crime prevention and developing a new crime prevention strategy with new structures to support problem solving and the development and delivery of crime prevention programs, initiatives and operations.

My questions to the minister are:

1. When will we see the results of this work being done by South Australia Police?

2. Will the members of the Victims of Crime Advisory Council (an organisation established under statute and which has an ongoing interest in crime prevention) be given an opportunity to contribute to the new strategy when it is produced?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:40): I will take the questions on notice and get an update from the relevant section of the police in relation to the progress of that program, and also in relation to whether the members of the Victims of Crime Advisory Council will be consulted. Obviously, during the development of most of their policies, the police do consult with a victims of crime officer. As I said, I will confirm that and bring back a reply for the honourable member.

NATURAL HERITAGE EDUCATION

The Hon. I.K. HUNTER (15:41): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about natural heritage education.

Leave granted.

The Hon. I.K. HUNTER: Today this state reached a milestone in its Three Million Trees Urban Forest Program with the planting of the 1.5 millionth tree. In recognising this fantastic achievement, the Premier (Hon. Mike Rann) was joined by two high-profile conservationists, Terri and Bindi Irwin, at a planting ceremony in Adelaide's beautiful Parklands. Their visit is an important recognition of the urban forest initiative, particularly so when it comes to spreading the message on biodiversity to our school students. Will the minister inform the council of initiatives to educate young South Australians on the importance of environmental conservation?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:42): I thank the honourable member for his most important question and his ongoing interest in important environmental matters. It was fantastic to see this milestone reached today, and particularly for it to be recognised by such well-renowned conservationists as the Irwins, who have brought momentum to the environmental movement that we are keen to incorporate into our program. I am pleased to say that a fantastic grants program is helping schools and kindergartens to 'go green' and plant native trees and shrubs endemic to their local areas, and a Grow a Great School program which began in 2003 and which offers grants of up to $1,000 to help South Australian schools develop on-campus planting projects for native trees and shrubs.

The idea behind the program is to help students, teachers, parents and care givers re-establish some of the vegetation that existed in the local area before European settlement. Since its inception, more than 90 planting projects have been undertaken around SA schools, which is all the more important given that students help to collect seeds from remnant native vegetation in local areas. Schools are not just a place to learn for our children; they are often a focal point for local community and, in many cases, an important green space in the area. They can be a home to native birds, a place to kick the footy with the kids on weekends or simply a green space to enjoy on a morning walk.

For this reason, schools can be used not only to educate children about conservation but also to show them how it is done. Students are literally helping to bring back small sections of bushland which would have once existed at the site of their school and which will encourage the return of native birds and other fauna; and what better way could there be of illustrating the

conservation message to students than seeing it in action? The potential benefits, both environmental and educational, are as varied as the projects.

Not only are students helping to plant trees and shrubs but also they are helping to recover and protect our native biodiversity by increasing habitat for the native wildlife, reducing greenhouse gases, improving air and water quality, reducing water consumption, creating amenity spaces, improving awareness and understanding of sustainability issues, building better partnerships and involving communities and helping improve skill levels and capacity to conserve our natural resources. It is fantastic to be able to offer grants to local schools. I encourage all schools to consider applying for this great program; it can provide a lifelong lesson in caring for the environment.

TRAM, SHARED-USE PATH

The Hon. M. PARNELL (15:45): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about the issue of a shared-use path across the South Road Glenelg tram overpass.

Leave granted.

The Hon. M. PARNELL: On 24 October last year, a media release from the minister announced funding for cyclist and pedestrian crossings for the city to Glenelg tramway cycle route project. The minister at the time stated:

> This shared pathway, on land that was previously inaccessible, is proving to be extremely popular with commuting cyclists and walkers...
>
> It's part of our commitment to improving the safety and convenience of alternative forms of commuting.
>
> The new shared-use path is part of ongoing efforts to provide a safe and convenient route for cyclists from Glenelg to the city.

The 10 kilometre tramway cycling route is a combination of shared paths and nominated suburban streets, which are shown on the government's BikeDirect website. If you go to the website and look at the maps, you can clearly see the tramway cycling route. It travels along the tramway and intersects South Road, and travels on into Black Forest and then into the city.

As part of the South Road upgrade project, the government is committed to a tram overpass where the tram line currently intersects level with South Road. The *Community Update* on this project, issued in December last year, reported that one of the most popular design features was this cyclist and pedestrian route along the corridor. The newsletter also listed the 'key urban design principles that will drive the design', and the number 1 principle is to 'provide all pedestrians, public transport users, cyclists and motorists with safe, enjoyable and easy access across South Road.'

Not surprisingly, the cycling community took the minister's comment at face value, and that confidence was backed up by supportive statements from the Department of Transport, Energy and Infrastructure. In the July to August edition of the Bicycle Institute of South Australia newsletter, entitled 'Stop Press: shared past bridge over South Road on tram line, from Peter Watts, Manager, DTEI, Office of Cycling and Walking', Mr Watts states:

> The great news for green travel corridors is the tram overpass of South Road at Glandore. This will grade separate the Glenelg tramway route up and over South Road including the shared-use path. This will then complete all arterial road crossings along the entire route for the Tramway Park. The South Road crossing is the one arterial road where we probably would have had the greatest difficulties in installing a pedestrian crossing because of its effect on traffic flows on South Road.

It was with that information that people were surprised when the second *Community Update* for the project came out in May this year showing two conflicting artist's impressions of the overpass—one showing a shared path, and the other one not. When the Bicycle Institute went to speak to the project manager, it was told that, instead of a shared path over the overpass, the preferred option was now an 'on demand' crossing at street level. My questions to the minister are:

1. Will there be a shared-use path for pedestrians and cyclists across South Road as part of the Glenelg tram overpass project as promised?

2. Does the minister agree with the manager of DTEI's Office of Cycling and Walking, Peter Watts, that replacing a tram crossing with an 'on demand' pedestrian crossing across South Road would totally destroy any attempt to free up traffic flow along South Road?

3. If that is the case, does the minister accept that an 'on demand' crossing simply will not happen, because it would effectively negate the rest of the project but would have the effect of halving the route and making South Road an impenetrable barrier?

4. Has the government given up on the city to Glenelg cycle path?

The PRESIDENT: The minister might disregard the number of opinions in those questions.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:49): First, I thank the honourable member for placing on record all the wonderful things this government has done for cycling. He did wax lyrical there for a while, and I thank him for that.

Towards the end of expressing those many opinions he did raise some issues. I will need to seek some advice from the department and also my colleague the Minister for Transport in the other place because, clearly, they are linked to larger infrastructures, and I will then bring back a response for the honourable member.

SPORTS FUNDING

The Hon. T.J. STEPHENS (15:50): I seek leave to make a brief explanation before asking the Minister for Police, representing the Minister for Sport, questions about sports funding.

Leave granted.

The Hon. T.J. STEPHENS: Yesterday we saw the state government announce a $100 million funding package for AAMI Stadium. In response to this announcement various representatives from athletics, hockey and swimming quite rightly asked, 'What about us?'

This Thursday's budget is crucial for the wellbeing of these sports. However, what is even more concerning is that the federal Labor government has recently scrapped about $2 million in funding for the north-eastern community's sporting clubs. My office has been contacted by representatives of the Golden Grove football and tennis clubs who have voiced their concerns that the $1.2 million promised by the former federal government to upgrade Harper's Field and $687,000 to upgrade Tilley Reserve will not be honoured by the Rudd Labor government. Together with the Premier's announcement yesterday about AAMI Stadium, it would seem that Labor has forgotten about grassroots sports.

The member for Makin (Mr Tony Zappia) has passed the buck and said he will try to attract more attention to these clubs at a state level. I congratulate the north-eastern community, which has already obtained 3,000 signatures on a petition which calls for the regional partnerships funding to be reinstated. My questions to the minister are:

1. Has Labor forgotten about grassroots sports?

2. Will the minister work with his federal colleagues to end the Labor blame game and ensure that these sporting clubs are delivered with the funding that was promised to them?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:51): The answer to the first question is, of course, no. In relation to the second question, the previous Howard government was throwing money around like confetti before the election. It was not really throwing money around: it was throwing promises around like confetti. Of course, at the end of last year, we saw the highest level of inflation we have had in many years because the previous government had put pork barrelling spending ahead of financial responsibility.

I have a great deal of sympathy for the current federal government in trying to put a cap on inflation and trying to deal with the situation it has inherited. The high levels of inflation that were inherited by the federal government and the consequential increase in interest rates have had a very significant impact on the living standards of many working Australians. Inevitably, the Rudd government has had to deal with inflationary pressures that have built up. One of the reasons we had those inflationary pressures was that the previous government was making all sorts of promises in marginal seats all around the country.

We all know just how unfair the funding was that took place under that government. We saw some regional grants where about 80 or 90 per cent of the funding was going to marginal

coalition-held seats. Unfortunately, there has to be some limit to what governments can spend. This government, as the honourable member has said, has provided money for football.

Members interjecting:

The Hon. P. HOLLOWAY: It is nothing compared to what they spend. They are saying, 'There is $100 million for them. Where is all this money?' They have been talking about stadiums that would cost $2 billion: that is what the sporting stadiums will cost in Western Australia. If they are going to spend this sort of money, they need to talk about where they are going to get it from. If the member who asked this question is serious about pushing forward those sorts of policies—and he is the parliamentary secretary, I understand, for sport—and supporting policies of his party in spending hundreds of millions, if not billions, of dollars on sport, how on earth is he going to get more money for local sport if he is promising five times more than this government is proposing to spend on elite sport? So, I think the honourable member really needs to sort out his own policy before he starts attacking the policy of this government.

GEOLOGICAL SURVEY

The Hon. J.M. GAZZOLA (15:55): My question is to the Minister for Mineral Resources Development. Will he provide the council with details of the important work carried out by the Geological Survey and its contribution, beyond mining, to other important South Australian industries?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:55): I thank the honourable member for his question. Geological mapping is a key role of the Geological Survey and it is integral to gaining a better depth of understanding of South Australia's geology. The work ultimately leads to the production of a range of maps and related geoscientific publications.

Recently, I had the pleasure to officially launch the newest geological map produced by the South Australian Geological Survey. This map will also become a key tool for one of South Australia's most popular tourist destinations, Kangaroo Island. The scenic beauty and special land forms that we automatically associate with Kangaroo Island reflect its long and varied geological history. The map also includes the southern part of Yorke Peninsula, an equally delightful part of the state and well frequented by South Australian, interstate and international visitors.

I am sure that the map will appeal not only to geologists but also to both tourists and the general public. Production of the Kingscote special map sheet, as it is geologically known, has arisen from the collective efforts of a number of geologists, with the completion and final compilation undertaken by Martin Fairclough, the chief geoscientist of mapping and exploration with the state's Geological Survey. I would take this opportunity to thank Mr Fairclough for his work in this regard.

The map sheet also features a short summary of the geology, its land forms and soil, geological points of interest and mineral deposits. More comprehensive geological information of the map sheet area can be found in the Kingscote explanatory notes, which include descriptions of the modern environment, geological evolution and history, palaeontology and economic geology. That is due for release shortly.

To complement the new Kingscote map, the Geological Survey has updated the brochure *A guide to Kangaroo Island* and has produced a new geological excursion map. Both products feature a modified version of the Kangaroo Island geology, with information on selected excursion stops, tailored to suit members of the public and students of geology.

I would like to congratulate the Geological Survey on the production of yet another excellent geological map and brochure package, and I would encourage all members to seek out a copy of this map sheet and the accompanying brochure. Both can be found at PIRSA's customer information centre, level 7, 101 Grenfell Street.

Not only does the Geological Survey provide important information leading to the discovery of minerals in this state but it also provides information of significant interest to many students, and others, who wish to understand more about the geological history of our state.

TRAM BARN SITE

The Hon. R.I. LUCAS (15:58): I seek leave to make a brief explanation before asking the minister representing the Premier a question on the subject of the old tram barn site.

Leave granted.

The Hon. R.I. LUCAS: In recent months there have been a series of media articles and concerns expressed about the nature of the deal entered into between the South Australian government and a representative arm of the Catholic Church in relation to the sale of the old tram barn site, and also the new building there, which is (significantly) now to be inhabited by SA Water as its corporate headquarters.

One of those articles was in *The Independent Weekly* in March of this year, written by respected financial commentator Bill Nicholas. In that article he made a number of comments, and I will refer to several of them. In talking about the original sale price, he states:

> That's around $734 per square metre.

That is the sale price of the old tram barn site to the Catholic Church Endowment Society Incorporated. It continues:

> This compares with an average price of around $1,500 per square metre that was the going price just over two years ago. Now the price would be $3,000 per square metre according to senior valuers.

Later on in the article he states, in a copy of an email he sent to the Premier asking questions:

> Why was the block of land on the corner of Angas Street and Victoria Square sold to the Catholic Church for a price that was about half the market rate at the time?

Mr Nicholas goes on to quote from an email received from Ms Jillian Bottrall providing some responses to the questions he asked. In part, he quotes Ms Bottrall as stating that the deed of agreement was signed in October 2003 between the Catholic Church and the South Australian government. However, he also quotes the Catholic Church PR, Chris McWilliams, who stated that the deed of agreement for the sale of the land was signed not in October 2003 (as claimed by Ms Bottrall) but in October 2004.

So, he highlights a difference of opinion between the Catholic Church and the South Australian government as to when the deed of agreement was signed. I do not propose to go through the detail of the article, but in it he highlights the issue of the role of Monsignor Cappo within both the church and the various arms of the South Australian government, and he raises questions about some of those issues. My questions are:

1. When was the deed of agreement actually signed? Was it either October 2003 (as claimed by Ms Bottrall) or October 2004 (as claimed by the Catholic Church representative, Chris McWilliams)?

2. Is it a public document; if it is not, will the government make it a public document in terms of public accountability?

3. What is the government's response to Mr Nicholas's claim that the price the Catholic Church paid at that time was about half the market rate at the time it did the deal with the South Australian government?

4. Did Monsignor Cappo discuss the issue of the sale of the tram barn site to the Catholic Church with the Premier, any minister, any staff member in their offices, or any public servant involved in the issue, prior to the government's making the decision on this matter?

5. Did Monsignor Cappo discuss the issue of SA Water's deciding to construct a new building on the tram barn site with the Premier, any minister, any staff member in their offices, or any public servant or officer of SA Water involved in this issue, prior to the decision of SA Water and/or the government?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (16:03): I will refer those questions to the Premier and bring back a reply. However, I note that it is great finally to see some new buildings being constructed within the city. I for one am very pleased that we will have a five-star building to accommodate SA Water on that very important site in Victoria Square. As I say, it is just one of a number of significant buildings that are currently being constructed in this city. We do not have quite the same number of cranes as Dubai, but I think that this government can be very pleased that it has been able to generate so much development in the city. I will refer those questions to the Premier.

ANSWERS TO QUESTIONS

STORM DAMAGE

In reply to the **Hon. C.V. SCHAEFER** (29 March 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Minister for Transport has provided the following information:

The Department for Transport Energy and Infrastructure, along with South Australia Police and State Emergency Services, responded to the emergency by managing the opening and closing of roads and undertaking inspections and emergency repairs (using a combination of DTEI resources and local contractors) to reinstate access to communities and towns as soon as practical.

The total estimate for the repair of damaged road infrastructure is in excess of $30 million.

DTEI responded immediately to reinstate access to all communities using a combination of departmental resources and local contractors. Access to all communities impacted along the sealed road network was reinstated one week following the flooding and access between Cradock and Carrieton being reinstated within two weeks. Access to the majority of communities on the unsealed road network was re-established in early February 2007.

The government spent $6 million in the 2006-07 financial year and allocated a further $24 million in 2007-08 to complete repairs to road infrastructure.

The Minister for State/Local Government Relations has provided the following information:

On 18, 19 and 20 January 2007, flooding occurred extensively across council areas in the northern area of the state and in one council area south of Adelaide. Councils primarily affected to various degrees were Flinders Ranges, Pt Pirie, Orroroo Carrieton, Mt Remarkable, Peterborough, Whyalla, Kimba, Coober Pedy, Roxby Downs, the Outback Areas Community Development Trust, Goyder and Yankalilla.

The state government's Local Government Disaster Fund Management Committee decided to provide an independent engineer to inspect the flood damage and assist affected councils in planning to restore the damaged infrastructure, providing advice where appropriate.

Each affected council assessed the extent of the damage to council assets and this formed the basis of their submission for funding assistance.

Eight of the councils applied to the Local Government Disaster Fund Management Committee for consideration of financial assistance. Applications were received from Flinders Ranges, Pt Pirie, Kimba, Mt Remarkable, Peterborough, Yankalilla, Orroroo Carrieton and Goyder.

The Local Government Disaster Fund Management Committee met on 24 April 2007 to assess the claims. The committee approved all claims in principle. Additional information was sought from each of the councils prior to the committee meeting of 21 June 2007 that recommended the following payments:

- Flinders Ranges Council $1,952,986;
- Kimba $84,250;
- Mount Remarkable $26,050;
- Peterborough $64,550;
- Port Pirie $1,032,352;
- Yankalilla $134,700;
- Goyder $5,062; and
- Orroroo Carrieton $856,900.

Immediate steps were taken to address infrastructure repairs. In late January, the Minister for State/Local Government Relations provided interim funding assistance totalling $150,000 to Flinders Ranges and Orroroo Carrieton councils ($100,000 and $50,000 respectively). In June, the Minister for State/Local Government Relations provided an additional interim funding amount of $300,000 to the Flinders Ranges Council. These funds were provided in advance of the final

consideration of applications by the Disaster Fund Management Committee and were made to assist the councils manage their cash flow and swiftly respond to some of the most pressing flood damage.

These interim amounts formed part of the recommended total payments outlined above.

Assistance was provided at the end of January, early June and early July 2007.

Final recommendations by the Disaster Fund Management Committee were made on 21 June 2007. Applicant councils have been informally advised of the outcome and the remaining payments are being processed.

The Minister for Agriculture, Food & Fisheries has provided the following information:

A public meeting to discuss the impact of the storm was held in Hawker on 8 March 2007. PIRSA's Emergency Management Coordinator was present at this meeting.

Following this meeting, the South Australian Farmers' Federation (SAFF) presented me with a submission seeking business support for approximately 30 pastoral businesses affected by the storm. In the submission SAFF requested financial assistance similar to that delivered following the Renmark storm in January this year and Virginia floods in 2005 (i.e. funding through natural disaster relief arrangements).

In this instance it has been difficult to establish a case to provide business support in terms of natural disaster relief given that the storm delivered significant business benefits as well as causing significant damage to some properties (outlined below).

From available information, including reports given at the public meeting, PIRSA has advised that:

- Five of the 31 properties in the affected district reported damage to more than 15km of fencing.
- The same five properties reported additional costs of repairs to other infrastructure estimated at more than $25,000 each. This mainly referred to internal roads and tracks.
- The remaining 25 properties estimated their total repair costs at less than $25,000.
- The rainfall event had many positive effects such as replenishment of water storages and particularly the rejuvenation of pastures.
- This event triggered larger than usual flooding but flooding in this area is a feature that occurs regularly after heavy rainfall events.

PIRSA is currently working to identify alternative means to assist the worst affected pastoral businesses including funding that may be available through the NRM Board and associated sources.

LAND TITLE

In reply to the **Hon. SANDRA KANCK** (31 July 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Attorney-General has provided the following information:

1. The member is enquiring after the motivation of an earlier parliament in enacting a particular measure in 1994. I can only refer the member to the *Hansard* record of the debates, to which no minister can usefully add anything.

The Minister for Infrastructure has provided the following information:

2. The Registrar-General has a duty under the *Real Property Act 1886*, to register any instrument that is, on its face, registrable.

The development was carried out by the owner of the land in accordance with legislative requirements at the time. The documentation lodged with the Registrar-General in relation to the land at Keyneton appeared on its face to comply with the requirements of the Real Property Act, and were consequently registered.

Purchasers before entering into any contact to purchase should take appropriate steps to ensure they are fully aware of the end result of any development.

The Registrar-General in 1992 responded to an Ombudsman's enquiry in relation to the delineation of the right. Advice was sought from the Crown Solicitors office into the ability of the Registrar-General to amend the delineation of the right to the position actually occupied by that right. The opinion of the Crown Solicitor was that the Registrar-General should not amend the position, unless all parties were in agreement. To date no further action has been taken to amend the delineation of the right.

The matter raised by the constituent as to whether the creation of the rights complied with the common law principles never arose, as rights were created under the Real Property Act to separate legal entities.

The Minister for State/Local Government Relations has provided the following information:

3. The relevant legislation is committed to the Attorney-General and there are no powers available to the Minister for State/Local Government Relations to act on this matter.

The Attorney-General has provided the following information:

4. The m ember's explanation does not make clear what this situation is or how it is causing hardship. If there is a legal difficulty about the easements over the subdivided land to which the member refers, then the affected owners should seek legal advice without delay. I do not intend to offer legal or other advice to the Mid Murray Council. The council is at liberty to seek its own advice.

CHILD ABUSE LINE

In reply to the **Hon. D.G.E. HOOD** (28 February 2008).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): I refer to the question without notice asked by the Hon Dennis Hood regarding police procedures and powers pursuant to the *Children's Protection Act 1993* and delays experience by police reporting matters to the Child Abuse Report Line.

The police officer in question is incorrect to imply that 'under the current powers available to them they could not remove the child from the house'. Section 16 of the *Children's Protection Act 1993* allows police to remove children if they believe on reasonable grounds that a child is in a situation of serious danger and that it is necessary to remove the child from that situation in order to protect the child from harm (or further harm), the officer may remove the child from any premises or place, using such force (including breaking into premises) as is reasonably necessary for the purpose.

Police have obligations to contact Families SA following the removal of a child in order to facilitate the appropriate placement and support for that child. A police only priority line has been made available to SAPOL for members to contact the Crisis Response Unit, Families SA. This number is designed for emergency use by police when a matter requires an interagency response, assistance and support. The number is not to be utilised by police officers for mandatory notifications which are made via the Child Abuse Report Line (CARL). There is no indication at present that police are experiencing undue delays when contacting the Crisis Response Unit police priority number.

Police can also remove children who are under guardianship of the minister or 'of whom the Minister has custody' under Section 51 (4) of the Children's Protection Act. In this case only police have the power to remove whereas, where there are no orders in place (Section 16) this applies to both Police and Families SA workers.

In summary, under the provisions of the act, police could have removed the child in question and did not have to wait outside the home leaving the child inside while they called the Child Abuse Report Line.

MITSUBISHI MOTORS

In reply to the **Hon. D.G.E. HOOD** (12 February 2008).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Minister for Industry and Trade has provided the following information:

1. The Department of Trade and Economic Development has advised that the State Procurement Board's Annual Report for 2006-07 indicates of the $3.3 billion state government

expenditure on goods and services (excluding capital works) the overwhelming majority of significant purchasing activity was committed to being undertaken through South Australian suppliers at 84 per cent.

2. As at 31 January 2008 there were 1,202 Mitsubishi 380s and 89 Mitsubishi Magnas in the fleet, which represents 15.4 per cent of the total fleet. This is substantially higher than the 1 per cent of vehicles sales in Australia in 2007 that were Mitsubishi 380s. As at 31 January 2008 there were also 3,102 South Australian made Holden vehicles, which represents 37.1 per cent of the total fleet. In the 12 months to 31 July 2007, 3,441 vehicles were purchased by the State Government, of which 1,876 were made in South Australia.

3. Fleet SA provides a central fleet management role for the state government, and is responsible for the purchase of all passenger and light commercial motor vehicles.

4. Australian vehicle manufacturers only make passenger or passenger derivative vehicles. Given this, the state government's operational requirements for light commercial motor vehicles cannot be met by locally produced vehicles.

With regard to passenger vehicles however, only Australian made passenger vehicles are currently purchased by the government, with the exception of the Toyota Prius, a Hybrid vehicle that assists the government in meeting a small car need and environmental targets. Any revision to this policy would need to consider cost effectiveness, environmental targets, best practice fleet management and vehicles being fit for purpose to meet government's ongoing needs.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee.

Clause 1.

The ACTING CHAIRMAN (Hon. R.P. Wortley): There are two amendments for this clause, one each from the Hons Mr Parnell and Ms Bressington. Would anyone like to speak on clause 1 first?

The Hon. J.M.A. Lensink interjecting:

The Hon. M. PARNELL: The Hon. Michelle Lensink says, 'Not really.' However, I do have some comments and questions on clause 1 before I move my amendment. Given that it is a lengthy bill, my guess is that (and with the chair's permission) it will probably proceed in that way—that is, comments and questions and then the formal amendments. That seems to me to be a sensible way to proceed.

My first question is related to the claim by the Premier and other ministers that, even with these cuts to injured workers' entitlements, the South Australian scheme will still be the most generous scheme in Australia.

The Hon. R.D. Lawson: He said the 'fairest'.

The Hon. M. PARNELL: The Hon. Robert Lawson says that the quote was the 'fairest' scheme rather than the most generous, and we might explore a little further whether there is a difference between those two concepts. However, my question is: what is the justification for the claim that we will have either the fairest or the most generous scheme in Australia?

The Hon. P. HOLLOWAY: The honourable member knows that there were some comments made in the Clayton report, and I am sure he has read the relevant sections of that report. I can only refer to him back to those comments made by Mr Clayton.

The Hon. M. PARNELL: I would like the minister to explore this claim a little more thoroughly in his answer. It is not just a question of claims made by Mr Clayton, unless the minister's answer is that everything Mr Clayton says the government now says with no independent thought. Perhaps I can use an example: under the Victorian model there is a regime where 28 per cent of the payments injured workers receive are received from common law claims. If we had similar circumstances in South Australia, that 28 per cent is a proportion of benefits that will be denied to workers here. So, I would like to minister to advise what it is about our system that makes it the most generous or fairest, given that we are the only state that does not have that additional avenue of recourse by injured workers to common law claims.

The Hon. P. HOLLOWAY: I can well recall the debates within the Australian Labor Party on the question of common law around 20 years ago—perhaps even more—and, obviously, the

matter was decided from the government's point of view at that time. The honourable member would have seen Mr Clayton's recommendations, whose view was that the common law would work against all return-to-work principles. As I have said, the government has accepted that advice, remembering always that originally the WorkCover Board had itself put forward to the government a number of proposals that went significantly further than those the government now has in its bill.

The Hon. A. BRESSINGTON: Given that the minister seems to have made up his mind to skirt around these particular kinds of questions and answers—he stated that he has been around for a lot of these WorkCover debates—perhaps he could give us an outline of the debate that occurred and the point at which common law was originally abolished in South Australia, and indicate what was promised to the unions as a workers compensation scheme in exchange for the abolition of common law.

The Hon. P. HOLLOWAY: This really is not what we are discussing in clause 1. During the second reading debate, the honourable member had the chance to give her views when she spoke for five hours. We know she favours common law. This government has made a decision that it does not support that and, really, we will just have to disagree on that. We could talk about it all day, but I do not think it will help anyone.

The Hon. A. BRESSINGTON: Mr Acting Chair, the whole point of this committee stage is for us to get answers to our questions and clarity on certain positions that the government is taking. At no time has any minister of this government made a public statement on why common law will not even be considered when, in other states, it is just a given that injured workers have access to that legal process. So, we could discuss this all day and we could ask the same questions all day, but the actual remedy for that is for the Minister for Police to give a straight answer to the question and help dispel the mystery as to why common law is such a distasteful port of call for this government.

The ACTING CHAIRMAN: The minister has actually given you the government's position on that.

The Hon. A. BRESSINGTON: No, he hasn't.

The ACTING CHAIRMAN: Well, he has.

The Hon. A. Bressington interjecting:

The ACTING CHAIRMAN: I understood that he said that they do not support common law.

The Hon. A. Bressington interjecting:

The ACTING CHAIRMAN: Excuse me, Ms Bressington; the fact is that he has given his position. He does not want to pursue it any further. He has put the government's position.

The Hon. A. BRESSINGTON: So, you are going to stifle this debate one way or another?

The ACTING CHAIRMAN: It is not a debate.

The Hon. A. BRESSINGTON: It is so! This is a committee stage debate, and I have asked a specific question on common law and we cannot get an answer from the minister.

The Hon. P. HOLLOWAY: I have a point of order. We are debating clause 1. If the standing orders of this place are upheld properly, the issue of debate has to be the title, to which this clause relates. That is the way the standing orders of this council apply, and, if the Hon. Ann Bressington does not want that, it is really unfortunate. In no other parliament in this country will this sort of discussion be tolerated in relation to clause 1. It is clearly against standing orders. During the committee stage of the bill, we are supposed to debate the clause before us. Clause 1 states that the title of this bill will be—

The Hon. A. BRESSINGTON: Scheme review.

The Hon. P. HOLLOWAY: Exactly. If the honourable member wants to move her amendment to clause 1, she is entitled to do so, but I will not participate in games. There are standing orders in relation to what we discussed during the committee stage, and the honourable member should adhere to them.

The ACTING CHAIRMAN: Does the Hon. Mr Parnell want to comment on the title of the bill?

The Hon. M. PARNELL: Absolutely, Mr Acting Chairman. One of the issues that those of us on the crossbenches who sought to try to improve this legislation had to grapple with in relation to the title of the bill was what would be a more appropriate title. The Hon. Ann Bressington has an amendment which she will move in due course. I also have an amendment which I will move in due course. It would seem to me that one title that would have been more accurate than the scheme review title adopted by the government would have been some title that referred to this legislation as being the Rann government's version of WorkChoices. We could have called the bill the 'WorkCover WorkChoices Bill' or 'Premier Rann's WorkCover No Choices Bill', or even something along the lines of 'The Premier's Plan for Injured Workers on the Scrapheap Bill'. We did not go down that path, however justified it might be.

One of the things that the minister commented on when he moved his motion earlier in relation to the suspension of standing orders—which is relevant to clause 1—was the allegation that the unfunded liability blows out by $1 million per week.

Someone in the government has fed that line to the media, and we saw the headline in *The Advertiser* about the Hon. Ann Bressington and I allegedly costing the state $150,000 for speaking for some period on the second reading. That sort of dodgy economics cuts both ways. I ask the minister to put on the record in relation to the scheme review: when did the government first know or appreciate that the scheme needed reviewing? Did it know before the last federal election and did it make a deliberate choice to not proceed with this legislation at that time because it did not want to confuse this draconian WorkCover bill with the then federal government's WorkChoices bill?

The ACTING CHAIRMAN: We are talking about the title of the bill. You will have plenty of opportunity during the moving of amendments to discuss these issues and get these positions from the minister. If you have no more discussion on the title of the bill, put your amendment.

The Hon. M. PARNELL: The question I have asked does not fit into any amendment to the bill. There is a clause we will get to with regard to the commencement of the bill but, when it comes to being able to ask the minister a question about when the government knew that a situation had arisen that meant that there was a necessity for legislation, there is no other time to raise it than in clause 1. In the two or more years I have been here, it is a common typical question always asked at clause 1. We are proceeding through this bill and will get to the amendments that relate to the title, but it is a valid question for me to ask the minister at clause 1.

The Hon. P. HOLLOWAY: The honourable member well knows the answer to his question: the WorkCover Board reported to the minister in November 2006 or thereabouts. The minister, having considered it and having brought it to cabinet's attention, engaged Mr Clayton in March 2007.

The Hon. M. PARNELL: That makes the point that if the Hon. Ann Bressington and I, having gone for some small number of hours on this bill, cost the state $150,000, on my back of envelope calculations the government, having sat on this bill for all those months, itself has cost the state at least $40 million, which makes the point that the dodgy economics cuts both ways.

We know that when the bill is passed, as it will be, the unfunded liability will immediately shrink. It will not shrink slowly over a period of time—it is not the same chart where you see this actuarial estimate increasing over time, but instantly it will shrink because the information the actuary will rely on in terms of future money in and out, especially in relation to payments, will change once the law is passed. So, it is absolute rubbish for the government to peddle the line that the Hon. Ann Bressington and I, by exercising our democratic right to a thorough debate, are costing this state money.

However, to move on—and it fits nowhere else in the bill—I ask the government to tell us what research it has done on the relationship between family incomes, in particular family incomes in an environment where they are cut or reduced—

The ACTING CHAIRMAN: I ask the Hon. Mr Parnell to stick to the title of the bill. If this is the direction you are going to take for the whole debate, we will be here for 300 years and the unfunded liability will be much bigger than $1 billion. There are plenty of opportunities to ask these questions when you are moving your amendments. You have lots of amendments and you will have plenty of opportunities. I do not believe that the title of the bill is the appropriate clause to take it on. If you have no more to say, please move your amendment.

The Hon. M. PARNELL: There are only two or three such questions. I will remove the questions and reinsert them elsewhere. It will not save us any time by stopping us asking questions

at clause 1 and insisting that they should be asked in respect of some other provision. I will always be differential to the chair, but I will also be very cross if I am stopped from asking a question later because it does not fit into an amendment. If that is the path you are pointing us down—

The Hon. P. HOLLOWAY: On a point of order, I simply ask that standing orders be enforced, and that is that during committee the debate has to be relevant to the clause.

The ACTING CHAIRMAN: Standing orders will be enforced throughout the debate.

The Hon. M. PARNELL: I accept that the standing orders talk about relevance, yet the long tradition of this place is that on clause 1, when there are matters that go to the overall import of the bill and do not fit neatly with any section or clause of the bill or fit with any amendment to be moved, some liberty is given to members to ask those questions at clause 1. I can either seek the indulgence of the committee to ask them at this stage or I can pull them all out and put them back in somewhere else. At the end of the day, the democratic process insists on us being able to ask our questions and put our position. There is no time to be saved other than us arguing about standing orders.

The ACTING CHAIRMAN: You are the only one arguing. I have given a direction to move on and move your amendments, so there is no argument.

The Hon. M. PARNELL: Thank you, Mr Acting Chairman, for your wisdom and extensive knowledge of the standing orders and processes of this place. I point out at this stage that three sets of amendments have been tabled: Parnell 1, Parnell 2 and Parnell 3. They are all live and no one of those sets replaces any other although, as I said in a memo to members, my third lot of amendments may or may not be moved, depending on the outcome of other amendments. I now move:

Page 5, lines 3 and 4—Delete 'Scheme Review' and substitute 'Reduction in Weekly Payments and Other Matters'.

My amendment seeks to remove the words 'scheme review' and replace them with the words, 'reduction in weekly payments and other matters'. I have moved that amendment because I believe that, in this place, it is a proper practice to be honest and frank when it comes to naming pieces of legislation. The bill before us represents a massive slashing of the entitlements and the rights of injured workers, relating in particular to weekly payments, and I think that should be incorporated into the title of the review.

We have the situation where we have many injured workers. We have some workers who are totally incapacitated but who have not given up on the chance of getting better in the future and who are being disadvantaged by this legislation. We have partially incapacitated workers, again, who are working as much as they can. They have not given up on working more in the future, and their weekly benefits are reduced as well. I think that retitling the bill to reflect one of the main impacts of this legislation is appropriate. In fact, it is not just those two categories I mentioned: all injured workers, except those whose injuries resolve themselves very quickly, will find that their payments are cut.

If that is the overwhelming effect of the bill, we should reflect it in the title. It is somewhat glib to try to hide behind the title of 'scheme review'. Members who vote for my amendment are in fact exercising their vote for a more honest description. The issue of mislabelling bills is one that has occurred in many jurisdictions, not just in South Australia. We have had the debate over the commonwealth WorkChoices bill, the main criticism of which was that it took the choices away. In fact, it was a complete misnomer. We have had laws stripping workers of unfair dismissal rights, entitled the Fair Dismissal Bill.

Even things such as the GST—which was sort of a new tax added to an existing tax—was called a new tax system. There is precedent for misnaming legislation, but that does not mean that we in this place must fall for that same trap here. If it is to be honest about the effect of its bill, and honest about the viciousness of its attack on injured workers, the government should support this amendment, and I would urge the opposition to support it also. It is not as radical as some of the other titles that I suggested. We could have been ruder. It was with some deference to parliamentary counsel that I did not go down the path of the most accurate labels I could have given it. Nevertheless, I think this is an appropriate title. I urge all members to support my amendment.

The ACTING CHAIRMAN: There are two amendments to clause 1. Would the Hon. Ms Bressington like to move her amendment?

The Hon. A. BRESSINGTON: I move:

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

Reduction of Entitlements and Redemptions

Like the Hon. Mr Parnell, I do not believe that the title of this bill reflects accurately or adequately the impact this piece of legislation will have on injured workers. My amendment is that the title of the bill be 'reduction of entitlements and redemptions', because that is exactly what this bill is doing. With respect to the wording 'scheme review', we have already tried to ask questions about the level of review that has gone into this piece of legislation and about the reluctance of ministers in this and the other place to answer questions relating to the review process. It is pretty obvious that it has been very limited, and that the review of our workers rehabilitation and compensation scheme in South Australia has not been conducted as other states have seen fit.

We seem to have had a practice here of taking bits and pieces out of here, there and everywhere to put together this shemozzle that will be our workers rehabilitation and compensation scheme. As we were trying to get across previously, part of that is the common law issue, but we will go into that when that amendment arises. I would like the minister to explain. Apart from a reduction of entitlements and redemptions, what else is there to this bill that will have any positive impact at all for injured workers? Like the Hon. Mark Parnell, I could have easily pinned 10 other titles to this bill, but they were not as polite as this one. We were told to go with an 'unemotive' title.

At the end of the day, the name of the legislation must reflect the intent of the bill. This title, Workers Rehabilitation and Compensation (Scheme Review) Amendment Bill, nowhere near reflects the disastrous effects this measure will have. As I said, I challenge the minister to list me at least five benefits this piece of legislation will bring to injured workers, especially long-term injured workers who do not quite fit the bill of getting the permanent disability payout under this scheme. Another title for this bill could merely be the 'Workers Rehabilitation (Cost Shifting) Scheme', because that is what this bill means for a lot of injured workers.

If he can, at some stage will the minister list me five benefits to injured workers to show that this has been a true scheme review, that it has not just been to bail out the WorkCover Corporation and that it has not just been to bail out or cover up EML's dysfunction, which I believe is dysfunction by design? I do not think that any scheme could be this dysfunctional by mistake; if it was, by God, people should not be holding the jobs they are holding.

In respect of the title of the bill, my challenge to the minister is to list five benefits to injured workers which will be long term and will not see them thrown on to the scrapheap. I urge members, if they are not going to support the Hon. Mark Parnell's amendment, to support mine, and show that this committee has the intention of at least being honest about the debate that we are having about the bill and its title.

The Hon. P. HOLLOWAY: The government opposes the amendments. This legislation is about reform of the WorkCover scheme. There are many areas of change; for example, there are increased lump-sum payments for permanent impairment with a part of this scheme, and there is the provisional liability where we have the provisional acceptance of claims based on the New South Wales scheme. Under the scheme, rehabilitation and return to work coordinators will be appointed. There are also increased obligations imposed on employers, which will involve, in some cases, stronger penalties. It is not actually in the legislation, but part of the package is the government's $15 million return to work fund, and that really brings us to the principle benefit of the scheme—why the government is doing it.

The WorkCover scheme in the state has the worst return to work record of anywhere in the country by a significant margin. If the changes do what one would hope, we will then have more workers back at work, who are otherwise on the scheme, and that has to be good for everybody, including the workers themselves. I challenge those who are opposed to any changes to this legislation: how can they suggest that the current scheme, which we know is less effective than any other scheme at getting workers back to work, is in the best interests of injured workers to have them continuously off work?

Clearly, something in the scheme is not working; the statistics show it. That is why we have the blowout in liability. If we get workers back to work, that will be the best thing that we can achieve for those particular workers and for the community at large. I note that during the second reading debate both Ms Bressington and Mr Parnell were telling us all how dreadful the current scheme is. They were telling us about how nobody likes it, etc. Why then do they want to keep it the way that it is? The government's principle objective is to try to get more workers back to work.

Yes, there are some changes that will be to the detriment of some injured workers in some situations; nevertheless, it is also true that the scheme has a number of significant changes.

Incidentally, in relation to the question asked earlier by the Hon. Ann Bressington, the increase in lump sums that we are seeing here was back in 1992 one of the trade-offs in relation to common law rights. Yes, there will be changes to workers' entitlements, but the changes that I have mentioned and anything that gets workers back to work is very much in the interests of the workforce at large.

The Hon. A. BRESSINGTON: I would like the minister to provide any sort of medical or scientific research that shows that cutting injured workers' entitlements and starving them back to work is actually an effective return to work scheme rather than the WorkCover Corporation being required to invest money or develop any sort of strategy for retraining and return to work. How do those two positions meet in the middle?

In this particular document, the Electrical Plumbing Union (CEPU), the ANWU, the STA, and the FSU of Australia make the recommendation that WorkCover be required to develop return to work strategies to get people back to work in a healthy way. Sending people back to work before they are healed and recovered will not improve return to work rates long term. The minister mentioned that some workers will be adversely affected in some situations. Could he give us examples of that?

The Hon. P. HOLLOWAY: We have had more than enough debate to know that; after all, the member spent five hours the other day telling us about some of those points. We have had the Clayton report, a copy of which I am sure the honourable member has. If she reads it, the member will see the reference to a significant amount of evidence in relation to the questions she asked; that is, the correlation between the increased claim duration and the increased income replacement.

The overwhelming evidence, surely, is the fact that every other state in Australia has schemes which are much more effective at getting workers back to work. So, unless our workers here are more badly injured on average, and unless our industries are that bad that we are injuring our workers worse here than anywhere in Australia, why is our return to work rate so bad in this state? That is the fundamental question that we all have to address.

The CHAIRMAN: Before we go any further, there are clauses in this bill about rehabilitation, and it is not clause 1. I insist that we stick to what the particular clause that we are debating covers in the bill and that people speak to their amendments to try to get agreement.

The Hon. R.D. LAWSON: The Rann government has on occasions been guilty of using emotive and grandiloquent language in the title of bills. One that comes to mind is the Abolition of the Drunks Defence Bill, which the government sought to insert quite wrongly into a bill. However, on this occasion the title of the bill, in our view, correctly reflects the operation of the bill, and we will not be supporting either of the titles suggested by the honourable members.

The Hon. M. PARNELL: It is up to you, Mr Chairman, to assist us in the progress of this debate. I asked the minister a large number of questions during the second reading debate. It is no reflection on the minister that he did not remember them all and, in his summing up, which was quite late in the day, he did not get to them all.

For those that do not relate to another specific clause of the bill, is it appropriate for me to put those questions in clause 1? There is not a large number of them, but there are a few that will not be answered if I do not put them again now.

The CHAIRMAN: If they do not relate to any other section of the bill, and you do not think they have been answered, you can ask the minister.

The Hon. M. PARNELL: Thank you. Will the minister table the actuarial advice that the government has received? If we do not have access to that advice, then it is very difficult for us to make any independent assessment about the alarming predictions in relation to the unfunded liability.

The Hon. P. HOLLOWAY: My advice is that that has been tabled as the appendix to the report, so it is part of the appendix to the report.

The Hon. M. PARNELL: Is the whole of the actuarial advice in the public realm?

The Hon. P. HOLLOWAY: My advice is that all of the information that Mr Clayton relied on was in the report.

The Hon. M. PARNELL: One question I asked was whether the minister would release the WorkCover guidelines on non-economic loss. I know we do get to non-economic loss later, but the simple question is: will the government release the guidelines?

The Hon. P. HOLLOWAY: My advice is that when those guidelines have been developed in consultation with the stakeholders they will appear as regulations, so they will obviously be in the public realm at that point. I have received some further advice. It is possible it could be a ministerial gazettal but, either way, it will be in the public realm.

The Hon. M. PARNELL: I thank the minister for that clarification. I did ask, in the second reading, in a global sense about the question of cost shifting whereby, if workers do not receive benefits under this system, they will presumably end up on a commonwealth benefit. My questions to the minister were: what is the estimated cost to the commonwealth of shifting workers from WorkCover to some other taxpayer-funded benefit; and, secondly, if there is such a shift from the state to the commonwealth, how does that fit in with the State Strategic Plan, which provides that we should be reducing the percentage of South Australians on government benefits (with the exception of aged pensioners) to below the Australian average by the year 2014?

The Hon. P. HOLLOWAY: I am advised there have been no costings on that. Obviously, any cost shifting, as the honourable member describes it, would be a matter for the commonwealth and we would be in the same position, for the most part, as every other state of Australia in regard to that.

The Hon. M. PARNELL: Just to clarify: is the answer that there has been no consultation with the commonwealth; there have been no approaches and no communications at all; and there is nothing that we know in relation to the cost shift?

The Hon. P. HOLLOWAY: Again, the thrust of this scheme is, where workers are capable of going back to work, getting them back to work. If we do that we will have an economically viable scheme and one which will deliver the best health outcomes, I would suggest, for workers. For those workers who do not return to work and who might otherwise have been capable of doing so, then, really, what is currently happening to many of them is a personal disaster. One of my commitments is to see a situation where, if the statistics that are produced are right, we can get more workers back to work, and that is very much in their interests and the community's interests.

The Hon. M. PARNELL: Without wanting to backtrack too much, in his answer to my question the minister previously said that the actuarial advice was in the appendix and that it was available. My understanding is that he was talking about Clayton's actuarial advice. My question is in relation to WorkCover's actuarial advice. I am told that WorkCover's actuary is a firm or a company called Finity, and I want to know if that information can be made available.

The Hon. P. HOLLOWAY: I will have to refer that back to the minister. My understanding is that it has not been tabled. If there is a reason for that, obviously it is a matter for the minister in another place and I will refer it to him.

The Hon. M. PARNELL: One other relevant matter for clause 1 that is, in fact, very new—and certainly was not available when we had the second reading debate but does go to the overall intent and need for this legislation—is the suggestion that there is, in the wings, some commonwealth takeover of workers compensation foreshadowed. On 3 May *The Australian* newspaper, under the heading 'Labor accord at risk over IR shakeup' reported 'proposed national laws on health and safety and workers compensation that could lead to higher standards in states such as New South Wales reduced'.

Are there negotiations between the state and the federal government in relation to a federal takeover of workers compensation legislation? If such discussions have been held, what information can the minister give in relation to the time frame and the likely impact on the legislation that we are considering today?

The Hon. P. HOLLOWAY: My advice is that the question of harmonising schemes is always one that is discussed at ministerial council meetings, and that is true of almost every portfolio area we get, I would suggest; we try to get some uniformity of schemes.

I do not have the federal platform of the ALP here, but I would be surprised if it does not have an objective of trying to make the conditions and benefits that workers get as uniform as possible right across the country, because, certainly in my view, that is a desirable goal. I understand that there have been these sorts of discussions on harmonisation, but my advice is that they have not proceeded further than that at this stage.

Amendments negatived; clause passed.

Clause 2.

The Hon. M. PARNELL: Clause 2 provides that the act will come into operation on a day to be fixed by proclamation. My first question of the minister is: when does the government intend that the whole of the bill will come into operation, and in particular those parts that affect the step-down in worker entitlements and the cutting of worker's income maintenance? When will those provisions be proclaimed to come into operation?

The Hon. P. HOLLOWAY: Obviously the government would like to get the bill proclaimed as soon as possible so that it can address the issue of getting workers back to work as quickly as possible and reforming the scheme, but obviously that will depend on the passage of the bill through this place. I am advised that there would have to be a cabinet submission for proclamation, so that could be possible by 1 July. I am also advised that the implementation of the bill would be such that it would probably be staggered, whereby some parts would be introduced before others, pending the development of regulations for those parts.

The Hon. M. PARNELL: I accept the minister's answer to the extent that, yes, when bills come into operation they are staggered. What I would like the minister to confirm is whether the information that I have from senior officers of Employers Mutual Limited is correct, and that is that the provisions stopping injured worker payments will not come into operation until April 2009.

The Hon. P. HOLLOWAY: My advice is that in relation to medical panels and work capacity tests obviously it will take some time to work that up because the panels have to be appointed. It is those sorts of issues that will take longer and therefore the proclamation will be delayed in relation to those particular parts.

The Hon. M. PARNELL: In relation to that, I am somewhat astounded, given that the government has had every indication (from several months ago) that the passage of the bill is secure and that the only issue is one of timing, which we have taken some steps today to make more secure as well. I put it to the minister that the main reason for trying to have this bill at least notionally in place by the end of the financial year is to ensure that the actuary factors into the calculations for the 2007-08 year the changes that are to be brought about eventually through the passage of this legislation. That is the real reason why it needs to be in, at least in name if not in operation, this financial year.

The Hon. P. HOLLOWAY: The actuary will make certain assumptions, but the actuary will unquestionably want to see improvements delivered by the scheme, and that is why the government's view is that the sooner it is implemented the sooner those improvements will manifest themselves and, therefore, the sooner the actuary will take those into account.

The Hon. R.D. LAWSON: Can the minister advise whether the coming into operation of this bill will, of its own force, have any immediate effect on the assessment that the actuary will make of the unfunded liability of the scheme as at 30 June 2008? In other words, will the mere passage of this bill before 30 June have any effect on the unfunded liabilities to be reported as at 30 June?

The Hon. P. HOLLOWAY: That is obviously a matter for the actuary to determine. In that sense it is a hypothetical question. My advice is that it is more likely to come in progressively. There may be some significant initial impact, but the key benefits of the changes are likely to flow through progressively over time as any improvements are demonstrated.

The Hon. R.D. LAWSON: To put it a little differently, has the government either sought or received any advice from WorkCover or the actuary that the passage of this bill before 30 June will have some effect on the unfunded liability of the scheme as at 30 June?

The Hon. P. HOLLOWAY: My advice is that the actuary has not yet specifically looked at that matter. However, we would obviously expect that, when you have direct cost reductions such as step-downs appearing straight away, and if they apply from, say, 1 July, he may be able to take those into account. However, in relation to other matters, it is really up to the actuary as to the extent to which he believes they will manifest. Certainly, the government's advice is that the scheme would achieve full funding in six to seven years if these changes go through intact. Essentially, that is the improvement that is expected: full funding in six to seven years from the full implementation of these measures.

The Hon. M. PARNELL: The second aspect of this clause is that section 7(5) of the Acts Interpretation Act does not apply to this bill. It provides:

An Act or a provision of an Act passed after the commencement of this subsection that is to be brought into operation by proclamation will be taken to come into operation on the second anniversary of the date on which the Act was assented to by, or on behalf of, the Crown unless brought into operation before that second anniversary.

In a nutshell, the normal provision means that, in the absence of a date being set in the *Government Gazette* for the commencement of certain provisions, they automatically come into force in two years. That does not apply in this legislation. My question to the minister is: will he rule out the use of that exemption to ensure that benefits to injured workers will not be affected by the use of that provision?

The Hon. P. HOLLOWAY: My advice is that the only reason we would use this provision is changes to the levy system and, because of the complexity of that, I understand that it could take more than two years. I am advised that the provision is in there for that purpose, and it is the only purpose that is envisaged.

The Hon. M. PARNELL: Just so that I understand the minister's answer, all parts of the bill that relate to cutting the entitlements of injured workers will not be caught up in this. They will all be introduced, but the levies the employers are required to pay, and any increases, might be delayed beyond two years. Is that the minister's answer?

The Hon. P. HOLLOWAY: There is no change to what they will pay. My advice is that it is a matter of timing: it will be a levy payment in advance instead of in arrears. I am advised that is why that provision is there—to deal with those changes.

Clause passed.

Clause 3 passed.

Clause 4.

The Hon. A. BRESSINGTON: I move:

Page 6, line 4—Delete all words in this line and substitute:

Section 2(2)—delete subsection (2) and substitute:

(2) This Act is intended to be beneficial to the interests of workers and in the event of an ambiguity under this Act a construction favourable to a worker should be adopted.

(2a) A person exercising judicial, quasi-judicial or administrative powers must interpret this Act in light of the principle set: out in subsection (2).

(2b) Any precedent that is inconsistent with the principle set out in subsection (2) will not apply to the extent of the inconsistency.

This amendment seeks to ensure that at some point in the future various adverse decisions and judgments that have disadvantaged injured workers, undermined occupational health and safety practices and eroded injured workers' rights and entitlements will be wound back. It seeks to recognise and affirm what WorkCover was originally set up to do and the problems it was supposed to remedy for injured workers.

That the Workers Rehabilitation and Compensation Act has not been treated beneficially to injured workers is indicative not of how the system was designed to operate, or what it now claims it was never to set up to do, but to redress the fact that it has been hijacked by commercial and other interests since the early 1990s.

The Hon. M. PARNELL: I speak in support of the honourable member's amendment. As I understand it, this amendment reverses the effects of the amendments introduced by the former Liberal government in Act No. 35 of 1995. They are the very same amendments that were so vocally objected to on the steps of Parliament House by the Premier, when opposition leader, in the video that has been already referred to.

It seems to me that supporting this amendment is, in fact, a perfect opportunity for all of us to redress the damage done then. The current Premier said that the changes made at that time should be fought and that no quarter should be given. So, here is the opportunity for us to do away with those changes and restore the basic common law position that was in effect before then. The position the Greens take to amendments such as this, and to this bill, is that workers rehabilitation and compensation legislation should be interpreted beneficially; we say that the legislation is intended to benefit the interests of workers, and that is how we should look at all interpretation.

I believe that without changes like this we are talking about a scheme that is, in fact, beneficial to employers. My understanding of the scheme as it was before those changes came in 13 years ago is that the premiums were much higher—in fact, in some instances even into double figures—compared with the 3 per cent it has been for the past few years. It seems to me that the principles contained in this amendment were good enough for Labor from the introduction of this legislation through to the 1995 Liberal amendments, and I think that then is an open invitation to Labor to go back to that position and show that it meant what it said all those years ago.

The Hon. P. HOLLOWAY: The government opposes the amendment. The amendment ignores a number of the objectives of the act which relate to achieving a balanced scheme, considering the interests of both injured workers and employers. The amendment also pays no regard to the fact that the existing act is already a remedial piece of legislation that exists to confer a benefit on people injured at work. This amendment is unnecessary and contrary to the government's goal of achieving a balanced scheme.

The Hon. R.D. LAWSON: I indicate that the opposition does not accept the statement made by the mover that the WorkCover scheme has been hijacked by commercial and other interests since the early 1990s—in fact, we reject that proposition. Furthermore, the opposition does not agree that the amendment proposed either fits in with the existing scheme of the legislation or that it adds anything of value to the legislation. We will be opposing it.

The Hon. A. BRESSINGTON: This amendment was moved because of the one-sided approach that the workers compensation and rehabilitation scheme is moving towards. As I said, it is a way of trying to bring back some of the injured workers' rights that have been forfeited over the years through amendments and bargaining, in the promise that they would get a fairer go if they gave up some of their rights as part of the workers compensation scheme.

This scheme, under its current functioning, can no longer be classed as a compensation and rehabilitation scheme, and this amendment tries to bring it back into some sort of centre place (if you like) where the corporation and employers are not the only ones to benefit. I am not at all surprised that the Liberal Party will not support it and I am certainly not surprised that the government will not support it, but I still believe that, unless we take a balanced view regarding what workers compensation and rehabilitation schemes were originally set up to do—that is, support injured workers through their injury and through recovery and, as the minister himself said earlier, to be judging in favour of certain actions that will give them some respite—then we should probably not even call this a workers compensation and rehabilitation scheme.

The Hon. M. PARNELL: I have a very basic question of the minister in relation to the change to the objects: how does it really alter the existing situation? In the objects clause as it is we have an object to provide for the effective rehabilitation of disabled workers and their early return to work. The government's amendment, which really imposes the same obligation, seeks to achieve a disabled worker's return to work taking into account the objects of the act—which is actually a circular argument because the objective is already in there. What substantial change does the government's amendment, rather than the honourable member's amendment, make?

The committee divided on the amendment:

AYES (5)

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

NOES (16)

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

Majority of 11 for the noes.

Amendment thus negatived.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell asked why the government was amending section 2. That is simply to ensure that return to work is emphasised by putting it into the

objectives of the act. No doubt, it is crucial to the success of any workers compensation rehabilitation scheme to get workers back to work. As I indicated earlier, part of the problem that we have in relation to the liability relates to the poor return to work rates that we have in this state. So, if we address that issue, not only will we make those workers a better offer—because we know that it is not in the best interests of those who stay on it for a long time, and that is quite clear—but also, of course, the financial health of the scheme will be significantly better off.

The Hon. M. PARNELL: I move:

Page 6, line 7—After 'to work' insert:

and to community life

This is a very important amendment which inserts into the object of the act the concept that, when workers are injured, they are not just injured in relation to their capacity to do work, although that is important: they are also injured in respect of their capacity to engage in family life, to engage in sport or, to put it all generically, to engage in community life. So, my amendment No. 2, in set 2, seeks to incorporate that reference to community life after the reference to 'work'. So, the object of the act is to establish a workers rehabilitation and compensation scheme that provides for the effective rehabilitation of disabled workers and their early return to work and community life.

It seems to me that the absence of such a clause shows a very utilitarian approach to human beings and their role in society. It basically says that their role is as economic units in the economy. It seems to me from the stories that injured workers have told me that a person's inability to go back to work is one thing, but their inability to engage in normal community life is in fact in many ways a greater impediment that flows from their injury back at work. So, it is about kicking the footy in the backyard, or taking the kids to the beach and swimming with them.

One of the workers who contacted me in relation to this provision, urging me to try to see whether I could fix it, was a 52-year-old employee who had a lower back and leg injury as well as an injury to the right wrist. The rehabilitation provider assisted in finding alternative employment and organised a meeting with a new employer regarding the worker's new employment. But immediately after the worker obtained the new contract of employment—this time with a self-insurer—the case manager closed rehabilitation prior to full duties. What that meant was that the new worker and the new employer had to manage on their own. One of the consequences of that was a further injury, including a psychological injury. So, they had missed out because the system closed them off too soon. They missed out in relation not just to their work but to their community life as well.

I think that, if we are genuine about giving injured workers a fair go, we need to look at getting them back into paid employment, but it is adding insult to injury if they cannot get back to normal family or community life as well. So, it is a very simple amendment. It does not undo any of the work in the bill; it simply adds that extra emphasis so that we see workers not just as economic units but as important members of the community as well.

The Hon. P. HOLLOWAY: The government opposes this amendment as the Workers Rehabilitation and Compensation Act already requires the establishment of rehabilitation programs, with the objective that workers suffering from compensable injuries are, where possible, restored to the workforce and the community. The amendment as proposed would make it the responsibility of the employer to seek to achieve the disabled worker's return to the community. The government does not believe this is an appropriate obligation to impose upon employers. An employer's obligation is to provide employment.

The Hon. A. BRESSINGTON: I rise to support this amendment. I am shocked that the minister would make the statement that it is the employer's responsibility to employ and not to guarantee any sort of quality recovery to an injured worker. Probably the guts of the problem with the South Australian scheme is that employers are not held to some sort of account for injuries that occur at work, and it is the difference between the South Australian scheme and the Queensland scheme, which does not have a long tail and actually seeks to make employers partly responsible for the well-being of their employees once they are on their workers compensation and rehabilitation scheme.

What the Hon. Mark Parnell said about that quality of life being an essential part of recovery is in fact true. As you said in your speech, Mr Acting Chair, we have all heard sad stories of injured workers and how their life—not just confined to the workplace but also their social and family life—is not only interrupted but often ruined by these injuries. One person wrote to me since this debate began (I will call him John), having had a lower back injury. He was in such excruciating

pain and was told originally by the doctor that it would be a recurring injury and that if it had not healed within six months it would never heal. His return-to-work plan was enforced and the doctor also said that nobody on her program on workers compensation would be allowed to just bludge. This man was sent back to work, the injury recurred and at one stage his pain got so bad that he was belting himself with a golf club and literally broke 12 of his own ribs trying to find some sort of way to relieve the pain he was feeling. That may sound crazy to a lot of people, but this is the beginning of that downward slope where people have no relief and will self harm in order to try to overcome the nagging and constant pain.

'Return to work' is a phrase we are using quite airy-fairy in relation to this bill and in relation to workers compensation rehabilitation. Returning people to work too early is not the solution to this, but making sure they have quality of life and that they can continue to recover and rehabilitate and get back some of that community living they had prior to the injury must be someone's responsibility, for goodness sake. If it is not the employers, practitioners and whoever else is involved in this who are held to account for this and the scheme itself, then why do we bother having this if it is just a token gesture? We use phrases like 'return to work, 'rehabilitation, 'recovery, 'medical treatment' and God knows what else, when in fact, as the Hon. Mark Parnell said, people are thought of and treated like economic units. There is more to workers rehabilitation and compensation than the economic rationalist viewpoint.

It was not that long ago that the Hon. Gail Gago was asking how much the life of a dolphin was worth. What is the life of an injured worker worth as far as being able to recover, rehabilitate and move on with their life? If we do not include the Hon. Mark Parnell's amendment and include community life as well, and if it is not written in legislation, then it will not be enforced or be a consideration.

The Hon. R.D. LAWSON: There is a great deal of strength and correctness in what the Hons Ann Bressington and Mark Parnell have said in relation to this matter. However, their comments are astray of what this amendment seeks to do. The objects of the act are set out in it. What the bill seeks to do is to impose upon the corporation and the employer, from whose employment a compensable disability arises, an obligation to seek to achieve a disabled worker's return to work. That provision is not currently in the act. It is proposed to be included, and we believe it is entirely appropriate that mention of return to work be made.

Our criticism of this bill is that it does not contain enough provisions to ensure that the return to work rate will improve, but we do not believe that inserting words like 'community life' will either enhance or have any meaningful effect on the way in which the scheme operates, and we will not support the amendment.

The Hon. P. HOLLOWAY: The Hon. Robert Lawson has summed up the impact of the original clause and objects of the act very well. The current Workers Rehabilitation and Compensation Act, at section 26(1), relating to rehabilitation program, states:

> The corporation shall establish or approve rehabilitation programs with the object of ensuring that workers suffering from compensable disabilities—
>
> (a) achieve the best practical levels of physical and mental recovery; and
>
> (b) are, where possible, restored to the workforce and the community.

There it is. It is in the current act. We are not amending section 26(1): 'The corporation shall establish programs...with the object of ensuring that workers...are, where possible, restored to the workforce and the community.' The honourable member is saying that in the objects clause this would be an obligation on employers. Obviously, employers have obligations in relation to their workforce. Primarily what we are trying to do is ensure that the objects achieve the disabled worker's return to work, but the return to the community we suggest is something which is a responsibility for WorkCover, or the corporation, and it is there in the act now under section 26(1).

The Hon. M. PARNELL: I thank the minister for drawing attention to that section, but to me it still does not answer the fundamental question that if we are not to regard these people as purely economic units we should include up the front, in the objects clause, a reference to community life. I pose the following scenario: take a person who is injured to the extent that they cannot work and they cannot kick a footy with their kids. Let us say they are undergoing rehabilitation and they are rehabilitated to a state that is just fine for going back to work, but they still cannot kick the footy. What the minister is saying is, 'Well, it's not WorkCover's responsibility to rehabilitate them back to that level where they can kick a footy with their kids.' The issue is that the only reason they were injured is because they were at work. The work injury is what we need—

The Hon. P. Holloway interjecting:

The Hon. M. PARNELL: It would also be the employer's responsibility to make sure that injuries were not further aggravated. Elements are in there which say that the worker's role in family and community life is just as important. I acknowledge that, yes, there is a reference to the community in the rehab program, but there may be issues outside rehabilitation where a person's role in the community is important. The way we reflect that in legislation is that we acknowledge it in the key provision that relates to the purpose of the legislation, that is, the objects clause. I do insist on this amendment, and I urge all members to support it.

The committee divided on the amendment:

AYES (5)

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

NOES (16)

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

Majority of 11 for the noes.

Amendment thus negatived.

The Hon. A. BRESSINGTON: I move:

Page 6, lines 3 and 4—

Delete all words in this line and substitute:

Section 2(2)—delete subsection (2) and substitute:

(2) This act is intended to be beneficial to the interests of workers and in the event of an ambiguity under this act construction favourable to a worker should be adopted.

(2a) A person exercising judicial, quasi-judicial or administrative powers must interpret this act in light of the principles set out in subsection (2).

(2b) Any precedent that is inconsistent with the principles set out in subsection (2) will not apply to the extent of the inconsistency.

This amendment continues to emphasise a requirement that WorkCover should focus its energies and resources towards ensuring a proactive and strategic return to work through a structured rehabilitation case plan. This amendment addresses the reasons behind WorkCover's long-term failure of what it claims to be poor return to work rates by injured workers and seeks to compel WorkCover to implement rehabilitation plans in keeping with the spirit of the act.

I know that the mantra is that it does deliver adequate rehabilitation, that it is working to improve all of that, and that it is not the fault of the corporation, but injured workers tell a different story, and rehabilitation providers tell a very different story. Only last week I had a rehabilitation provider in my office telling me about the obstructions put in the way of injured workers to access adequate rehabilitation and prepare them for return to work.

Again, I stress that we need to include the word 'rehabilitation' in this act wherever we are referring to return to work rates, and also 'community life' (as in the Hon. Mark Parnell's last amendment) to emphasise that this bill is dealing with human beings, and that it is a human right for them to be able to have some sort of guarantee that everything will be done to effect their recovery. The word rehabilitation means to restore a person to their original state of wellbeing prior to an injury, accident, or any sort of trauma. We are not seeing that happen.

As I said in my second reading speech, if this was successful, if these return to work rates were not so poor because of poor rehabilitation and a lack of the corporation to allow the level of rehabilitation that is necessary for an injured worker, we would not be having this debate. More than likely, there would be fewer people on the long-term tail of this bill. If we are going to stay with

the spirit of compensation and rehabilitation rather than just a WorkCover Corporation bill, we should be enshrining this in every paragraph and at every level of this bill necessary to make sure that the corporation, and even EML, for that matter, gets it.

It is interesting that you hear from the self-insured sector that the amendments to this legislation will not necessarily affect in any way their performance of return to work rates. They do not need improvement in their return to work rates. They do not need improvement in their rehabilitation programs. Why? Because they apply this legislation as it is meant to be applied. It obviously then stands to reason that WorkCover is the failing corporation, that rehabilitation providers scream out that they are not being accessed, that there is very little choice of rehab, that it is cost prohibitive, and that, if it is going to cost too much, the corporation will not approve it. So, let us make it very clear to the WorkCover Corporation, EML, and anyone else who has to enforce or enact this legislation that rehabilitation and return to work go hand in hand.

The Hon. P. HOLLOWAY: We are actually debating the government's amendment to the 'objects of the act', which provides:

> Section 2—after subsection (2) insert:
>
> > (3) The corporation, and the employer from whose employment a compensable disability arises, must seek to achieve a disabled worker's return to work (taking into account the objects and requirements of this act).

The government is inserting this into the objects to ensure that it is clearly spelt out that the objective is return to work. It also provides:

> ...(taking into account the objects and requirements of this act).

The amendment moved by the Hon. Ann Bressington is simply redundant. Returning injured workers to work as soon as they are medically fit is one of the primary principles of effective rehabilitation. The existing clause contemplates return to work efforts taking into account the object requirements of the act, which includes rehabilitation programs. I have already quoted from section 26(1) of the act and much more. In that sense, the amendment is just totally redundant.

The Hon. A. BRESSINGTON: I do not think that the minister is on the same plane of reality. I specifically mentioned that return to work and rehabilitation are two separate issues. There are people being returned to work too early and then incurring further injury because they are not rehabilitated properly, because they do not get access to those rehabilitation plans and programs that are supposedly out there and available to everyone.

This is about separating these issues and the language; return to work is a very different thing to rehabilitation. It is the lumping in of return to work and rehab that has caused all this confusion in the first place, and the lack of enforcement of this legislation by the WorkCover Corporation and EML and any other agency in the past. Stop trying to muddy the water by lumping together all of this terminology to mean the same thing. Return to work does not mean rehabilitation, and rehabilitation does not mean return to work. They are two separate things, and they are a sequence of events, if you like. It is quite possible to have return to work without rehabilitation. There are plenty of stories to show that.

The Hon. R.D. LAWSON: We believe that this act exists for the benefit of injured workers not for the benefit of rehabilitation providers. The amendment actually qualifies or limits the breadth of the current proposal, which would be an object of the act, that the corporation and the employer achieve a worker's return to work.

If that return to work can be achieved without a comprehensive rehabilitation program, the worker ought to go back to work. To say you cannot go back to work because somebody has not prepared, at great expense to the scheme, a comprehensive rehabilitation program, is entirely missing the point and counterproductive. Accordingly, we will not be supporting this amendment.

The Hon. M. PARNELL: I do support the amendment, and I appreciate the sentiment with which it has been moved by the Hon. Ann Bressington. Like her, I have received a great deal of correspondence and communication from injured workers and their representatives about the quality of rehabilitation assistance that they received from WorkCover. The overwhelming majority of that feedback is very negative.

I think that the intent of the honourable member's amendment, which is to reinforce the idea that rehabilitation must be comprehensive—and that is the word that sticks out to me in this amendment—has merit. Having said that, I have some serious concerns overall about the objects clause. As we work our way through it, I will set out my concerns. For now, I think this is a

worthwhile amendment. I acknowledge what the Hon. Robert Lawson says—that you can have a return to work without a comprehensive rehabilitation program—but I say that the argument I used in moving my amendment applies here as well. If you think that a comprehensive rehabilitation program is an important part of the legislation, let us put it right up front in the objects clause.

The committee divided on the amendment:

AYES (4)

Bressington, A. (teller)	Evans, A.L.	Hood, D.G.E.
Parnell, M.		

NOES (15)

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

PAIR (2)

Kanck, S.M.	Hunter, I.K.

Majority of 11 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 6, after line 8—Insert:

(4) In connection with the operation of subsection (3), the Corporation or a self-insured employer (as relevant), and the employer from whose employment a compensable disability arises, must take all steps that are reasonably practicable to expeditiously achieve a disabled worker's—

(a) return to work—

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

(ii) at a rate of pay that is at least equal to the worker's previous rate of pay; and

(b) return to his or her previous level of participation in the community (insofar as this was affected by the occurrence of the disability).

This amendment is yet a further attempt to strengthen the objects clause and to give it some real teeth. The amendment that I am proposing is the insertion of a new subsection (4) which will require:

...the corporation or a self-insured employer...and the employer from whose employment a compensable disability arises, must take all steps that are reasonably practicable to expeditiously achieve a disabled worker's—

(a) return to work...

The amendment then goes on to set out that that return to work should be:

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

(ii) at a rate of pay that is at least equal to the worker's previous rate of pay; and

(b) return to his or her previous level of participation in the community (insofar as this was affected by the occurrence of the disability).

My intention in moving this amendment is to try to fix the objects section from its current position, which is (pretty much) a redundant overlay of existing provisions, and to make it something that actually has meaning and substance. The first thing that it does is place upon the employer and WorkCover an imperative to act swiftly and comprehensively. That is something that is desperately needed. That is why I have used the word 'expeditiously'.

To give an example: what I found, with the people who communicated with me, are cases of quite atrocious delays in dealing with very basic requests made by injured workers of WorkCover and of Employers Mutual Limited, the claims agent. For example, an injured worker made a request for gym access to help them rehabilitate themselves, and after five months they still could not get an answer to that basic request. They could not get a decision, either yes or no. Just to get

a decision on such a basic request, the injured worker had to start a case before the Workers Compensation Tribunal.

The case that I have in mind, in particular, was of a worker who was 45 years old and who had multiple injuries, involving head, neck and shoulders. The injuries included neurological, soft tissue and joint injuries. There was a series of diagnoses and treatment from various allied health specialists, and part of the recommended treatment program was to attend a gym to improve the worker's fitness, posture and strength to aid recovery from their injuries. That sort of approach is in keeping with best practice guidelines for the nature of the injuries.

In that case the inexperienced and young case manager refused to approve the gym program as part of the worker's rehabilitation and return-to-work plan, even though it was recommended by the treating doctor and rehabilitation provider. So, if WorkCover's repeated references to the importance of addressing return-to-work issues swiftly are correct and are to be taken at face value, then it is critical for action to be taken swiftly.

It seems to me, from the information presented to me, that both WorkCover and Employers Mutual largely fail when it comes to taking rapid action. If the government and WorkCover were sincere about getting injured workers back to work through quick action, then this amendment would have the support of all members.

Another aspect of this amendment that is important—and I have talked about the need to expeditiously take action—and if we are serious about delivering a fair go to injured workers and their families, is that we should be trying to rehabilitate injured workers to return to work of equal, or even better, pay and status. Sadly, the track record of WorkCover, under the present government and the previous government, is to try to push injured workers into the most menial, low skill, insecure, low pay and low status jobs possible, just to get them back to any work.

What that means is that the worker and their families can continue to suffer from the injury and the illness for the rest of their lives through having to go into that type of work. So, when injured workers set their sights on a rehabilitation path that can lead them to bigger and better things, WorkCover, and in some cases some of the exempt employers as well, do everything they can to turn the light off at the end of the tunnel and to prevent people from having those aspirations to actually do better for themselves.

You can ask any injured worker who has experience of the so-called rehabilitation system that is run by WorkCover and often the reaction is that, if they said they had mapped out a new career path suitable to their injuries but it involved university study, there is no help for them. Injured workers who have been through the rehabilitation services provided by WorkCover know that any such aspirations would be relentlessly crushed and denied by WorkCover.

I think all members of this place should be focussed on trying to deliver a high wage/high skill economy for South Australia. That includes workers who have been injured and who are re-entering the workforce at a different level. We should still focus on high wages and high skills. So, when workers are stripped of their original career path and the ability to use their existing skills through their injury, we should all be looking to develop their human capital as much as possible to meet the skills of the economy, not to churn out more and more workers that are reliant on insecure casual jobs with little or no hope of a career path.

We heard about the skills shortage, and here we have a system of injured workers crying out to be retrained, and yet the system fails those people if they set their sights higher than WorkCover or the claims managers are prepared to allow them. It seems to me that there is a tremendous pool of human capital in the ranks of injured workers but, rather than treat them as an opportunity for development, WorkCover has simply seen them as a problem to be disposed of as cheaply as possible, no matter what the long-term cost might be to them, their families or the economy.

It is not surprising that so many injured workers are not at all enthusiastic about the rehabilitation that WorkCover provides, especially when it is made clear to them that the only goal they are allowed is a low paid, low status job that leaves them far worse off than before their injury.

If WorkCover supported injured workers' aspirations for more fulfilling jobs (heaven forbid, even jobs with higher pay and status than before the injury), it would be natural to expect that injured workers would show a lot more enthusiasm for the rehabilitation programs offered to them—certainly more enthusiasm than they have for the depressing de-skilling or industrial scrapheap, if you like, WorkCover tries to push injured workers onto now.

According to the people who have contacted me, such as the unions and injured workers, WorkCover continues to put bureaucratic hurdles and a short-sighted cost control approach in the way of genuine rehabilitation, which ends up costing far more than meaningful rehabilitation. I think that it is critical that the legislation spell out exactly that its primary object is to ensure that rehabilitation is not pushed to the bottom of the pile and ignored, as it is.

It seems that, if my amendment is supported, it will enhance the other existing objects. For example, object (1)(a)(iv) concerns reducing the overall social and economic cost to the community of employment-related disabilities. I doubt that there can be any serious challenge to the fact that delivering better rehabilitation will reduce the overall social and economic costs. So, that objective is assisted in being met.

Objective (v) relates to containing employers' costs within reasonable limits and minimising the impact of employment-related disabilities on business. Once again, the best way to do that is to get serious about rehabilitation; again, it is a supportive amendment. Object (1)(b) relates to having an efficient and effective scheme in terms of administration. If WorkCover actually delivered decent rehabilitation, the scheme would be more efficient and effective.

Object (1)(d) ensures that the scheme is fully funded on a fair basis and, by delivering meaningful rehabilitation and getting injured workers back to work, the income maintenance costs of the scheme, which make up the lion's share of the liabilities, will be massively reduced. It delivers the full funding the government seeks without having to go down the path of cutting the entitlements of injured workers.

So, if the government were serious about rehabilitation, if it wanted to go beyond just the hype and spin of having the best scheme in the country (which it is not), and if it were serious about putting return to work and rehabilitation at the centre of our compensation scheme, this amendment should be supported. The amendment also introduces the element of speed in terms of providing rehabilitation expeditiously. This means that cases such as that where the person was being denied their gym membership for five months would take a very different turn.

I was contacted by another injured person who had a shattered wrist. It took them nine months to get out of EML an answer to their question about whether they could have their car modified so that they could drive. It would have saved everyone a lot of money, because they were using taxis, but they could not get an answer in a timely manner. WorkCover complains about injured workers staying longer on the scheme, but it is within its power to reduce some of the delays, because it is the cause of many of the delays. If we think it is a problem, then we fix it through this legislation, through my amendment, and require them to act expeditiously.

I think that attempting to return workers to work of equal or greater status and pay as their pre-injury work is also crucial. I think it would have a major impact on something with which every stakeholder I have spoken to agrees, whether they be from WorkCover or the unions—that is, secondary psychological illnesses, particularly depression, that so often flow from the physical injury. The incidence of such psychological injuries can be greatly reduced when the light at the end of the tunnel is brighter and there is actually a possibility for people in the unfortunate circumstances of their injury to improve their lot.

I do not think that many of us should be surprised at the current high rate of serious depression amongst injured workers, because at present, in addition to coping with the pain and disruption to their life, they are also victimised by a dysfunctional system that makes it clear that WorkCover is interested only in trying to prove that they can do a dead-end job and then kick them off the system, rather than trying to give them a genuine career.

I think that injured workers need to be helped to make a transition in life when they cannot return to their pre-injury employment. I think that many of us would be depressed if there were no assistance to achieve something in our life. With those words, I urge honourable members to support this amendment. I think that it will make the objects clause meaningful, rather than the fairly hollow list of platitudes it currently is.

The Hon. P. HOLLOWAY: No-one is arguing that effective rehabilitation should not be a key part of the Workers Compensation and Rehabilitation Act. What we are discussing here, however, is the objects, and I regard something as highly prescriptive as the honourable member suggests as just inappropriate to put it in an objects clause. I think that it really defeats the whole purpose. If you start to get that level of prescription in objects in acts I think the courts will very soon start to ignore them. However, that is just an opinion.

In relation to retraining generally, I mentioned earlier the return to work fund of $15 million that the government is providing under the package, even if it is not specifically referred to in the legislation. The retraining expenditure is now at the highest level in the history of the scheme; there has been a threefold increase in the past five years and the government has made a commitment to spend more. I suggest the appropriate place to argue the rehabilitation scheme is when we get onto that part of the bill; it is quite inappropriate to put that level of detail in an objects clause.

The Hon. A. BRESSINGTON: I rise to indicate that I support the Hon. Mark Parnell's amendment. I cannot help but be amused by the minister saying that we are trying to be too specific with the objects of this bill. I repeat: the self-insured sector is able to enact this legislation and it works for them. I know there are a few differences but there is no excuse, other than the fact that perhaps the legislation is currently not prescriptive enough for the WorkCover Corporation and EML to understand. Perhaps that is why it is not being enacted in the same way it is through the self-insured sector. If we have to be prescriptive in the objectives of the bill to make it happen then so be it.

I would like to quote from a speech made on 7 February 1995 just to show that it is not only the Hon. Mark Parnell and myself who have issues with the WorkCover Corporation and how it treats injured workers. The Hon. Kevin Foley, in the House of Assembly, said:

> I have some problems with the way in which the WorkCover Corporation looks after its clients. Many of the complaints of those who come to see me are about the way they are mistreated, mishandled or treated with absolute contempt by the WorkCover Corporation. So, I come in here no fan of the WorkCover Corporation per se...I am prepared to stand in this chamber and say that the WorkCover Corporation needs to improve its act in the way it deals at the coalface with clients...

I ask that, during the course of this committee stage, if any members have any positive feedback from injured workers between 1995 and 2008 that show things have actually improved since the Hon. Kevin Foley made his quite passionate speech in 1995 on changes to WorkCover, then by all means bring those stories forward. Let us hear about the improvements that have occurred from the injured workers, not from the corporation or the minister or anyone else in here representing any other agenda. Let us hear about any positive changes that have occurred since 1995 with the amendments that were so vehemently opposed by the Labor government.

If the Hon. Kevin Foley was quite contemptuous of the WorkCover Corporation and the way it handled its workers back then, I say that that is more reason for us to be even more prescriptive in this part of the bill, the objects of the act, so that the WorkCover Corporation has very little difficulty in interpreting how it is supposed to be enacted and what are the objects. Perhaps we can assist it in that area by making it as simple as possible.

The committee divided on the amendment:

AYES (4)

Bressington, A.	Evans, A.L.	Hood, D.G.E.
Parnell, M. (teller)		

NOES (15)

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

PAIRS (2)

Kanck, S.M.	Hunter, I.K.

Majority of 11 for the noes.

Amendment thus negatived; clause passed.

[Sitting suspended from 18:10 to 19:45]

Clause 5.

The Hon. M. PARNELL: Clause 5 inserts a number of new definitions and I note that there are seven amendments to clause 5. I would like to ask a question or two of the minister in relation to this clause. My first question is in relation to subclause (20), which inserts new section 3(9). In relation to the question of who is an employer, why are decisions such as this to be made by regulation when other, in many ways important, decisions under this regime are made by the minister or WorkCover, or just published in the *Gazette*? Why does this item require a regulation?

The Hon. CARMEL ZOLLO: Are you talking about the prescribed allowance?

The Hon. M. PARNELL: I am talking about the government's clause 5(20) which provides 'Section 3—after subsection (8) insert...' and then new subsection (9) talks about the regulations prescribing work or work of a specified class, basically designating a person as a presumptive employer, and so on. Why is that particular issue (which relates to the identity of the employer)—in fact, a clause of some benefit to the employer—in regulations when a lot of other things are not?

For example, something that is not in regulations are the guidelines for calculating section 43 entitlements. They are not passed through regulation; therefore, they have no parliamentary oversight. So, issues of most concern to workers appear to be not subject to regulations and therefore parliamentary scrutiny, but issues in relation to employers are, and I ask why this item is seen to be an appropriate subject for regulation.

The Hon. CARMEL ZOLLO: I am advised that it is a technical change to support the position involving a deemed employer of deemed workers, where there is no contract employment relationship. It is particularly brought to our attention with recent amendments concerning the coverage of jockeys.

The Hon. M. PARNELL: Is there any particular problem that this clause was inserted to overcome? Does the minister say that it is in relation to jockeys?

The Hon. CARMEL ZOLLO: That is our advice, yes.

The Hon. M. PARNELL: Who their employer is—is that the issue in relation to jockeys?

The Hon. CARMEL ZOLLO: That is correct.

The Hon. M. PARNELL: New subsection (15) proposed to be inserted by this amendment relates to indexation. Where the word 'indexed' appears, a formula is then set out for calculating what that means. Is there any difference between the process of indexation under the proposed new subsection (15) and the existing arrangement for indexation?

The Hon. CARMEL ZOLLO: My advice is that there is no change, that it is the same as currently applies.

The Hon. M. PARNELL: I wonder about the need to put it in if there is no improvement or difference. I now move:

Page 6, after line 27—Insert:

(6a) Section 3(1)—After the definition of dependant insert:

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

This amendment in the definition section relates to inserting the definition of a designated common law liability. This is the first of a number of amendments which together would give South Australian workers the same rights that workers in every other state of Australia have, namely, the basic right to take action when you are hurt by negligence or recklessness. I acknowledge that the amendment is identical to the one the Hon. Ann Bressington moved and I am happy for her to speak to mine rather than move her own. The issue of common law rights is not one that I explored in any great detail in my second reading contribution, as I left it until the committee stage.

However, what I will say is that the issue of common law rights is one that the Greens around Australia have supported. A Greens member in the upper house of the New South Wales parliament, Lee Rhiannon, is on the record as successfully maintaining common law rights in that state. Ms Rhiannon said in the New South Wales parliament:

The Greens strongly support the right of seriously injured workers to have access to common law remedies. We believe that such access not only protects the injured worker and provides some form of compensation for the injury but that it also acts as an important discipline on employers and their insurers to improve workplace safety.

In New South Wales, less than 2 per cent of all workers comp matters are dealt with by common law. Nonetheless, common law damages remain a crucial component of the scheme. I think it is worth noting that, whilst it might only be a small number of cases, it can be a fairly large proportion of the total compensation pool and, as has been referred to already, some 28 per cent of compensation payments in Victoria come through the common law scheme.

The effect that common law has on behaviour is that it is the simple ability of a worker to pursue damages through the courts that of itself helps to protect from negligent behaviour. It is a bit of a silent sentinel, in a way. Without such mechanisms, I think that standards of care inevitably degrade, with the consequential human cost that flows from that. I can see no reason why seriously injured workers should be denied the rights granted to other members of our society simply because the injury occurred in relation to employment. If it occurred elsewhere, a person would have the right to sue a party who is at fault. I do not think that employers should be exempted from exposure to common law remedies.

A number of the groups that contacted me—in particular, unions and lawyers—urged me to move an amendment to reinstate common law rights. It has been said before in a derogatory fashion that the only reason why lawyers would be pushing for common law rights is that they stand to gain money out of it. I think that attitude has been regarded as insulting by many of the lawyers who work in this field, who I believe have an overriding duty to their client to get the best outcome they can for them, and that that prevails over the supposed self-interest. I think it is too easy for the government to back out of something like common law rights simply by saying that some party might stand to gain from it other than the injured workers, or in addition to the injured workers.

One lawyer wrote to me and said that, despite adopting many of the principal provisions of the Victorian act (which this legislation does), the Clayton report and the bill fail to at least provide some access to common law for injured workers against their employers, and that the only relevant access at present relates to motor vehicle injuries. I will not read the rest of the letter, but the point has been made several times that all other jurisdictions have some access. There are limits to what that access is; it is not open-ended, but they have some access.

Queensland has probably the most open access provision to the courts and it, of all jurisdictions, is the one with the least problem and it does not have any of this so-called unfunded liability. So, I think it is wrong to suggest that, if you have common law rights, you will have an unfunded liability problem. You can have common law rights and still do away with the common law liability. You just have to follow the Queensland example rather than the Victorian example.

There is no reason why negligent employers should not be held accountable. The unions in one of their position papers to me pointed out that in Victoria, as I said, it is 28 per cent of total claims, but the dollar amount is something like $1.3 billion paid to injured workers as a result of serious employer negligence. The unions pointed out, as have other commentators, that the deterrent effect is one of the main advantages of common law.

By 'deterrent', we are talking about an incentive on employers to have safer workplaces; and if you have safer workplaces you have fewer injuries. So, the very existence of common law makes workplaces safer. The other point, of course, is that common law can help to reduce the scheme's long tail by allowing some workers to finalise their claims and not to be on the system for such a long time. Separation of court awards of damages and compensation from the scheme can ensure that costs were borne by the employer who was found to be negligent. It is like we see in other jurisdictions. It is the equivalent in workers comp of the polluter-pays principle in environmental law.

Another principle is at stake here, that is, that good employers should not have to subsidise poor employers. The principle is one that that level of cross-subsidy in fact is to the advantage of the worst of the employers. People have written a number of other submissions to me. The Victorian figure of 28 per cent can be compared to an even higher figure in Queensland of 41 per cent of payments coming from common law claims. It is a smaller figure in Tasmania, where it is only 5 per cent, and in Western Australia it is 13.7 per cent. When we talk about Victoria, it is one of the great ironies of this bill that we have copied all of the worst of Victoria's system but not the best.

I want to look at Victoria's system and find out how it went about reinstating its common law rights. What we find is that, in April 2000, the Labor government introduced a bill into parliament to reinstate common law rights—the Accident Compensation Common Law and Benefits Bill. In his

second reading explanation of the bill, the Minister for WorkCover, the Hon. Mr Cameron, said in the Victorian parliament:

> The purpose of this bill is to implement the Bracks government's election commitment to restore access to common law damages for seriously injured workers, to sue employers and recover damages. The government believes that the right of seriously injured workers to sue negligent employers is a fundamental right that should never have been removed.

That is what the Victorian Labor government said. The minister's second reading explanation further states:

> The government is committed to the restoration of common law rights for seriously injured workers within the context of a fully funded and financially stable system which maintains competitive premiums.

So, it was not a reckless, irresponsible act of the Victorian government: it did it in the context of financial responsibility, and we can do it here as well. There is no reason why we cannot. The Hon. Mr Cameron, the Minister for WorkCover, further said:

> The government promised the restoration of common law rights to seriously injured workers within its first 100 days of government.

And that is just by way of emphasis to show how important the Labor Party in Victoria saw it was to distance itself from the Kennett era and from Jeff Kennett's removal of those rights. Just one other brief sentence from the minister's second reading explanation states:

> The commitment of this government to restore common law rights to seriously injured workers has an equal commitment to ensure that the costs of the restoration of common laws rights are confined, and the number of common law claims and the cost of those claims can be actuarially measured in a reasonably predictable manner.

Again, it is in that context of financial responsibility that the Victorian government saw fit to reintroduce common law rights. As I have said, this bill has a number of amendments dealing with common law. This is the first one of them because it puts the definition back there in the scheme. A former prominent member of this place, now senator elect, the Hon. Nick Xenophon, certainly was on the record saying that consideration should be given to the restoration of common law rights for injured workers. He provided four fairly succinct reasons. He said them better than I can. I will read them; they are only brief. The four reasons that the Hon. Nick Xenophon suggested were, first:

> Damages reflect the negligent conduct of an employer leading to the injury sustained. As such, this would act as a disincentive for such conduct (through higher premiums), and give the injured worker a sense of closure and justice in the settlement of a claim based on such principles.

I think that psychological aspect is important as well. People need to see that justice has been done. It is one thing to talk about a no-fault scheme, but when clearly there is fault most people have an expectation that that be recognised somehow. The second reason:

> The current WorkCover scheme discriminates against workers with a psychological or psychiatric disorder in terms of non-inclusion for such injuries under schedule 3, which in turn leads to no section 43 lump sum payment for non-economic loss being made available to the worker.

The third reason:

> Workers who sustain an injury that after several years has left little residual disability, but who suffered significantly until that time, now receive a paltry payment under section 43 for such pain and suffering.

The fourth reason:

> Injured workers should have the right to pursue a common law claim for economic loss in cases where the injury is due to the employer's negligence, in that this provides an equitable basis for determining the extent of the worker's long-term reduction in earning capacity.

I think that the Hon. Nick Xenophon makes the point well. There are other arguments in favour of it, but I think that he has hit the nail on the head with those four.

The situation is that, with every other state having that right, I think we need to incorporate it into our law as well. As the flip side to common law claims for damages, you also have prosecution. In cases of gross negligence you have a role for the criminal law too. There is no other state in Australia where seriously negligent employers can get away with knowing that there is no chance of a badly injured worker suing them because under this bill—unless we fix it—that will not be allowed to happen.

Again, I ask why employers who have a good track record in workplace safety should have to subsidise those employers who injure their workers as a result of serious or gross negligence. The employers who cause the most damage should be the ones to pay. The good employers, on the other hand, should be rewarded through lower insurance premiums, and the bad employers

should be punished with high premiums. I think that the scheme would rapidly return into the black if long-term serious injuries were compensated by the common law system and reduced as a result of the deterrent effect of such a scheme.

The workers compensation scheme could then concentrate on real rehabilitation efforts if the burden of long-term serious injuries was compensated by the common law system of insurance. Employers, I think, would feel tangible benefits. Many would see reduced premiums, and the focus on workplace safety would add to that task as well. Negligent employers, on the other hand, would be forced to confront work site safety in the face of rising premiums.

In moving my amendment, I await the government's response, but my basic question of the minister is: why shouldn't the worst abusers of workplace safety be made to pay more?

The Hon. A. BRESSINGTON: The Hon. Mark Parnell has really said it all, and I spoke at length about the restoration of common law in my second reading contribution to this bill. I would like to clarify this: if we are not going to restore, or we are not interested in restoring, common law so that injured workers can receive some sort of finalisation of claims or whatever and we are not going to concentrate on improving occupational health and safety standards in this state, then it appears that the full burden of reducing workplace injury lies entirely with the workers.

They have to be more careful and, if they are injured and want to continue to have a reasonable income, then it seems their only option is to continue to work while they are injured because, once they get onto the scheme, they get stuck in the scheme and now they will have a minimum amount of time to be able to access any sort of treatment and rehabilitation, and they will be expected to return to work anyway.

So, without restoring common law as a mechanism by which injured workers can access some sort of justice in this system, this parliament has basically decided that injured workers have no rights at all in the workplace, and that negligent employers basically can be rewarded for their negligence and ongoing negligence through, eventually, reduced levies. I ask again how we can even think that any of this is acceptable. South Australia was referred to by, I think, the Victorian Premier as a backwater, and I think this piece of legislation as it stands, with the government and opposition being immovable in wanting to support any measures of restoration of common law, are basically showing just what a hillbilly turnout we are becoming and what a very one-sided piece of legislation this bill is.

As I said earlier, for over 10 years now, as far back as I have read, every politician in this place and the other place has received numerous complaints about injured workers and the restriction that is placed on their life through being caught in this system and through their not having any legal recourse to solve their problems and get any sort of payment that would be necessary for them to be able to move on with their life.

The Hon. Mark Parnell mentioned that in Tasmania the money paid through common law totals about 28 per cent, and in Queensland 41 per cent of payments to injured workers comes through common law proceedings. As I said also in my second reading speech, on the day of the demonstration on the Parliament House steps, the Hon. Mark Parnell, the Hon. Sandra Kanck, the Hon. John Darley and I attended a presentation involving the Queensland scheme. They were having the same debate 10 years ago, having the same problems and facing the same legislation. They decided to become proactive, and their scheme is very successful. If we are serious about workers compensation and looking after our injured workers, we have two models that we could be taking examples from rather than trying to create our own model based on no evidence and no performance at all. We could integrate some of the things that Queensland and Tasmania have done in their state and create a good scheme in South Australia.

I am surprised at the bloody-mindedness of the government and the opposition on this matter. For the opposition simply to say, 'It's your mess, you clean it up,' is not good enough. They are there—and it is their job—to loyally oppose. And the government is here to introduce legislation that is in the interests of the true welfare of the people of this state. The one amendment reintroducing common law would be acceptable to unions and injured workers, and the only people it is keeping accountable are negligent employers.

I would like the minister to state now—this is probably a better forum to ask this question than in the clause 1 debate—what is the resistance and explanation of this government as to why it will not even consider giving injured workers access to common law. If it says it is because it will create a feeding frenzy of lawyers and whatever else, that has not happened in other states, so why would South Australia be any different?

The Hon. CARMEL ZOLLO: We clearly oppose this amendment, which we believe is totally contrary to the return-to-work principle, and a return to the lump sum culture. The government opposes this amendment as it opposes the reintroduction of common law into the South Australian workers compensation legislation. The delays associated with and adversarial nature of the common law action are contrary to the goal of return to work, as I have mentioned. Maximizing incapacity and symptoms is encouraged in order to maximise damages.

Disputes lengthen a worker's time on the system and distract from the focus on return to work. Common law over-compensates minor injuries and significantly under-compensates more serious injuries compared with long-tail statutory arrangements such as exist in South Australia.

The prerequisite requirement of having to demonstrate fault for access to common law damages departs from the philosophical no-fault basis of statutory workers compensation schemes. The relatively high transaction costs associated with common law mean that it is a less efficient mechanism for delivering benefits to injured and ill workers than statutory benefit arrangements.

The independent review of the WorkCover scheme—the Clayton review—did not support the reintroduction of common-law. It states:

> Like redemptions, access to common law would seriously compromise the success of the other proposals and would lead to cost escalation in the medium term.

The Hon. Mark Parnell made several comments. I think he was making some comparisons with the Queensland scheme and its common law. I am advised that, under the Queensland statutory scheme, if employees receive just over $200,000 over five years they are then removed from the scheme. Our bill also increases compensation for permanent impairment through larger lump sums. Our legislation is about looking after seriously injured workers in our state without their having to prove fault. We have better arrangements set up through our system and more generous weekly payments also.

In relation to prosecution, negligent employers face prosecution through OH&S legislation. We have had some recent legislation changes in relation to OH&S penalties. We cannot make comparisons with other states, particularly Queensland, on payments, because they have a completely different scheme. We emphasise weekly payments and statutory entitlements: they emphasise common law entitlements, which have to be fought through the court system.

The Hon. A. BRESSINGTON: I would like the minister to cite the source of her information and the evidence to support it. The presentation we received about the Queensland scheme was that, for a certain period of time, it supported weekly payments. It is after a worker had been assessed as being unable to return to work that they were moved off the scheme, which was then short-tail scheme. They do not stay on the workers compensation rehabilitation scheme for ever, as we are seeing happening with 3,700 of our injured workers. They are moved from that scheme so that they can access common law remedies, and they pursue finalisation of their claims through that when and only when they have been assessed as being unable to return to work.

It seems that, with this particular bill, not returning to work is not an option. That is the focus of this: return injured workers back to work, almost regardless of whether they are physically capable of it. We have had plenty of people writing to us saying that that is exactly the case, that is, that they are not fit for work, they are returned to work and they incur further damage and further injury—and the cycle just goes on and on.

Access to common law is not the first port of call for Queensland; it is the last port of call. When all of the other processes are exhausted, the assessments have been done and the determinations have been made and rehabilitation has not been able to be achieved to obtain return to work, then and only then do they have access to common law. We do not offer our injured workers that option or that last chance, if you like, to be able to move on with their life.

The blasé response of the minister is, 'We do our scheme differently.' Well, we have a $911 million unfunded liability, and that is why we are having this debate. Queensland does not have a huge unfunded liability; it does not have a long tail system; it does not have to have this debate any more. Queensland does not have demonstrations on the steps of its Parliament House any more because of an unfair scheme. Queensland actually saw the light and moved forward and moved with the times and actually worked to meet the needs of employers and the needs of injured workers. Here in South Australia, it is this dogged opposition to seeing that there are two sides to this story: the employer's side and the employee's side. There has to be somewhere where we can

meet in the middle with this. Just to say that we are doing it differently does not necessarily mean that we are doing it better.

The CHAIRMAN: I remind honourable members that they should not be debating unless they are talking to the amendment.

The Hon. M. PARNELL: The minister did respond to my question about why the government was not supporting common law amendments, and I am not surprised by the answer the minister gave because it was pretty much the points the Clayton report made as well. However, I think that any serious scrutiny shows that most of these arguments do not stand up. For example, the claim that common law is bad for rehabilitation and return to work ignores the fact that there are better rehab and return-to-work systems in every other state, and every other state still has common law rights.

The minister also mentioned this idea that common law under-compensates serious injuries and overcompensates lesser injuries, and I am not sure what evidence there is for that claim. However, it would seem to me that, if it were true, workers in those circumstances would simply choose not to engage in the common law system. It is the worker's choice whether or not to pursue their employers for their serious negligence. I am not sure whether there is any evidence of overcompensation of lesser injuries and, if the minister has that evidence, I would be delighted to hear it.

I think the minister mentioned high transaction costs as well. However, the point that is often missed is that the way in which those transaction costs can be reduced is by employers and compensating authorities entering into realistic settlement negotiations at an early stage, rather than dragging the proceedings out unnecessarily, because that is where it becomes a lawyers' picnic, as we have been told, and that is where the transaction costs are high.

WorkCover and the minister, I think, also maintained that the Victorian situation is that common law in that state was maintained for historic reasons. As I have pointed out, it was not: it was reinstated by the Bracks Labor government.

If I can give one example that proves the point that being able to sue employers for their serious negligence is a great driver of workplace safety, it is the case where, after the very first negligence case for passive smoking, every single Australian airline banned smoking on planes. It just took that first common law case in respect of passive smoking on an aeroplane, and that was the result—and we have seen everywhere else, whether it is in hotels, clubs or whatever, that is the power of common law. In fact, it has driven our public places to be safer from that one danger of passive smoking. That is why I think the minister's explanation is inadequate, and I urge all honourable members to support this amendment.

The Hon. D.G.E. HOOD: I do not intend to speak to many clauses in this debate. I think we are all aware of the reality that probably all the amendments will be defeated, or so it seems. That may not be the case but it certainly looks as if it will be the case.

An honourable member interjecting:

The Hon. D.G.E. HOOD: I am accused of being a bit pessimistic. We shall see. I do wish to speak very briefly to this clause because it goes to the heart of this bill. Family First strongly supports the rights of injured workers to have access to common law remedies. It is a fundamental principle in our society that if somebody is wronged they have the right to pursue a correction of that wrong. This amendment, as moved by the Hon. Mr Parnell, will allow that right. Every other state in Australia allows it. Why can we not have it here in South Australia? Why should injured workers in South Australia not have the same rights as those interstate?

One can mount all the arguments one likes for the unfunded liability and the need for a government to act responsibly. At some level we can all understand those issues and accept them, but what we cannot accept is the common law rights of workers being eroded, as they would be by this bill. It is fundamentally wrong. I think every member in this chamber knows that it is fundamentally wrong to remove those rights from people who are injured at work. No-one wants to be injured at work, no-one intends to be injured at work; it is something that nobody seeks to do. It is a negative influence in people's lives and all they want to do, when all else fails, is have the legal right to redress that problem. How can we possibly vote to take that right away?

If the Hon Mr Parnell and the Hon. Ms Bressington (who, I understand, has a similar amendment) had not moved an amendment to this effect, then Family First certainly would have. I ask the committee again: why are we different to every other state in Australia on this issue?

People get hurt at work, not through their own choice; they get hurt through unforeseen circumstances. Why should they not have the right to redress that wrong under law? This is the worst part of this bill. We strongly oppose this aspect and, therefore, we strongly support the amendment.

The Hon. CARMEL ZOLLO: A lot of comparisons have been made by all three honourable members in relation to other states. I think Queensland has been used as the comparator here. In Queensland there is an immediate step-down to 85 per cent, compared to ours being 100 per cent immediately. I understand that, over time, Queensland goes down to 65 per cent, when employees are arbitrarily cut off regardless of capacity.

I am also advised that, under the Queensland scheme, along the way the weekly payments are far less than ours. Queensland does not have an unfunded liability because it cuts off its workers after a certain period. However, under our scheme, if a worker continues to have no work capacity he or she can stay on the scheme until retirement at the 80 per cent rate.

The Hon. A. BRESSINGTON: The minister stated that if a worker is assessed or proven to have no work capacity then they will be retained on the scheme for however long. Will the minister explain to the chamber what level of injury is required before a person is assessed as being incapable of working?

The Hon. CARMEL ZOLLO: I am advised that we will debate that at length under clause 15. However, just for the interim, I understand that there would be a medical assessment that the person has no workforce capacity now or in the immediate future. That would be the test.

The Hon. R.D. LAWSON: I should indicate why the Liberal Party has supported the proposition for some time in South Australia that access to common law rights be circumscribed. The fact is that common law rights are available to those who can prove that their employer was negligent. If a worker is injured but cannot prove that his employer was negligent, he gets nothing—nil, nothing at all.

We changed the system some years ago in South Australia to ensure that every worker is entitled to compensation if injured at work: every worker with no exceptions. You do not have to prove a court case, you do not have to hire lawyers to establish negligence and you do not have to go through all the trauma and the cost of litigation and the prospect of failing to get compensation.

In South Australia you are compensated irrespective of whether your employer was negligent. That is the fundamental reason why we, in the first place, agreed to forgo common law rights to get everyone appropriate compensation, rather than throw them onto the lottery and say, 'If you can prove negligence, you get plenty; if you can't prove it, you don't get anything.' We have a system—some might not like it; it is a socialised system—whereby everybody gets what is regarded as fair compensation.

Some of the comments that are made by some of the proponents of common law—and most of my colleagues in the legal profession are great supporters of common law—are that it is a wonderful system; it gives everybody an opportunity to institute an action; you are likely to get a settlement and you are certain to be paid. It is a great system for the lawyers. The reason why it was restored in Victoria, after the abolition of the system was effected by the Kennett government, was simply the power within the Labor Party of firms like Slater and Gordon and Holman Redlich, and the powerful legal establishment in the Labor Party in Victoria managed to get a partial restoration of common law.

Do not rely upon our arguments. Look at the most recent and most comprehensive report on this issue which was published by the Productivity Commission in 2004 on the subject of national compensation, occupational health and safety frameworks. I ought to read and put on the record some of the comments made there that established the appropriateness of the position which we have taken (and make no apology for taking) and which the government has sought to maintain here.

I might add, incidentally, that there was no suggestion in the Clayton report, which is a report that the government sought on this, that common law rights be restored. From page 220 of the Productivity Commission report, I read as follows:

> In most countries, the role of common law as an avenue for providing compensation has largely been replaced by statutory workers' compensation schemes while its role as a deterrent has largely been assumed by OHS regulations.

Let me interpose here. The lawyers will tell you that the way to bring employers into line is actually to make them subject to common law liability, so that they will realise that they are likely to be sued and, therefore, they will have safe systems at work. The Productivity Commission says that you do that by occupational health and safety regulations. You impose a regime with which they have to comply, and you police that regime heavily and make sure that they do. You do not use the backdoor method of the fear of compensation to make them comply; you actually require people to meet certain standards. The Productivity Commission report continues:

> For example, common law actions are disallowed in New Zealand, which compensates workplace injury, along with all other personal injury through a comprehensive no-fault scheme. Common law actions for workplace injury are also generally disallowed in the United States and Canada—the only two countries (other than Australia) to have federal systems of workers compensation—

that is the US and Canada—

> US courts view workers compensation as part of an employment bargain under which employees relinquish common law rights in return for a guarantee of compensation by employers.

That is the system we have here. The report continues:

> It is only when employers breach this contract, for example, by failing to carry workers' compensation insurance or by intentionally causing harm, that the exclusion from common law action is removed. The United Kingdom allows unrestricted common law access for work-related fatality, injury and illness. For this reason, all employers are required to carry privately underwritten Employers' Liability insurance.

There is no separate statutory workers' compensation in the United Kingdom—no separate system. The report further states:

> Workers who are unable to establish negligence on the part of their employers, or who choose not to pursue a common law claim, may be entitled to payment through the social security system. A review of the UK civil justice system, conducted in the mid-1990s, concluded that the common law was:
>
> ...too expensive in that the costs often exceeded the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful wealthy litigant and the under resourced litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces fear of the unknown; ...it is incomprehensible to many litigants...and too adversarial.

The report continues at paragraph 8.3, dealing with the situation in Australia, as follows:

> Access to common law differs across jurisdictions. Over the past two decades, nearly all schemes—

and this is the Australian workers compensation schemes—

> have restricted access to common law on a number of grounds, including that it: is fundamentally contrary to the concept of 'no-fault'; undermines scheme affordability; and, it is inimical to early intervention, rehabilitation and return to work. According to the Northern Territory Government:
>
> Common law is not available as the NT Government believes this is inappropriate for a 'no fault' scheme since it increases costs, results in significant delays, provides a disincentive to rehabilitation and return to work, and creates an adversarial environment which is detrimental to the worker's long-term return-to-work prospects.

The Productivity Commission's report continues in a reference to Queensland, and some members have made specific reference of that, and I think this comment reinforces something of which the Hon. Ann Bressington has been saying. It states:

> Jurisdictions which allow common law access may also have in place mechanisms designed to encourage rehabilitation prior to the commencement of the common law action:
>
> The Queensland system includes rehabilitation programs, organised by WorkCover, in the statutory process that the lawyer is not involved in. In fact, only when the injury has stabilised is an assessment made by the Medical Tribunal, which becomes the basis of an offer by WorkCover to finalise the claim, can the injured worker elect to move on into the Common Law processes.

You do not have immediate right to common law in Queensland. You have to go through the workers compensation system. That is hopefully a system that will return you to work. The report continues:

> This ensures that any rehabilitation required by the injured worker is provided by WorkCover prior to the Common Law claim proceeding.

However, as the minister indicated a moment ago, in Queensland you do not get as you get here 100 per cent or 80 per cent: you get a great deal less during the initial period. You get 65 per cent in Queensland.

I conclude these comments from the Productivity Commission's report, which I think is very comprehensive, with its recommendations. It has dealt with practically every issue. The recommendations are as follows:

The Commission recommends that common law should not be included in a national framework for workers' compensation on the grounds that it:

- does not offer stronger incentives for accident reduction than a statutory, no-fault scheme;
- can provide lump sum compensation which may prove inadequate to the longer term needs of seriously injured workers;

As the minister indicated, if you are deprived of all work capacity under the South Australian workers' compensation scheme, as it will exist after these amendments, if you are injured at the age of 23, you will get your income support for the rest of your life until age 65. It continues:

- may over-compensate less seriously injured workers who, in the normal course of events, could be expected to rehabilitate and return to work;
- delays rehabilitation and return to work (if there are psychological benefits to be derived from receiving a lump sum, these could be obtained through statutory benefits); and
- is a more expensive compensation mechanism than statutory workers' compensation.

So, it is for those reasons that the Liberal Party has, in the past, supported the replacement of common law rights by statutory rights in South Australia. We do not seek, by means of this particular bill, to restore common law rights. It was not recommended in the Clayton report and the government has not proposed it.

We have been critical of the government for the way in which it has handled WorkCover. We are not entirely satisfied with the way in which the government has devised this particular solution, but this is the government's solution to the problems which this government itself has allowed to develop in South Australia. We believe that it ought to be able to implement the scheme that it says will provide a fair system for workers and a system that is sustainable into the future.

The Hon. M. PARNELL: I cannot let the honourable member's comments go without reply, as the mover of this amendment. It seems to me that the main fault in the honourable member's analysis is an undercurrent—he did not say it—that it is either or. It is either you have a no fault system or you have a system of being able to sue negligent employers. It seems to me that that is a false dichotomy—you can have both.

I support a no fault system. If a worker is injured through some fault of their own or through the fault of their employer, the system needs to compensate them for their injuries. Reintroducing common law is not about being critical of the no fault system. It is an adjunct to the no fault system.

The honourable member mentioned the Queensland weekly payments: their step-downs are more severe. I have two things to say about that. First, the presentation that the Hon. Ann Bressington and I attended demonstrated the satisfaction rate for, if you like, clients of the WorkCover system. Workers in Queensland were much more satisfied with their lot than workers in other states, including South Australia. If that is an indicator of success, then their system is more successful.

The second point to make, and I think the honourable member was on to something here, is that common law was done away with, rightly or wrongly, as part of a deal to bring in the no fault scheme. The point to be made now is that the deal has been broken. The deal is off. The government is starting to cut the weekly payments of injured workers through the step-downs. So, whatever support the abolition of common law rights might have had from unions or others in the past has now evaporated, and now these are the people who are calling for the system to be reintroduced.

I would not want members to leave this aspect of the debate thinking that the Greens' position is to scrap the entire WorkCover system and replace it with common law. Of course that is the wrong way to go. But for all the reasons that I set out before, I think that there are many advantages to layering over the top of the weekly compensation system the right for, not all but some, seriously injured workers to be able to chase their negligent employers.

We have to remember that, if the employer was not negligent, if it had good systems in place and the worker is to blame for what happened to them in some way, common law does not apply. Common law applies only if you can prove, on the balance of probabilities, that your employer owed a duty of care to you, that it breached that duty and that you suffered some loss as a result.

Let us not think that this is somehow a revert-back to the bad old days where we are not going to have a compo scheme, that we are just going to have common law rights, because we can

have both, and the experience in other states is that having both works well. So, I would urge members to support the amendment.

The Hon. CARMEL ZOLLO: I thank the Hon. Robert Lawson for placing on record—and supported by the Productivity Commission's report for 2004 on OHS and the workers compensation national frameworks, as well as the Clayton review—why South Australia is going to continue with a no fault system, without common law being introduced.

If Queensland workers are happy being paid less, then good luck to them. I think we need to remember that in South Australia, as supported by the Hon. Robert Lawson, if injured workers have no capacity for work they will continue to earn 80 per cent of their previous salary until retirement. I think that needs to be placed again on the record.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 7, lines 20 to 24—Delete subclause (17)

This amendment seeks to delete the proposed new subclause (17), which is a replacement definition of 'prescribed allowance'. It seems to me that one of the main justifications for this measure—as advanced by WorkCover and as supported by Premier Rann—was to make the calculation of average weekly earnings much simpler, and the underlying philosophy seems to be that the simpler the calculation the less dispute there will be. I believe that misses the point, because the simplest and fairest method of calculating average weekly earnings is to use all earnings and not have exclusions.

The government, in proposing this new definition of 'prescribed allowance', has made no credible case for the change. My guess is that it has in mind some mischief that it would like to redress. I do not know what that is, so my first question to the minister is: what mischief does this new replacement definition of 'prescribed allowance' seek to redress?

The Hon. CARMEL ZOLLO: My advice is that there is no mischief; this government has no current policy intention to either broaden or narrow the scope of allowances included or excluded under the Workers Rehabilitation and Compensation Act. Basically, we are simply moving the prescribed allowances into regulations.

The current definition in the act is detailed, and features three specific forms of allowance as well as any other prescribed allowance or benefit. Clause 5(17) of the bill replaces this with a short definition simply referring to any prescribed allowance or benefit. This means that if any allowance is to be validly disregarded in the calculation of average weekly earnings it must be prescribed in regulation rather than legislation.

The Hon. Mark Parnell's amendment would delete clause 5(17) from the bill, and thus the current definition of 'prescribed allowance' would be retained. This would mean that three forms of prescribed allowance remained enshrined in the legislation and only the remaining forms of allowance could be prescribed by regulation. So, the government opposes this amendment as it makes no sense to have some allowances prescribed in section 3 of the Workers Rehabilitation and Compensation Act and others prescribed by regulation. It would be much better to put them in a single instrument, and regulation is the better alternative.

There are numerous types of allowances and benefits in modern workplaces. These change all the time, and it is important that the government have the flexibility to adapt the scope of

prescribed allowances to keep pace with social and industrial changes. Regulation rather than legislation is the appropriate tool for this. Either way, the government does not plan to broaden or narrow the scope of prescribed allowances. Both the government's and the Hon. Mark Parnell's amendments are technical.

The Hon. M. PARNELL: I thank the minister for her answer, and perhaps she will excuse my suspicion. It seems to me that the current regime lists three types of allowance and then has a catch-all, which says 'any other allowance or benefit prescribed for the purpose of the definition'. However, the proposed new model is to have them all prescribed—in other words, put them all into regulations.

Notwithstanding the minister's statement that there is no intention to add or subtract from the list, the obvious question that we as legislators have to ourselves is: what about current paragraphs (a), (b) and (d)? The act provides:

> (a) by way of an allowance to cover special expenses incurred by the worker in the course of employment;
>
> (b) by way of special rates paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed (not being rates that are paid during a period of leave with pay)
>
> (d) by way of site allowance;

Those three are to go and they are to be replaced by a catch-all, 'We are going to put it in the regulations'. I am not a suspicious person by nature, but it seems to me that, if we already have a catch-all in the legislation and all we are doing is removing three specific types of allowances, then people would suspect that something is up. Having said that, I do not doubt for one minute what the minister said about its not being the government's intention, but it seems to me we are opening the door to remove these specific ones in the guise of more convenient parliamentary drafting.

The Hon. P. HOLLOWAY: The government has no intention to either broaden or narrow the scope of allowances included or excluded in the act. The government plans to prescribe by regulation the same allowances currently prescribed. The government is moving it into the regulations in order to make the administration of the act more flexible.

The Hon. SANDRA KANCK: Both the Hons Carmel Zollo and Paul Holloway have effectively said in their responses, 'Trust us, we are the government.' That is not acceptable to me. For many years the Democrats have been doing our best to ensure wherever we can that we have information in the legislation rather than the regulations. There is such a lot that can go wrong with regulations. There is the issue of time lag. For instance, take the time parliament gets prorogued for an election. It would be possible for a government to do something via regulation in November and for it not to be addressed through a disallowance motion until perhaps May of the following year, by which time it would be well and truly too late.

It is all very well to ask us to accept an undertaking that the government has no intention to do anything, but that is its position at this time. Quite frankly, I am not prepared to accept that. As a consequence I will be supporting the amendment. In relation to what the Hon. Carmel Zollo said about inconsistency—that some would be in legislation and some would be in the regulations—then I invite the government to put them all into legislation.

The Hon. P. HOLLOWAY: I am advised that prescribed allowances are specifically excluded from average weekly earnings. I understand the minister in another place has said that he has no intention of regulating those things; in other words, they will remain removed. Because they are not prescribed, then they are included in average weekly earnings.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 7, line 30—After 'currently suited' insert 'of comparable status and with comparable remuneration to the employment in which the worker was employed at the time of the occurrence of the relevant compensable disability'

This amendment is of a similar theme to one we dealt with earlier, but it needs to be dealt with separately because it relates to the definition of 'suitable employment'. My amendment proposes, in the definition of 'suitable employment', after the following sentence 'suitable employment in relation to a worker means employment in work for which the worker is currently suited', to insert the words 'of comparable status and with comparable remuneration to the employment in which the worker was employed at the time of the occurrence of the relevant compensable disability'.

I believe that South Australians should have the right to fully regain their earning capacity and their place in the workforce and to be able to continue in their work from a comparable position to where they would have been if not for their work injury. The aim of the scheme should be to deliver injured workers back to the workforce, the community and their families in just as good a position as when they were injured. I do not believe that it is too much to ask that suitable employment for them should be of comparable pay and status. The alternative to that position is to regard as inevitable that a person, having been injured, must go down in status and remuneration. I do not think that that is fair.

It is well understood that a person's place in the workforce can be a substantial part of a person's identity, and I think we need to be fair to people, especially people who have been injured in the workplace, in helping them to preserve their identity. I do not think we should allow a system that says suitable employment for injured workers is not even comparable to the pay and status of the work they were doing before being struck down by their injury, which occurred because they went to work. It seems to me that it is a very logical amendment, which does not have as its basis the fact that an injury at work is of necessity a downward step, in terms of position or pay.

This amendment is the first of a number that I will be moving to try to bring back some reality to this legislation and to try to insert into it the way real people think and operate. I think that will make the legislation a more honest piece of law. I do not think that many members of this place or many people in the community would regard a significant downward step in work status and pay as being suitable employment. I think that that concept would generally be regarded in the community as rubbish, and I think we need to fix it up in this bill.

If members do not support this amendment, we will be confirming that what the regime is about is delivering cheap and nasty so-called rehabilitation, with no interest in seeing workers get genuinely and properly back on their feet in genuinely suitable employment. The aim should be to return the injured worker to work equivalent to or as close as we can get, in all the circumstances, to their pre-injury work, in terms of their status and payment. I think we need to contrast that position with the one that is in the current bill, which basically says that return to any work is suitable.

So, really, it is about trying to stop a lowest common denominator approach. It is about forcing WorkCover and its claims managers to act strategically in the interests of injured workers and also to act strategically in the interests of the employers and the state as a whole. I think that many employers would benefit tremendously in getting the skilled workers they need if WorkCover would try to genuinely upskill workers instead of dumping them on the scrap heap, and that is what this amendment is largely about.

I think that voting against an amendment such as this is effectively telling injured workers and the people who care about them that suitable employment is really anything that can be found, rather than something that is genuinely suitable for them in their circumstances. I urge all members to support this amendment.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell's amendment concerns the definition of 'suitable employment'. The definition is not currently in the Workers Rehabilitation and Compensation Act but would be added into section 3 by the bill. The bill's new definition would be as follows:

...in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to...

A range of factors are then listed. The Hon. Mr Parnell's amendment would tighten the definition of 'suitable employment' in the manner he has described. This would significantly narrow the definition of the term such that employment cannot be suitable unless the type of work, classification and wage were at least equal to the worker's pre-injury employment. The government is opposing the amendment as it would be unworkable. First, it would go beyond even what is in the current Workers Rehabilitation and Compensation Act; it would make it much harder for WorkCover to deem a level of earnings for a partially incapacitated worker; and it would really strike at the heart of what the government's bill is trying to achieve, namely, encouraging workers, employers and WorkCover to focus more on opportunities for return to work than staying on the system.

The government's view is that the amendment is quite impractical and would be difficult to fulfil. It also greatly underrates the value of injured workers returning to work in a range of jobs that may be lower paid and of lower status but nonetheless rewarding and rehabilitative. I also suggest that the amendment would be somewhat retrograde in the sense that it would reinstate the legal position of much of the 1990s where the existence of suitable employment effectively depended on the state of the labour market, which is clearly not what workers compensation legislation should be concerned with, and this government and others in Australia have generally taken this position. For those reasons the government opposes the amendment.

The Hon. A. BRESSINGTON: I support this amendment. I concur with what the Hon. Mark Parnell said about suitable employment. The honourable member used the example of Joe, a pest control person who incurred a back injury. He was told that it would be a recurring back injury. No assistance could be offered to him in terms of a cure for his injury or pain. He requested retraining for IT work. He was computer literate, but he needed a diploma to be able to get some sort of alternative employment. He was refused retraining by the WorkCover Corporation because it was too expensive. As a result, that gentleman was sent back to his labouring jobs. Again, he incurred further injury and he is now living on $22,000 a year through the scheme. He has been offered no rehabilitation or retraining at all, and he has been living on that meagre amount for the past four or five years.

He has lost his home and his wife. He can no longer pay child support, so he has lost access to his children. I do not think members in this place get this. It may be written in the legislation that people will get 80 per cent of their wages. The Hon. Rob Lawson said that everyone will get something under the South Australian scheme. They will not get enough on which to live or survive or to maintain any kind of reasonable lifestyle, but they will all get something. It is the same with this attitude that we have got suitable employment—anything is better than nothing! The minister said that they may not have the same job that gives them the same remuneration but it might be satisfying for them.

I ask members: if you cannot make ends meet, if you cannot pay your rent, if you cannot put food on the table, if you cannot pay your electricity bill and if you cannot put petrol in your car, how in God's name will you be satisfied with the job you have got? This is ideological. It is ridiculous. It is absolutely insane that we could be putting up these arguments for the reasons given by the minister. The sufferer will incur a loss in income but might be satisfied with the job. In this day and age the dollar is everything and if you are not getting enough weekly income to ensure that you can make ends meet, you are not going to be happy in your job, regardless of what it is.

The minister has quite an altruistic approach. I would like to see how he would manage if his income was slashed to $22,000 a year and how satisfied he would be with trying to pay his rent and put food on his table and the other living expenses that I have mentioned.

Finding suitable employment for a person means that they gain a level of personal satisfaction out of their job. An example is a teacher who is stressed and on WorkCover and who was offered a job as a process worker. He had one year to go until he retired and was offered a job as a process worker, on half the money, with no job satisfaction and not having to use his intellect or his training or what he studied for for his entire his life. No; go and pack baked beans into a can for eight hours a night and take home less than adequate wages.

This attitude and outlook on this is abhorrent. How dare we expect people to accept a crap job, regardless of their training, less money and lose everything and we sit here in our granite tower and say, 'Well, they may be happy with the job that they get. They may get some satisfaction out of it.' It is up to us to ensure that provisions are made for these people to be able to return to reasonable employment; gainful, meaningful employment. Not so for the worker over here who was injured at work, who was offered four hours a day as a car park attendant in a booth, who had a back injury with which he could only sit for 20 minutes at a time and who was shoved into a car

park booth to push a button, because it required less energy and less effort, but he still could not sit doing that job.

This entire thing is an insane proposal. To think that we sit here and tell these injured people that, 'You know what? Near enough is good enough and, if you are only getting $22,000 a year, you know what? You just shouldn't have been injured at work in the first place.' I do not think it is an unreasonable amendment that the Hon. Mark Parnell has moved to require that WorkCover Corporation should try to find reasonable employment for these people with a reasonable wage; suitable employment that is comparable with what they were doing before.

I support the amendment and, as the Hon. Mark Parnell said, this gets down to the lowest common denominator that we could be offering injured workers. I hate to get too emotive about this, but we should be absolutely ashamed of ourselves that we are asking our injured workers to live with these second rate, third world ways of living. I do not know how we think that this is acceptable for injured workers who have already been stuck on a scheme for God knows how long and are already in financial difficulty. Some of them have tried to commit suicide two and three times. Do you think people do that because they have nothing better to do? Here we are debating a bill that will not improve their lot. We will not ensure that they get comparable employment or income. We will just do our job and wash our hands of this as soon as possible.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 7, line 30—Delete 'whether or not the work is available'

This and the following two amendments continue this theme of suitable employment and trying to insert some reality into the government's definition. The nature of this amendment is to remove from the definition of 'suitable employment' the words 'whether or not the work is available' because, as proposed, the clause reads:

suitable employment, in relation to a worker, means employment in work for which the worker is currently suited—

it then goes on to say—

whether or not the work is available.

I want to remove those words.

As members would understand, much of the significance of this concept of suitable employment is that income support to injured workers who are still suffering the results of workplace injury will be stopped or cut based on this definition of suitable employment. That is why we have to get this definition right, and we have to get it fair. There will continue, in the application of the provisions overall, to be some similarities in outcomes between the current and the proposed new system.

As I understand it, one of the aspects of the legislation that I think is most uncaring and harsh to injured workers at the moment, which is made worse by this bill, is that injured workers have their pay cut or stopped based on work being called 'suitable' when the injured worker cannot get the job in question because of their work injury.

The Supreme Court has recognised the reality facing injured workers even if the government chooses to use doublespeak and spin to say that black is white and night is day. The leading case on this is the WorkCover Corporation v Warren, which is a Supreme Court case from

1998. His Honour Justice Cox talked about the fiction that this amendment would abolish. He stated:

> Common experience shows that, if there is suitable work that a partially incapacitated worker can do, the major impediment to his obtaining such work will usually be his need to persuade a cautious employer to prefer him when he is competing against others who are able bodied. However, the effect...is to remove the factor of job competition, leaving the worker in question as the only applicant. Whatever the actual state of the labour market may be, he is to be supposed to have the very great advantage of continuous work availability. His prospect of obtaining suitable employment will therefore in most cases be excellent.
>
> His application for a suitable vacancy could only fail if the employer were willing to leave the job unfilled rather than employ someone who, though in fact qualified to do it, has a disability history. The worker could still be rejected because of that history or his partial incapacity or his age or his lack of experience or his lengthy absence from the workforce or for some other reason, but where he is to be treated as in effect the only applicant for a vacant position, most employers, one would imagine, would prefer to take a chance with him rather than simply appoint no-one.

That is the fiction. Earlier, the minister referred to the bad old days (I am not sure if they were his exact words) of the 1990s when, heaven forbid, the state of the labour market played some role in determining suitable employment. It seems to me that that is not such a bad way to look at it. This bill highlights the cynical unfairness that the existing legislation inflicts on injured workers. For many of them, the major barrier to their getting a job is not the work injury itself: it is the fact that you have had work injury or that you have made a WorkCover claim.

That is a big part of why so many injured workers find this cynical make-believe—this notion that that job out there is for you and has your name on it, even though you know you are not going to get it—so insulting. According to this bill, it is suitable employment even if you cannot get it because you have had a work injury. This provision lessens the financial incentive for WorkCover to help injured workers find a real job, because a suitable job that they can never get is all WorkCover needs to slash or stop their payments.

We are undermining incentives that WorkCover would have had to find proper suitable employment when we allow this fiction to remain, that somehow a theoretical job available is enough for WorkCover to wash its hands of its responsibilities. When a worker cannot get a job because of their work injury, even when they are trying hard, because there is in theory a job for them—some suitable job that they could do, even if no-one is willing to give them the chance—the government rewards them by cutting their payments or stopping their income support altogether. It seems to me that if we want to impose an element of reality, an element of the real human condition of injured workers, members need to support this amendment.

The Hon. P. HOLLOWAY: The government does not support the amendment. This amendment again concerns the definition of 'suitable employment'. The definition is not currently in the Workers Rehabilitation and Compensation Act but, of course, it would be added.

Mr Parnell's amendment would have the effect of significantly narrowing the definition of 'suitable employment', such that employment would actually have to be available to be considered suitable. The current scope of 'suitable employment' in the Workers Rehabilitation and Compensation Act is seen as one of the main drivers of the high number of long-term claims.

The provisions of the bill regarding suitable employment and work capacity assessments are fundamental to the bill and are drawn from the Clayton report. These provisions are estimated by the actuary John Walsh to result in the greatest cost savings to the scheme. If the provisions are significantly tampered with, Mr Walsh's underlying actuarial assumptions can no longer be relied upon and the cost savings will not eventuate. This will defeat one of the key purposes of the bill.

The proposed amendment is out of step with every other jurisdiction in Australia. The amendment is also quite impractical and would be difficult to fulfil. The amendment would reinstate the legal position of the 1990s, where the existence of suitable employment effectively depended on the state of the labour market. This is clearly not what workers compensation legislation should be concerned with, and this government and others in Australia have generally taken this position. The state of the labour market is more relevant to the fields of social security, employment and the economy. A state-based workers compensation scheme should not be required to fulfil a Centrelink-style role. In short, the amendment really strikes at the heart of what the government's bill is trying to achieve, namely, encouraging workers, employers and WorkCover to focus more on opportunities for return to work than staying on the system.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 7, line 39—Delete paragraph (f) and substitute:

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

This is the third and final amendment to the definition of suitable employment.

An honourable member interjecting:

The Hon. M. PARNELL: A colleague from the Liberal Party asked whether it is my final amendment forever but, no; it is not.

An honourable member interjecting:

The Hon. M. PARNELL: I am not naming or shaming anyone. This amendment seeks to delete paragraph (f) from the definition and to replace it with a new paragraph (f). Currently, in the definition of 'suitable employment' there is a list of factors that have to be taken into account. The last of those factors is, in paragraph (f), under the government's bill 'the workers rehabilitation and return to work plan, if any'. My amendment proposes to replace that with 'the effectiveness of any rehabilitation and return to work plan.'

The reason that I have moved that amendment is similar to the reasons for the other amendments: I believe that it is a more realistic amendment that focuses on what is happening in reality on the ground, rather than simply focusing on shuffling pieces of paper. That seems to be a very large part of the WorkCover system. One of the aspects of the system that causes a lot of despair is the paper warfare that goes with this system.

It seems to me that 100 rehabilitation plans signed off by 100 WorkCover rehabilitation consultants will not help an injured worker one bit if they are not effective. Is that not what we should be drawing to get WorkCover to do; to deliver effective rehabilitation? The reason I say that is that, at present, as the bill is drafted, it is the existence of and the content of the workers rehabilitation and return to work plan but it completely ignores the most important question, which is whether that plan has been effective; whether the plan has actually worked in reality. I do not think that it is sufficient to simply tick some boxes in an ineffective or unrealistic plan and say that that is sufficient.

This amendment is trying to get an actual focus on effective rehabilitation, which means genuine outcomes for injured workers and their families. If we do not amend this clause in the way that I am proposing it sends the same signal that WorkCover has been sending for years and years under this government and under the previous government, and that is that it is all about the paperwork; that process compliance is more important than getting a good result.

By 'process compliance' I mean getting the paperwork right; having a document prepared that you have to have prepared, regardless of whether it achieves anything on the ground. That is the message that this sends. If the government is interested in delivering a good result for injured workers, instead of keeping the focus on filling out pieces of paper we should focus on the effectiveness of rehabilitation plans, and I would urge all members to vote for this amendment.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell's amendment No. 4 will change one of the factors in the bill that needs to be taken into account when deciding what is suitable employment; specifically, '(f) the workers rehabilitation and return to work plan, if any' would be changed to '(f) the effectiveness of any rehabilitation and return to work plan'.

This amendment tries to ensure that WorkCover not only considers the existence or content of the rehabilitation and return-to-work plan but also its value and effectiveness. The government opposes this amendment as the wording of the current bill is sufficient, and this amendment would add nothing.

The phrase in the bill is simple and broad. The claims decision-maker can take into account anything to do with the rehabilitation and return-to-work plan, including effectiveness. There are no inherent limits on what a decision-maker can consider. The phrase proposed by the amendment is also out of context with the other factors listed in the definition, as it contains a qualitative measure—effectiveness—which requires someone to make a value judgment. This is not appropriate or necessary.

The Hon. A. BRESSINGTON: I rise to support the amendment. The government indicating its lack of support for this then in turn indicates its support for what is referred to as dead-end processing. How could we not require that rehabilitation and return-to-work plans are able to be measured as effective and, if we are not looking for effectiveness, why do we bother with rehabilitation and return-to-work plans at all?

I might add that, in many cases with injured workers, rehabilitation plans or return-to-work plans are not undertaken. Five cases have been brought to my attention where injured workers have waited so long for a rehabilitation or return-to-work plan that they have actually developed their own and submitted it to WorkCover to have it rejected, and only then three or four months later when the squeeze is put on them for WorkCover to then submit back to the injured worker the original rehabilitation or return-to-work plan that the injured worker originally submitted that was rejected.

If we are not going to have any measure or any expectation that we have effective rehabilitation and return-to-work plans, as I have said time and again in the committee stage of this bill, why do we bother? Why are we actually bothering to even have the words 'return-to-work plan' or 'rehabilitation plan'? Why do we not leave it completely up to the discretion of the WorkCover Corporation and let it just go its own merry way as it has been doing for quite some time?

As I said, I had a rehabilitation provider in my office only last week talking about the obstructive behaviour of WorkCover when an injured worker tried to put a return-to-work plan in place, fit and well, able to work, having found a job that they are actually able to do and that they are quite happy to do, and then the employer is bugged and harassed so much that it becomes just too hard for that employer to have this employee in their workplace, and they let them go.

That is the epitome of ineffectiveness. If we are not prepared or we are not willing to want to change that culture at all, this entire debate is a farce. It is a money-grab, or it is a cost-shifting exercise, but it is certainly not a bill that is here to aid and assist injured workers. Just the fact that the word 'effectiveness' makes the government twitchy is a pretty good indication of the true intent of this bill.

The Hon. M. PARNELL: Just a very brief response to what the minister said to my amendment. He made the point, which some members might think is important, that in his view this amendment would be out of character with the other things in the list because of its subjective element. I just point out that the definition of suitable employment commences with the words 'suitable employment in relation to a worker.' So we are talking about individuals, and that means we are talking about individual circumstances.

Certainly some of the factors in the list do not require a great deal of assessment or judgment, such as the age and place of residence; they are matters of fact. If we look at paragraph (e), it talks about 'any rehabilitation programs are being provided to or for the worker.' I would have thought inherent in that are some qualitative aspects in relation to the nature of those rehabilitation programs and their effectiveness.

I did not see a need to introduce the concept of effectiveness in relation to the rehabilitation program paragraph because I think that is inherent in the concept. I think that it can be implied. But when it comes to the worker's rehabilitation and return-to-work plan, if any, I do see the need to put in there the qualifying word 'effectiveness', because that plan could be a load of rubbish. It might be something that was completely ineffective and useless to that worker, for whatever reason. We do not need to go now into fault and why the plan might not be appropriate, but let us just say it is. Let us look at making sure that effective plans are taken into account in relation to suitable employment rather than ineffective plans.

The Hon. P. HOLLOWAY: It is probably not worth spending too much time on this. We are talking here about the definition of 'suitable employment'. The bill's new definition would take into account the following factor:

(e) if any rehabilitation programs are being provided to or for the worker;

So, if it is suitable employment, one of the factors to be taken into account is if any rehabilitation programs are being provided. Paragraph (f) states:

the worker's rehabilitation and return to work plan, if any;

If you take paragraphs (e) and (f) together, it is quite clear that on the one hand you take into account if there is a program and, if there is, the worker's rehabilitation is taken into account. That is why it comes back to our earlier point that this amendment adds nothing to what is already provided for in the government's amendment.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 9, lines 1 to 6—Delete subsections (13) and (14).

The government's bill proposes to include two new subsections that basically have the effect of further removing WorkCover and the minister from parliamentary oversight. It seems to me that the track record of WorkCover is that it needs more, rather than less, scrutiny from a range of agencies, including parliament.

The two new inclusions, subsections (13) and (14), provide for forms to be designated and gazetted by the minister. That is to be contrasted with existing arrangements where, generally speaking, forms need to be prescribed; they need to be made by regulation. Of course, the big difference between a form, or in fact any measure that is made by regulation, and that which is simply made by the minister or by WorkCover publishing something in the *Government Gazette* is that there is that scrutiny of disallowance.

I raised earlier the issue that there are some aspects which make sense to go through regulations, and there are other aspects where simple decision-making or gazettal might be appropriate, but this is something where I say that we do need that level of parliamentary scrutiny provided by requiring these forms to go through regulation. The regulation-making power is there. There is no problem with doing that.

I also point out that the inclusion of these two provisions was not something recommended by the Clayton report. It was not recommended by the Stanley report or the Mountford report. This is really just WorkCover and the government trying to avoid an element of scrutiny. I have seen no sensible justification from the government for these provisions. What I would be interested in hearing from the minister about is whether there has, in fact, been any particular problem in relation to parliamentary scrutiny over forms in relation to WorkCover.

If the minister could point me to a major problem, then maybe I would see his reason for removing parliamentary scrutiny. In the absence of any problems, I am not interested in supporting a measure which provides that these forms, a most important part of the WorkCover regime, should simply be at the whim of the executive, or of WorkCover, without there being any parliamentary scrutiny.

So, if there are problems with the way it is done at present, I ask the minister to tell the committee what those problems are and what other options might have been considered to address those problems. I will leave that with the minister as a question: what problem do subclauses (13) and (14) seek to address?

The Hon. P. HOLLOWAY: The government's original proposal to include the definitions of designated forms and noted matters is needed to support the many new references in the Workers Rehabilitation and Compensation Act to designated form, which was formerly a prescribed form. The government's main proposal is to remove the need for forms to be prescribed by regulation and, instead, allow them to be approved by the minister.

The proposal to include such definitions supports a handful of other provisions in removing the need for forms to be prescribed by regulation and, instead, allow them simply to be approved by the minister. While a number of forms are presently regulated, I am not aware of any circumstances where the parliament has disallowed a regulation. The changes are a prescribed form, in answer to the Hon. Mark Parnell's question. However, the point is that there is a significant amount of work involved in going through the whole process of preparing a regulation.

The change will reduce unnecessary red tape in the administration of the scheme. No other states or territories have such onerous provisions as we do at present. It is something that exists only here and does not happen in other states. The removal of the need to regulate forms will give the scheme much needed flexibility to change the way in which it gathers information—something that is essential in an ever-changing social and economic environment, as the WorkCover scheme operates in.

It is not so much that changing forms by regulation has a case history of opposition, but it puts a significant amount of additional work and time delay in the process. By following every other state and territory in having similar provisions, we have the capacity to have a much more flexible way to change the way in which information is gathered.

The Hon. M. PARNELL: I thank the minister for his answer. I do not accept that we should be doing away with parliamentary oversight. However, I advise the committee that I will not be dividing on this amendment.

Amendment negatived; clause passed.

Clause 6.

The Hon. A. BRESSINGTON: I indicate that I will not move my amendment.

The Hon. M. PARNELL: I move:

Page 9, after line 27—Insert:

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

(a) was on unpaid leave; or

(b) was not in employment,

will be disregarded.

First, I want to ask a few questions of the minister in relation to this clause. As I understand it, the government appears to have put forward this clause largely on the basis that it believes that it will reduce disputes. However, I do not believe that it will because, effectively, it trades one set of subjective rules about overtime in particular for another set of subjective rules. In each case, there will be subjective arguments about the worker's reasonable expectation about what is meant by 'foreseeable future' and what are 'other relevant factors'. Those are all subjective elements that are still within the revised wording.

This amendment simply trades one set of problems for another set of problems. At least with the legislation that exists now there are well-understood and well-known decisions of the courts that explain how the current provisions work.

The government's proposal will mean a lawyers' picnic at working out what the new provisions actually mean, and then constant disputes about how to apply the facts in any given case. The simple solution—and, it seems to me, the fairest and only real workable solution if we want to avoid that lawyers' picnic—is to simply include all earnings rather than using a new set of concepts to define what is included in average weekly earnings and what is not. So, my question is: has the government received any actuarial advice on the cost of simply including all earnings

compared to the savings that would be made by avoiding disputes through the simplest possible system of calculating average weekly earnings? If so, is there any advice the minister can table?

The Hon. P. HOLLOWAY: We will just check that, but while that is being done I will sum up the government's position on this amendment. Section 4 of the current Workers Rehabilitation and Compensation Act sets out the definition of average weekly earnings. The current method of defining average weekly earnings in South Australia is prospective, based on what the worker could reasonably be expected to have earned for a week's work had they not been injured. Overtime is included where it was worked in a regular and established pattern. Superannuation contributions are excluded from average weekly earnings regardless of whether they are made by an employer or by an employee through salary sacrifice.

In the original amendment bill this clause 6 replaces section 4 in the current act. The key change proposed by this clause is the new definition of average weekly earnings to be, basically, the average amount that the worker earned per week during the previous 12 months. This means that an injured worker's average weekly earnings will now be determined by what they earned in the 12 months preceding the injury rather than what they could have been expected to earn after the injury. Average weekly earnings will also include an average of the worker's overtime from the preceding 12 months.

I refer the honourable member to page 196 of the Clayton report, Chapter 6—Individual Cost Impacts. In section 6.2.1—Definition of AWE [average weekly earnings], it states that PricewaterhouseCoopers 'concurs that the cost impact would be negligible'. So the actuarial advice to the government is that this is effectively cost neutral.

The Hon. M. PARNELL: I thank the minister for his answer. The next question I want to put is in relation to the income that a person might earn as an independent contractor. As I understand it, under the government's proposed new section 35C(2) an injured worker's compensation payments can be cut by reference to what they could earn as an independent contractor—that is, work that is not employment.

In proposed new section 4(2) that we are now debating, if a worker has a second job when they are injured those earnings can be taken into account when setting average weekly earnings, but not if the worker was earning money through independent contracting when they were injured in other employment. The question that raises is: how can it be fair for the government to propose cutting an injured worker's pay by reference to what they could earn as an independent contractor in theory, when it refuses to recognise what they were earning in reality as an independent contractor when their work injury stopped them from earning any more?

When talking about independent contractors, people would think, 'That can't apply to many people,' but members should think of someone with a Jim's Mowing franchise or someone doing odd jobs and advertising in the Messenger Press, and that type of income. Why is it taken into account in one circumstance and not the other? What justification does the government put forward for being inconsistent in this approach, which applies one set of rules when setting workers compensation and another set of rules when the government is proposing to cut compensation? The clear result of this juxtaposition is that workers lose. It seems to me that if we are going to take independent contracting work into account it should be recognised in compensation payments. I ask the minister to respond to that proposition.

The Hon. P. HOLLOWAY: My advice is that there is no change from the current system.

The Hon. M. PARNELL: It might not be a change from the current system, but it is not fair. That is why I am seeking to reform it. I find it unsatisfactory that we are not taking the opportunity to reform legislation when inconsistent and unfair provisions are brought to the government's attention.

I turn now to my amendment. In the definition of average weekly earnings, my amendment proposes to insert new subclause (2a) which provides:

> For the purposes of subsection (1), any week during the period of 12 months preceding the relevant date when the worker—
>
> (a) was on unpaid leave; or
>
> (b) was not in employment
>
> will be disregarded.

I draw members' attention to the issue of unpaid leave. It seems that great unfairness would result from not taking into account the fact that workers might be on unpaid leave in the period during

which their average weekly earnings would be calculated. I do not believe that setting the rate of compensation incorporating periods of unemployment or unpaid leave would reflect the usual or normal earnings of an injured worker. The increased casualisation of the workforce and any erosion of entitlements due to poor reward provisions has meant that many workers are in a situation where they have forfeited entitlements such as paid leave, job permanency and job security. We need to look no further than AWAs or the WorkChoices regime at the commonwealth level.

I believe that including periods of unpaid leave sets up two classes of injured workers. Workers who might have taken extra unpaid leave for health reasons (which are not work related), family commitments (including unpaid maternity and paternity leave or carers leave) or cultural reasons during the 12 months preceding the relevant date would be unfairly disadvantaged by the setting of a lower rate of compensation. For example, in relation to maternity leave, the fact that a mother might be off work with a young baby for a period of time does not reflect necessarily their past or future average weekly earnings. Unless my amendment is supported, such a person could be seriously disadvantaged.

Whilst it is simpler and fairer to average all earnings, I think regard must be had to the needs of injured workers and their specific circumstances, as well. I would expect that the vast majority of workers who are at risk from the current provision (unless it is amended) are women. It will be mothers who have taken unpaid maternity leave, whether the whole period of that leave was unpaid or whether only some of it was unpaid. If members are serious about giving mothers who take on the huge challenge of having kids and staying in the workforce a fair go, they should support this family friendly amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment, as the Workers Rehabilitation and Compensation Act is not able to cater for every individual worker's circumstances when calculating average weekly earnings. Under the government's proposed bill, it is likely that section 4 could be interpreted by the tribunal so a period during which the worker was unemployed or on unpaid leave would not be included in the calculation anyway. In addition, subsection (6) also allows that, if a worker has been in their current job for only a short period, their average weekly earnings can be determined with reference to an equivalent colleague's remuneration. For consistency of calculation and interpretation, it is appropriate to have a simple formula to calculate average weekly earnings. Flexibility may have to be sacrificed for the sake of certainty.

The Hon. M. PARNELL: To clarify the answer, I understand that there is a provision in averaging that, if a person has been in the job for only a short period, perhaps for a month or so, you can look at what an equivalent person is doing; but, if that person technically had been in employment for the whole of the year but for some of that period they were looking after a sick relative or a young baby—a situation that will not necessarily continue in perpetuity but might just be a specific situation that applied to that one year—it seems very unfair that that person be disadvantaged in the calculation of average weekly earnings because they have chosen to put their family first or to take some unpaid caring role.

It seems to me that, with the flexibility that the government is providing for in terms of dealing with people who have not been employed for a whole year, and working out their average weekly earnings, we could apply some flexibility as well to people on unpaid leave. In the absence of my amendment, I do not believe that those factors will be taken into consideration, and that is why this is an important amendment to support.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 12, line 1—Delete 'of a prescribed class'

This amendment, again to the definition of average weekly earnings, relates to the issue of non-cash benefits that an employee might receive. As I understand it, the existing legislation deals with this issue—that is, how these non-cash benefits are taken into account—in a fairly flexible way, by simply applying the guiding principle for the setting of average weekly earnings that is set out in the existing section 4(1); that is, '...the average weekly earnings of a disabled worker are the average amount that the worker could reasonably be expected to have earned for a week's work if the worker had not been disabled'.

Whilst I appreciate that this bill is moving from a forward looking to a backward looking model, I cannot see the need for the approach taken by the government—that is, that workers are compensated only for the loss of non-cash benefits, which are on some government list—unless, of course, what is really intended is a way of using this provision to cut benefits by stealth. As I understand it (and I am happy to be corrected), neither Mr Clayton nor the Stanley report recommended this approach. By 'this approach', I mean the government's inclusion of the words 'any cash benefit of a prescribed class provided to the worker by an employer'. So, it is the inclusion of those words, 'prescribed class' which means that only those non-cash benefits that are on a list that the government has developed and put in regulations will be taken into account.

My position is that, unless this amendment is successful, I think it is inevitable that workers will be worse off because, if the government of the day (whoever it is) does not first become aware of a particular type of non-cash benefit and then takes action to put it onto its list by including it in the regulations, the workers will simply miss out. I will give an example of where that could well have occurred in the past had these provisions already been in place. Five years ago, would anyone have expected that home broadband access, which is now a common non-cash benefit, would have held the status in remuneration packages that it now does? I do not think that people five years ago would have imagined that that type of benefit would be common.

Unless the government, first, becomes aware of an emerging type of non-cash benefit and then passes a regulation to incorporate it, the benefit of that benefit will be lost under this scheme. I think that it is a bit much for us to expect any government to know about or to anticipate all types of non-cash benefits and then put them into the regulations; so, I think that workers will miss out. We have no shortage of examples through this parliament in all manner of fields where unanticipated trends take us by surprise. When wind farms were to be established there were no planning rules to cover them because they had not been anticipated.

One can think of any number of things where the government is behind when it comes to regulating, and I think that these non-cash benefits will fall into that category. I am interested in the government's response to this amendment and, in particular, the demonstrated need for this amendment given that the previous system was more flexible and, as I understand it, worked reasonably well. I am interested to know of any decision of the Workers Compensation Tribunal that demonstrates why this amendment is necessary; and, if so, I would like that reference to be provided to the committee.

If the government thinks there are some things that should not be included that are currently being included, I would like to know, first, what they are. What type of non-cash benefits should not be included? Secondly, I would like to know why the government would want to deal with issues such as that by prescribing what is to be excluded. Unless this is what it seems to me to be, which is a way of cutting benefits by stealth, I can see no good reason not to deal with this issue by excluding what you want out rather than saying that non-cash benefits can be compensated only if they are things that the government is aware of and has approved. So, it is a question of approach.

In all matters of interpreting this legislation, I try to make sure that it is the injured workers who are the ones who do not miss out by any changes through this bill. I would like to know whether the minister can give any commitments about what items will definitely be included on the list, and whether such a list has been considered yet or whether we will have to wait for regulations. I make the point also that if a worker takes a job because they are attracted, for example, by a provision for private vehicle use, or maybe the provision of a mobile phone or home broadband and they lose those things because they cannot work due to an injury, why are they put in a situation where, unless the government has actually listed their benefits in the regulations, they will miss out?

That seems to me to be most unfair. I do not think that we can have confidence that any government will keep up-to-date with developments in what non-cash benefits are prescribed, because keeping regulations up-to-date in this area has not been a strong point for any government in recent years. For example, the regulations still provide that, in assessing a permanent loss of function, the third edition of the *American Medical Association Guidelines for the Assessment of Permanent Impairment* must be used in some circumstances when this edition is so old and outdated that it is almost impossible to buy.

The fifth edition has been in print for some time and the sixth edition is about to come out. There is no track record here of regulations under WorkCover keeping abreast of developments as they occur; and, given the rate at which non-cash benefits are emerging in the workplace, I do not think we can have that confidence. The test I think for members is a simple one: if you want to ensure that injured workers get fair compensation for their work injuries by having all of their non-cash benefits included in the calculation of average weekly earnings, members should support my amendments.

The Hon. P. HOLLOWAY: First, I inform the honourable member that my advice is that there is nothing instructive from the tribunal that would enlighten the issues raised by the honourable member here.

The Hon. Mr Parnell wishes to remove the reference to 'prescribed non-cash benefits', which would result in all non-cash benefits being included within average earnings, rather than those regulated for by the government. We are opposing this amendment because it is not appropriate to legislate that every single non-cash benefit, regardless of what it is, should be included in the calculation of a worker's average weekly earnings, if they do not retain that benefit after being injured.

Non-cash benefits will be included in the worker's average weekly earnings under the proposed bill—those regulated for by the government, for instance the provision of phones and cars, but not the coffee that their boss may buy them every morning. It is anticipated that non-cash benefits that are part of a worker's contract will be amongst those included in the calculation of their average weekly earnings. As I said, the minister made that clear in the debate in another place. He stated:

> If things such as cars, mobile phones and laptops are in the contract, obviously they will be part of the average weekly earnings. If it is non-contract then it is out. We are talking about things such as entertainment, which would be out.

I think that should cover the issues raised by the honourable member.

The Hon. M. PARNELL: I thank the minister for that answer, and I ask him to elaborate further. Is the commitment of the government that, if it is in the contract, then it is definitely covered; and, if it is not in the contract, then it will be a case-by-case basis? I ask that question because clearly, in the case of the boss who may buy a worker a cup of coffee each morning as a matter of routine, it is not going to be in the contract, but it would seem to me that you could have substantial non-cash benefits that are not in a contract. It might be something that has been provided part way through an employment arrangement. An employee is providing such good service that the employer says, 'We'll pick up your broadband fee,' or, 'Would you like a new mobile phone?' People do not go and rewrite their contracts.

The relationship between the employer and the employee is a dynamic one and it is based on a level of trust in many elements. Maybe not in every form of employment, but certainly when it comes to some of the more professional areas of employment, there could be a wide range of non-cash benefits that emerged after contracts were originally signed. The worker has come to rely on them, but they have never formally found their way into a contract of employment.

But I distracted the minister from my first question, which was: if it is in the contract of employment, is it definitely covered? That is the first part, and the second part involves non-cash benefits that are not in the contract of employment: which of those will be gazetted and which will not?

The Hon. P. HOLLOWAY: My advice is that, if it is in the contract, it would be included in average weekly earnings, and that would apply whether it was the original contract or a varied contract.

The Hon. M. PARNELL: To clarify that; when we are talking about 'the contract', can that be a contract varied verbally, or are we only talking about written employment contracts?

The Hon. P. HOLLOWAY: How would you establish that?

The Hon. M. PARNELL: It may be that a person could get a benefit that they had for the last five years and it has never found its way into their written contract, but they have come to rely on it. It is a part of their remuneration package.

The Hon. P. HOLLOWAY: I imagine that something in that situation could be pretty easily established. If it could not be easily established that it was in there, what do you do in these things? You obviously have to draw the line somewhere and I suppose it is a matter, at the end of the day, of what can be reasonably established. That would be the commonsense answer, but I do not think that we can say more than that.

The Hon. R.D. LAWSON: I should say that the reason we are not attracted to this suite of amendments proposed by the Hon. Mark Parnell is the fact that disputes about average weekly earnings, according to the Clayton report, occupy 20 per cent of all the thousands of disputes that occur. We think that any measure that can be taken to remove the uncertainty that prevails under the current regime is to be commended. We believe that the government's proposals are an improvement on the existing regime.

The honourable member says, incidentally, in relation to the last matter, that if something is in a contract it ought to be included as a benefit for the purposes of compensation, but that does lead to equity issues where a benefit in a contract might be a benefit to enable the worker to fulfil his employment. For example, a mobile phone is provided for the purpose of enabling him to satisfactorily perform his work, which is as much for the benefit of the worker as it is for the benefit of the boss. Why a worker who is injured and unable to work should have a mobile phone when there are other workers at the plant who are not receiving a mobile phone leads to issues of inequity.

So, whilst the minister has said that it is the government's proposal that benefits included in a contract would be included in the prescription, I cannot see that that is necessarily a good thing. But, in any event, that is beside the point: we do not support this suite of amendments.

The Hon. M. PARNELL: I need to respond to that point. Certainly someone might get a benefit that is exclusively for the use of their work, in which case it may be more difficult to argue that when they are no longer doing the work there is any benefit lost by not having that. But the point I was making is that, when it comes to phones, cars, broadband allowances and things such as that, it seems to me that inevitably there is a personal component and, if there is a personal component, that is a proportion of a person's own money they do not have to spend on it.

I was not going to get too much into the entitlements and arrangements of members of parliament, but some of us have our broadband covered by some parliamentary allowance and, yes, it helps us to do our work from home but we can use that same quota of broadband, if you like, or downloads for private use also. Not to have that taken into account is genuinely cutting out of the equation an important part of a person's overall compensation. And you could say the same about the private use of a car or a mobile phone. So I think the honourable member's analysis might apply to a small range of non-cash benefits, but there are many others where not counting them will result in an injustice.

As to the proportion of disputes that relate to this area, of course there is a number of ways of reducing disputes. You can loosen the rules to include more things—that reduces disputes—or you can go down the path that the government is going down, which is to fall behind the times and be slow and late with regulations, and the losers inevitably are the injured workers.

The Hon. A. BRESSINGTON: I would like to ask a question of the minister. I know of a situation where a gentleman is working in a vineyard, and he is the vineyard manager. As an arrangement between him and his employer, instead of taking a pay increase based on bonuses for wine sales and whatever, the agreement between the employer and the employee was that the employer would build the employee a brand new three-bedroom home to a stage where it was ready to move into. He receives that home rent free for 10 years, and that is his bonus. How would that worker be affected by this particular clause if he was injured at work? Would he then find himself with no house to live in? What would be his situation?

The Hon. P. HOLLOWAY: That is really a technical question. It would be interesting to know what the Australian Taxation Office might think about such an arrangement if it was declared. Tax has its own treatment of benefits, but I guess it comes back to what I was saying before about common sense. It would be a matter of being able to establish it.

The Hon. A. Bressington: This is all done legally.

The Hon. P. HOLLOWAY: As I said, if the tax office is aware of it, I suppose it could be established. If that was in his contract and if, as a result of his workplace injury, he lost the benefit of it, that would be included as part of this calculation for AWEs. But if he retained the benefit—if he was living there—then it would not be included as part of his earnings. It would not matter whether or not he lost the benefit.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived.

[Sitting suspended from 22:40 to 23:05]

The Hon. M. PARNELL: I move:

Page 12, line 15—Delete paragraph (b)

We are still on the theme of average weekly earnings, which is an important theme because it is very much at the heart of what an injured worker's entitlement will be because it provides the base.

This amendment proposes to delete new section 4(14)(b)—any prescribed allowances, which is a catch-all provision. New section 4(14) provides:

> Despite a preceding subsection, the following will be disregarded for the purposes of determining the average weekly earnings of a worker:
>
> (a) any contribution paid or payable by an employer to a superannuation scheme for the benefit of the worker;
>
> (b) any prescribed allowances.

My amendment seeks to delete paragraph (b). I should say at the outset that I would have liked to also delete paragraph (a), which relates to superannuation, but I have not done that. I do appreciate that every other workers compensation scheme that I am aware of does not take superannuation into account. However, in saying that, the point to make is that, the minute you are injured and off work, it is effectively a 9 per cent cut in pay. It is not 9 per cent that is cut from your weekly pay, but it is a cut you will appreciate only when you retire because the superannuation payments that were being made by your employer on your behalf are no longer made.

I think we can lose sight of the fact that that is now an increasing part of the total remuneration package of a worker that relates to their retirement standard of living rather than their present standard of living. I have let that go by the wayside; I have not sought to amend that. However, I have sought to delete paragraph (b).

In support of my amendment, I remind members that workers often rely on allowances and non-cash benefits to supplement their income and their earnings, and we have talked about some of those—the non-cash benefits in particular. But to exclude allowances by the government arbitrarily classifying them as a prescribed allowance will result in injured workers not receiving an average of his or her earnings. If the government is genuine about creating and ensuring a simpler and fairer method of calculating average weekly earnings, all earnings, in whatever form, must be included in the calculation. The existing act defines prescribed allowances for these purposes as follows:

Prescribed allowances in relation to the earnings of a worker mean any amount received by the worker from an employer:

(a) by way of an allowance to cover special expenses incurred by the worker in the course of employment;

(b) by way of special rates paid to the worker on an irregular basis to compensate for the occasional disabilities under which work is performed, not being rates that are paid during a period of leave with pay;

(d) by way of site allowance...

(e) by way of any other allowance or benefit prescribed for the purpose of this definition.

As I understand it there are no regulations at present that add to the list of matters set out in the legislation, other than in relation to superannuation, which I have referred to already. It is really not at all clear to me what the case is for change. Is the government saying that the items in (a), (b) and (d) of the existing definition will no longer be excluded; that they will be included in average weekly earnings? If so, I will be interested to know whether there has been any consultation with employers (in particular, construction industry employers) about that.

However, it is a matter of principle for me that average weekly earnings should include all earnings. It may be that the worker gets paid a site allowance for working on a particularly difficult site, and that is the sort of thing that workers expect when they take jobs on. Similarly to the issue that we raised before, I think if members want to see this crucial concept of average weekly earnings is to be fair and realistic in relation to the actual circumstances of each worker, then they should support this amendment.

The Hon. P. HOLLOWAY: The government opposes this amendment as it reverses the exclusion of prescribed allowances from both the current amendment bill and the Workers Rehabilitation and Compensation Act legislation. Prescribed allowances are not included in the calculation of the worker's average weekly earnings because the reason they originally received the allowance generally does not apply while they are off work and receiving income maintenance.

The Minister for Industrial Relations in another place has made it clear that he does not intend to prescribe any allowances. The policy intent behind clause 4 of this bill is to include overtime and allowances to the greatest possible extent. However, the reason the government needs to retain this section—(paragraph (b), allowing an allowance to be prescribed—is really as a reserve power to be used if circumstances of frivolous or unnecessary allowances emerge. That is the context in which it is there. It is simply a reserve power. Certainly, if those sort of allowances that have been referred to are the sort of allowances that most reasonable people would generally understand to be legitimate (if I can use that word) allowances, then of course the minister has indicated that it is his intention that they should be included to the greatest possible extent.

The Hon. Mr Parnell also asked a question about paragraphs (a), (b) and (d) and the answer is, yes, this will allow some allowances to now be paid, so that is the government's intention. The minister has indicated he does not intend to prescribe any allowances; it is really just that we need to keep paragraph (b) as a reserve power to enable it to be used if there were some circumstances where frivolous or unnecessary allowances emerged.

The Hon. M. PARNELL: I thank the minister for his answer. I still believe that this is an amendment that is worth pursuing, but I can advise the committee that I will not be dividing on it. It is not the same as other amendments that we have been dealing with. It does have similar aspects but it is not my intention to divide on every single amendment in this bill.

However, I am conscious of the words uttered by the Premier on the steps of Parliament House 13 years ago when he was going to give every Labor member of parliament an opportunity to vote against every single clause of the Liberals' then bill. I am now giving the Premier's colleagues the opportunity to again test themselves in relation to a large number of these amendments, but I am not going to divide on this particular one.

Amendment negatived.

The Hon. M. PARNELL: This will delight all members; I will move three amendments together. I move:

Page 12—

Line 24—Delete 'prescribed amount' and substitute:

minimum remuneration standard

Line 25—Delete 'prescribed amount' and substitute:

minimum remuneration standard

After line 30—Insert:

(ab) a reference to the minimum remuneration standard is a reference to the average weekly wage for an adult working ordinary hours applying under section 69(3)(a) of the *Fair Work Act 1994* at the relevant date, adjusted, if relevant, on a proportional basis to take into account any case where the worker was not in full-time employment over the period used to determine the average weekly earnings of the worker; and

These three amendments seek to delete the phrase 'prescribed amount' and substitute the phrase 'minimum remuneration standard'. To put the amendment in context, proposed section 4 provides:

(15) Despite a preceding subsection—

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

(b) if, but for this paragraph, the average weekly earnings of a worker (not being a self-employed worker) would be less than the prescribed amount, the average weekly earnings will be fixed at the prescribed amount.

That phrase 'prescribed amount' is what I seek to replace with the phrase 'minimum remuneration standard'. My amendments 5 and 6 seek to do that. My amendment 7 proposes to insert, in effect, a definition. It proposes to insert a new paragraph (ab) to subsection 16 as follows:

(ab) a reference to the minimum remuneration standard is a reference to the average weekly wage for an adult working ordinary hours applying under section 69(3)(a) of the *Fair Work Act 1994* at the relevant date, adjusted, if relevant, on a proportional basis to take into account any case where the worker was not in full-time employment over the period used to determine the average weekly earnings of the worker; and

If I could just speak to the whole of the clause briefly, it seems that the government's proposal in this clause is to protect inappropriately low-paid workers by setting a floor for average weekly earnings at whatever level the government sets as the prescribed amount. As I understand it, that has been the approach in this legislation for many years under both the previous governments.

My amendment says that we cannot rely on the government to care enough about low-paid injured workers to actually follow through and set a floor or a minimum, if you like, for average weekly earnings. Part of the reason why I say we cannot rely on governments to look after the low-paid when they get hurt at work is that, despite having the ability to set a minimum for average weekly earnings for many years, neither the Labor government nor the Liberal government has actually done it. As I understand it—and I am prepared to be corrected by the minister—despite the legislation giving the government the power to set minimum average weekly earnings, it has never been done. The government had a lot to say about the importance of a minimum wage when it was pursuing the Fair Work Bill through this place, and quite rightly, but it does not seem to care enough about injured workers to give them the minimum average weekly earnings that they deserve, and that is why my amendment is so important.

The government, through the Fair Work Act, set up a minimum wage for all South Australians within its jurisdiction, and this amendment simply asserts that injured workers deserve to get that minimum too. I do not think that is too much to ask. If it is fair enough for all other workers to get a minimum wage—the minimum wage that the independent umpire sets—why not injured workers?

I know that the Liberal Party has long wanted to abolish minimum wages and leave it up to the market but, if Labor members vote against this, then what they will be doing is going against core Labor values. I think there is no doubt about that. What this amendment invites members to do is to stand up for the lowest paid workers when they are suffering work injuries and to make sure that they get a minimum wage just like everyone else. That is what this amendment is all about.

The Hon. P. HOLLOWAY: The government opposes this amendment as it seeks to set a minimum remuneration standard which could result in an injured worker's average weekly earning exceeding their usual salary. This would create unintended and perverse incentives that would work against an incentive to return to work. The government's amendments to the Workers

Rehabilitation and Compensation Act provide for the continuation of the existing arrangements for the calculation of average weekly earnings as it relates to the setting of a minimum amount.

It is true, as the honourable member said, that there is a provision in the current act to regulate to set a minimum amount of weekly payments for workers to receive, but the provision has never been used as it was deemed too complicated to set what the minimum amounts would be. It would also give some workers a pay rise for being injured. If they are covered by an award and being underpaid, I would suggest that is an industrial relations issue, not a workers compensation issue, and it should be addressed in that context.

The majority of workers will not experience any significant change in their average weekly earnings under the new provisions. I also make the point that the current method of calculation is extremely complicated, and that is why the government is moving its amendment to this clause. We do oppose the set of amendments moved the Hon. Mark Parnell on the grounds that it could create that unintended and perverse incentive.

The Hon. M. PARNELL: I invite the minister to clarify that statement, because it seems to me that, if a person is being underpaid illegally, we are entrenching the right of the WorkCover system to perpetuate that through their benefits. The minister's response seemed to be that it is not a matter for WorkCover to deal with people who are being underpaid. It seems to me that my amendment complements other provisions we have in state law in relation to minimum wages.

In fact, it uses the opportunity, if you like, of a person being injured to identify that underpayment and make sure that it is fixed up. If that is a perverse incentive, then it seems that the flip side of the coin is that someone who has been poorly treated cannot be treated fairly, because it would give them an incentive not to go back to work because they are treated fairly under WorkCover but not when they are at work. It seems illogical to me that we would want to perpetuate unfairness through WorkCover if a person is not being paid their proper wages.

The Hon. P. HOLLOWAY: The new bill provides, as did the old bill, at clause 6(15)(a) that:

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

That provision is currently in section 4(7)(a) of the act and it has been replicated under this new subsection.

The Hon. R.D. LAWSON: The more likely event of the occurrence of the use of this section would be in the case where a farmer does not employ his son on award wages, or in some other business, and when the son goes on WorkCover he is actually in a better position than he was when he was working for his father. So, we support the government's position on that.

The committee divided on the amendments:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendments thus negatived; clause passed.

Clause 7.

The Hon. M. PARNELL: I move:

Page 12, after line 38—Insert:

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

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

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

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

This clause deals with the issue of the advisory committee. My amendment proposes to insert a new subsection (4) to section 7, which goes to the independence of this advisory committee. It provides that the following persons are not eligible for appointment as the presiding member of the committee: a member, or former member of the board of management of the corporation; or an employee, or former employee of the corporation.

Under this act the advisory committee is potentially of very great value. I believe it provides a great opportunity for WorkCover and the minister to get good advice and feedback from people who are involved in the day-to-day operation of the system. It seems to me that both the former Liberal government and the present Rann government have acted against the spirit and intention of the legislation to make sure that the committee is not independent. In by far the worst transgression, the former Liberal government appointed the then CEO Mr Brown to chair the committee—giving it no hope of being independent from WorkCover.

The Rann government has now appointed WorkCover board member, Mr Bentley, to chair the committee—and, once again, that removes all real hope of independent advice. The fact is that a committee like this will, in doing its job, inevitably have to criticise WorkCover and will, also as part of its job, need to suggest or propose ways of doing things differently. I do not think it can do that effectively if the chair of the committee is an employee or board member—be that past or present. In short, we need to have a truly independent advisory committee.

Members would be well aware of advisory committees in other jurisdictions which do not provide frank and fearless advice; they provide the advice that ministers, governments or statutory authorities want to hear. I think we are selling ourselves short if we do not give this committee every opportunity to be independent. If the committee were truly independent and if it were properly resourced it may have had a far greater influence in delivering better performance of WorkCover to date.

It seems to me that both WorkCover and the government of the day—whether Liberal or Labor—are afraid of decent scrutiny and advice as to how to improve things, so they effectively nobble the advisory committee by appointing a chair who is not independent. If members want an independent advisory committee, one that is not gagged or sidelined, then this amendment is the way to support that.

I would have expected an advisory committee on WorkCover to have a fair bit to say at a time like this. I would have expected an advisory committee to come out supporting the rights of injured workers to decent treatment; however, we are not seeing that. We are seeing a committee that is silent. I think that when the chair is part of the board, and when the board has been pushing for many of these changes to cover up their own failings since 2006, that is inevitable.

I urge all honourable members to support this amendment. It is not radical in the sense that it undermines any particular philosophical underpinning of this legislation, but it does allow this committee to achieve its proper potential by making sure that there are genuinely independent people on it—and in the case of my amendment now, to ensure that the chair is independent.

The Hon. P. HOLLOWAY: The government opposes this amendment on the basis that there are very few people available within this small state who possess expert knowledge in the field of workers compensation and rehabilitation. As such, the government seeks to retain access to relevant subject matter experts and professionals who are currently working within this specialised field. The existing presiding member of the Workers Rehabilitation and Compensation Advisory Committee is Philip Bentley, a WorkCover board member and expert in the closely related field of occupational health and safety as well as a business advisory consultant. Mr Bentley has also served on the former national Occupational Health and Safety Commission. The government does not support this amendment.

The committee divided on the amendment:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

Amendment thus negatived; clause passed.

New clause 7A.

The Hon. M. PARNELL: I move:

Page 12, after line 38—Insert:

7A—Amendment of section 8—Functions of Advisory Committee

Section 8—after subsection (5) insert:

(6) If a Bill for an Act to amend this Act is introduced into Parliament by a Minister without the Advisory Committee having been first given a reasonable opportunity to provide advice to the responsible Minister on the proposals contained in the Bill in the manner contemplated by subsection (1)(b), the responsible Minister must prepare a report on the matter and have copies of the report laid before both Houses of Parliament.

(7) In this section-

responsible Minister means the Minister to whom the administration of this Act has been committed.

There are two main elements to this amendment: the first relates to the advisory committee and the second relates to rehabilitation. New clause 7A relates to the functions of the advisory committee. The process by which this whole bill comes to the parliament shows that the government is not acting consistently with its previous work in this area, and in particular I refer to the Fair Work Bill and the SafeWork SA bill. The process those bills came through, which is in contrast to this one, is that there was an independent review and an opportunity for stakeholders to comment on the review findings. We then had a draft bill released, with stakeholders given an opportunity to comment on that, and all that happened before anything was introduced into parliament. As I understand it in relation to other related legislation, that process was very much appreciated by all stakeholders, whether workers or employers. Stakeholders felt that it led to the legislation being improved compared with what it would have been had there not been that consultation.

However, when it comes to the WorkCover bill the government's desperation to get it through and to control the agenda meant that it did not even pretend to go through proper consultation processes. That is why my amendment proposes to provide for a level of consultation not dissimilar to that which has been followed previously. As I said previously, there is a lot of value in having an advisory committee made up of stakeholders who are involved in the day-to-day cut and thrust of the relevant area, but if we are to have such bodies we need to give them their head and give them a role in providing views on major proposals before final decisions are made.

The government, in contrast, in the way this bill has come to parliament, has disregarded the legislative intention of the current act, and that is because the very first function of the advisory committee listed in the current act is to advise the minister on the formulation and implementation of policies relating to workers rehabilitation and compensation. So, the question is: how can the committee do its job—how can it advise the minister on the formulation and implementation of policies relating to workers rehabilitation and compensation—when the committee does not even get to see the Clayton report, let alone a draft bill, before it is introduced into parliament? The government is effectively flouting the intention of the legislation.

If there is to be an advisory committee, I say that it must be allowed to do its job and, if the government is going to ignore it to keep it in the dark, it might as well be abolished. In that context, my amendment seeks to put more detail on what is obviously the intention of the legislation, which is to try to make sure that the government behaves properly and makes proper use of the advisory committee. My amendment proposes the following: if a bill for an act to amend this act is introduced into parliament by a minister without the advisory committee's having first been given a reasonable opportunity to provide advice to the responsible minister on the proposals contained in the bill in the manner contemplated by subsection (1)(b), the responsible minister must prepare a report on the matter and have copies of the report laid before both houses of parliament.

If the government wants to ignore the advisory committee, if it wants to keep it in the dark—and that is ultimately the government's right—it should have the decency to explain itself if that is what it chooses to do. That is what my amendment requires: if the government is not going to engage the advisory committee, it should at least explain itself. If members here want to reinforce the importance of proper consultation and, in particular, the role of the advisory committee, made up of key stakeholders, they should support this amendment.

This issue of amending the bill and of consultation was a matter on which I attempted to ask a question earlier in clause 1 and was not able to, so I now want to briefly refer to two examples that relate to the importance of proper consultation in relation to legislative reform. The first document I want to refer to, which all members would have received, was from the South Australian Council of Social Services, which put out a circular on 8 May and sent it to all members of the House of Assembly and the Legislative Council.

One of the things it said in its correspondence was that it had serious concerns about the impact of the legislation on vulnerable workers. It set out a lot of the difficulties which others have already raised and which we are raising during the committee debate here. Clearly, it was unhappy with the level of consultation that it had received. Its position on the bill was that it was not adequately informed through consultation, but it was informing itself with its own blueprint to eradicate poverty, and it was on that basis that it was an infringement of what it wanted to see in relation to poverty that had it saying that this legislation was seriously flawed.

The other piece of correspondence that relates to consultation was from the Working Women's Centre, which coordinated a letter on behalf of itself, the Work Injured Resource Connection Inc., the Injured Worker Support Group and the Injured and Disabled Worker Support Group. Its letter of 12 May to the Premier concludes with the following sentence:

> We don't feel we've been properly consulted. We ask for more time to consider and respond to your government's proposal. As a society, we believe it is important that we get this right.

My amendment, seeking to entrench the role of the advisory committee in future legislative reform, is one that is backed up by other key stakeholders. The question, especially given the amount of disquiet in the community in relation to this bill, is about whether we think the consultation has been adequate, and if it is not adequate then what measures can we put in place to ensure that, in future, legislative reform has a greater level of consultation. I think my amendment had a number of other parts but, as I understand it, we need to put that part first. I leave my comments in relation to new clause 7A there, and I urge all members to support it.

The Hon. P. HOLLOWAY: The government opposes this amendment because it runs counter to the existing intention of the act. The advisory committee's function is to provide advice to the minister on its own initiative or at the request of the minister on proposals to amend the act. The act establishes this group as an advisory body and does not envisage that the power of a minister of the Crown should be diminished by what would be seen as a mandatory referral to a tripartite advisory group. Stakeholder representatives appointed to the advisory committee had an opportunity to provide feedback on changes to the scheme as part of the government's consultation process associated with the independent review of the South Australian workers compensation scheme.

A formal call for submissions was made by the government on 12 May last year seeking input to the review from interested parties. The public and interested parties were invited to register their interest to receive details of the process for submitting and receiving information. Submissions closed on 30 June 2007. I am aware that a number of members of the advisory committee were involved in the preparation of submissions and in meetings with the review team. The Clayton review ran for some nine months, it received 72 submissions and, during the course of that review, there were 26 consultation meetings.

The Hon. M. PARNELL: I am just taking some advice in relation to the ordering of these amendments and to make sure that I do not fail to move important aspects. My amendment No. 8 has the aspect to which I just referred in relation to the advisory committee. Also, as part of it, it has an issue in relation to rehabilitation, and that relates to new clause 7B. Do we deal with new clause 7A first?

The ACTING CHAIRMAN (Hon. B.V. Finnigan): We are dealing only with new clause 7A at this point.

The Hon. M. PARNELL: I will come back to new clause 7B.

The committee divided on the new clause:

AYES (3)

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

NOES (18)

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

Majority of 15 for the noes.

New clause thus negatived.

New clause 7A.

The Hon. M. PARNELL: I move:

Page 12, after line 38—Insert:

7A—Insertion of sections 14 and 15

After section 13 insert:

14—Staff

(1) The minister must, after consultation with the advisory committee, provide for staff to assist the committee in the performance of its functions.

(2) The staff of the advisory committee will consist of—

(a) any public service employee assigned to work as a member of the staff; and

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

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

(a) exclude public service employees who are members of the staff of the advisory committee from specified provisions of the Public Sector Management Act 1994; and

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

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

(4) The minister may appoint a person as a member of the staff of the advisory committee on terms and conditions of employment determined by the minister and such a person will not be a public service employee.

(5) The advisory committee may, by agreement with the minister responsible for an administrative unit of the public service, make use of the services of the staff, equipment or facilities of that administrative unit.

15—Annual report

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

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

This is an amendment again where there are two elements in the proposed 7A that relate to the advisory committee and they are the elements that I will deal with first. For honourable members, it is Parnell amendment 10 in the No. 1 set, just dealing with the insertion of the new 7A, which is the insertions of sections 14 and 15, and we will come back to 7B later.

I have already spoken about the independence of the advisory committee, but to date there is another issue; not just the chair of the committee, which I have spoken about, but also the other resources that are available to that committee. These resources have all been provided, as I understand it, by WorkCover. In other words, employees who have been assigned to support the committee have been WorkCover employees. That means it is not fair to expect those persons

whose primary loyalty is to WorkCover (their employer) to be able to give frank and fearless advice to the committee. Members of staff will no doubt feel uncomfortable providing advice or writing materials that are critical of WorkCover (their primary employer), even if that is what the advisory committee genuinely thinks. So, to operate truly independently, the advisory committee needs to have its own staff, and that is what this amendment provides for.

It seems that it is clear that WorkCover does not like the idea of being scrutinised by an independent advisory committee. In fact, it would prefer to abolish the advisory committee, and that is what it said in its November 2006 proposal. I am not prepared to abandon that committee, with its potential. I would like to see it reformed by giving it some genuinely independent staff.

The second aspect of this insertion of clause 7A is new section 15 that relates to the annual report, and my rationale for that amendment is that if we have an advisory committee it should be of equal status and importance to other statutory advisory committees in the industrial relations area, such as the Industrial Relations Advisory Committee and the SafeWork SA advisory committee. These other comparable advisory committees submit annual reports for parliament and for the community's consideration, and I think that this committee should do likewise.

I think that, as members reflect on the importance of accountability and independence of these advisory committees, they need only think of other such committees in other bits of legislation. We know that, where they are serviced only by the staff and do not have to report, they rarely provide the sort of frank and fearless advice that we expect of them. So, I urge members to support this first part of my amendment.

The Hon. P. HOLLOWAY: The government opposes this amendment, as many of the queries and action items that arise from the meetings of the committee need to be addressed by WorkCover, and it seems sensible that it should therefore provide the secretarial function. Currently, WorkCover provides secretariat support to the advisory committee. This function was transferred to WorkCover from the then Workplace Services (now SafeWork SA), as WorkCover is able to provide a more specialised support function and, appropriately, has access to information sought by the committee.

I understand from the minister in the other place that no issues have been raised with him suggesting a lack of support for the advisory committee. While there are no existing explicit provisions for the advisory committee to submit an annual report to the minister, the committee is already required to report to the minister, on its own initiative or at the request of the minister, on any other matter relating to workers rehabilitation or compensation under section 8(1)(d) of the Workers Rehabilitation and Compensation Act.

New clause negatived.

New clause 7B.

The Hon. M. PARNELL: I move:

7B—Amendment of section 26–Rehabilitation programs

Section 26—after subsection (4) insert:

(5) In addition, a worker is entitled to be compensated for reasonable costs associated with rehabilitation reasonably incurred by the worker in consequences of having suffered a compensable disability even if the rehabilitation has not been approved by the Corporation, or has not been provided by a person or as part of a program or plan approved or established by the Corporation.

(6) Compensation for costs to which subsection (5) applies may be paid—

(a) to the worker; or

(b) directly to the person to whom the worker is liable for those costs.

This is the second part of my amendment No. 8. The rehabilitation aspects of this particular amendment are in two parts, but I will now deal with proposed new clause 7B. At the moment there is a fundamental difference in the legislation between the treatment of medical expenses and the treatment of rehabilitation expenses. I think that this difference is not justified, because it results in worse rehabilitation and return to work outcomes.

If a worker incurs a medical expense and it is reasonable and due to their work injury it will be paid for by the compensating authority irrespective of whether there was prior approval to incur the expense. However, unless a rehabilitation expense is approved in advance, then, generally

speaking, the compensating authority does not have to pay for it no matter how reasonable or useful the rehabilitation is.

If compensating authorities were more efficient and more supportive of worker requests for rehabilitation, that might not pose such a problem; however, there are many examples of compensating authorities—both Employers Mutual Limited and even exempt employers—not even making a decision on a request for rehabilitation until the worker forces the issue by taking it to the Workers Compensation Tribunal.

As an example, I understand that a worker had identified that there were good opportunities in a particular field but that a TAFE course was required to get one of the relevant jobs. The worker repeatedly sought approval from Employers Mutual to do the TAFE course but could not get a response. Eventually, the worker took the matter to the Workers Compensation Tribunal to force a decision one way or the other. When that happened, Employers Mutual agreed, but by that time the worker had missed two intakes for the course, meaning that the worker started the course a year later than he would have had the legislation allowed him to simply get on with it. That worker had taken other initiatives to improve his situation and rehabilitate himself, but Employers Mutual says that, because it did not approve these things in advance, it will not pay.

This amendment is about cutting through that bureaucratic red tape and inaction, letting workers actually get on with getting themselves back into the workforce. If they incur costs that are not reasonable the compensating authority does not have to pay. If members here genuinely want to see better rehabilitation and return to work, this is the amendment to support.

The mechanics of the amendment are fairly straightforward. It provides that a worker is entitled to be compensated for reasonable costs associated with rehabilitation incurred by the worker in consequence of having suffered a compensable disability even if the rehabilitation has not been approved by the corporation or has not been provided by a person as part of a program or plan approved or established by the corporation.

It might be regarded in some ways as retrospective approval, which, provided it is reasonable, should still be paid. We can think of parallels in other areas; in fact, the Hon. Paul Holloway, as Minister for Planning, would appreciate that, when people, under the planning system, go ahead and build something without getting approval, the local council, as the authority, rarely tells them to knock it down. What they say is, 'Okay, you should have got approval beforehand. Go and lodge an application and, if it turns out that we approve it, no harm done—you can keep the building.' That is the approach we take. When people undertake investment in building—they do not get approval when they should have got approval—a local council can retrospectively approve it.

My amendment provides the same thing in relation to workers. Sure, they should get approval beforehand, but if for whatever reason they cannot get approval and it turns out that it is a reasonable expense they will still be reimbursed. If it turns out that they do not incur reasonable expenses—they are unreasonable expenses—they will not get their money back. It seems to me that this is a straightforward amendment that would enable workers to take some responsibility for their own rehabilitation. It would allow them to cut through red tape, and it would not add one cent, that I can see, to the overall cost of the scheme because only reasonable expenses will be incurred. It does not cost any more, whether or not you have your approval in advance.

This is one of those eminently sensible amendments that I can see no reason to oppose, and I would urge all members to support it.

The Hon. P. HOLLOWAY: The government opposes the amendment to section 26 on the grounds that it runs counter to best practice case management principles. It does not involve the agent as the coordinating party responsible for arranging rehabilitation services, and it does not foster a partnership approach to an injured worker's assessment and treatment following a workplace injury or illness. WorkCover's approach to recovery from injury and return to work is founded on the principle of partnership necessary for the effective coordination of services. I also point out that existing section 26(4) allows for the provision of rehabilitation prior to determination of the claim.

The Hon. D.G.E. HOOD: In principle, Family First supports the thrust of the Hon. Mark Parnell's amendment, but I want to clarify something with the mover if I may. Looking specifically at subsection (5), I am a little concerned about the wording midway through, where it refers to expenses incurred by the worker in consequence of having suffered a disability, even if the rehabilitation has not been approved by the corporation or has not been provided by a person, etc. My question is: what if the injured worker chose to pursue a type of therapy that would be seen as

very unusual—if I can use an extreme example, some sort of a cult healer, or something of that nature? As I see it, potentially that could be covered by this amendment, and I certainly would not like to see that. So I would like to hear the mover's views on that.

The Hon. M. PARNELL: It seems to me that the key is in the first two lines, which talk about reasonable costs reasonably incurred. It seems to me that, if the money was in fact wasted—if it was spent on useless, unproven therapies—that will not be covered. It seems to me that this amendment really relates to the timing—that if recompense was going to happen anyway, let us not penalise the worker for having gone out with a bit of self-help and engaged the service. If it turns out that they have not reasonably done it, they will not get all their money back. That is the way I see the amendment working.

The Hon. R.D. LAWSON: Can the mover point to any other workers compensation scheme in Australia where such a provision applies?

The Hon. M. PARNELL: Whilst I have done a great deal of interstate comparisons of WorkCover, I have not found another measure where this particular provision applies. The analogy I used before I took from the planning field. It is where people undertake something without going through the normal process, but the commonsense test that is applied is 'no harm done', that is, 'Had they gone through the proper processes, we would have allowed them to do it. We would have compensated them; we would have repaid them their money.' To me, it does not matter whether a sensible amendment has been included in anyone else's workers compensation scheme. If it is sensible, I think we should include it in our scheme.

The committee divided on the new clause:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

New clause thus negatived.

New clause 7B.

The Hon. M. PARNELL: I move:

7B—Amendment of section 26—Rehabilitation programs

Section 26—After subsection (4) insert:

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

This is the insertion of 7B and the issue here is one of the injured worker having a choice of rehabilitation provider. My amendment proposes to insert a new subsection (5) in section 26 which states simply:

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

As we all know, WorkCover's results in helping injured workers get back to work have not been good enough. There is no doubt that we need change in this area. However, in my view, this bill does nothing of substance to improve the rehabilitation assistance provided to injured workers.

Injured workers have the most to gain from effective rehabilitation and the most to lose from bureaucratic do-nothing attempts that are simply called rehabilitation but do not, in fact, work. In my view, no-one will be more demanding of rehabilitation providers and require more of them in delivering meaningful rehabilitation assistance than the injured workers themselves. That says to me that injured workers should be put in the driver's seat. They need to be given more control over their own destiny because at the moment the rehabilitation providers are assigned to them, usually

with no consultation, and if the worker feels that the rehabilitation provider is not up to scratch or is half-hearted in pursuing their rehabilitation, there is little or nothing that they can do about it.

Rehabilitation providers know that it is the self-insurer, EML, or WorkCover that will decide what work they get and whether or not their business is successful. So, of course, they orient themselves to the demands of those engaging agencies, which are usually to keep the money spent on rehabilitation to an absolute minimum, because that is what guarantees them their contracts. With injured workers having more control over the choice of rehabilitation providers, those providers will have to get better at delivering rehabilitation. I think that is what is desperately needed. I would urge all members to support this amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment concerning the choice of rehabilitation provider. A specialised service such as the provision of rehabilitation is different from choosing a treating doctor. It will often be the case that a person would not have the knowledge or experience with these services to make an informed choice. It is critical that a rehabilitation provider be appropriately experienced and suited to the goals of the rehabilitation program.

I understand that, where concerns are expressed by a worker regarding their rehabilitation provider, every effort will be taken to select a provider who is suitably experienced and acceptable to the injured worker. The need for the injured worker and the rehabilitation provider to work collaboratively is paramount to a successful outcome.

New clause negatived.

New section 26A.

The Hon. M. PARNELL: I move:

After section 26 insert:

26A—Related principles

Without limiting any other principle or entitlement under this Act, the following principles should be applied in connection with the operation of section 26:

(a) if it appears that a disabled worker will be incapacitated for work for a period exceeding 4 weeks, the Corporation should seek to arrange for the worker to participate in a form of training or retraining unless it appears that such action would have a detrimental effect on the worker's health or medical progress or that there is some other good reason for not proceeding under this paragraph; and

(b) the Corporation should seek to establish a scheme under which rehabilitation may be provided within specified monetary limits to a disabled worker without needing to obtain the prior approval of the Corporation; and (c) if it appears that the provision of equipment, facilities or services at home would make a significant contribution to the rehabilitation of a disabled worker, the Corporation should take reasonable steps to undertake an assessment of the home and to provide appropriate forms or levels of equipment, facilities or services.

This amendment seeks to insert a new section 26A headed 'Related principles'. WorkCover may use what seems to be its standard response to these sorts of amendments in this case by saying it is not necessary, because we already have the power to do that under the existing legislation. What I am referring to is applying the principles that I am setting out in section 26A(a). WorkCover may say that we can do that already. I am saying that we need to prescribe some of these things in the legislation. That is what this first element seeks to do: the new subsection (a) is about training. The advice that I get from injured workers and unions is that WorkCover and exempt employers do not provide enough training to injured workers to help them get on with life. This amendment is designed to ensure that workers receive that training.

In my view, training can help even where a return to the same job is possible. One of the things that we should all be looking to do is to make sure that returns to work are durable, because if a person goes back to the same job with more or updated skills, then it stands to reason that they will have a better chance of staying in work.

Another extremely important factor is trying to reduce the appalling toll of mental illness that seems to be almost par for the course for workers who have a serious work injury. In fact, my briefing with WorkCover reinforced what the unions had all told me: that what might start off as soft tissue damage very quickly escalates into mental illness as the grind of the system and the failure of proper rehabilitation take their toll.

It is not hard for us to envisage why sitting at home fearful for the future, worried about how food will be put on the table, suffering pain and no obvious pathway to a secure future would result in clinical depression and anxiety, or what are euphemistically known as 'adjustment disorders'.

Injured workers certainly report the feeling of being alone and unsupported when they have a work injury. Being involved in training or retraining, even a refresher course, a first aid certificate or a safety course, learning some new skills where it is medically appropriate gets injured workers interacting with other people. It can give them something positive to focus on; it can provide a light at the end of the tunnel; and, even if they are planning on going back to the same job, they do that in the knowledge that they will be in a better position for a pay rise or a promotion because they have improved their skills, and that must help.

The government, as I understand it, has said that some millions of dollars will be devoted to training. That was part of the package. The point that I make is that workers need to have rights, because the track record of WorkCover and many exempt employers is that they cannot be relied on to agree to reasonable training requests, let alone initiate training even when the money is there. So, that is why establishing more of a right is the way to go.

The next point in my amendment, which is proposed new section 26A(b), is again about cutting through red tape. Essentially, it is saying to injured workers that if you want to go to the gym, do hydrotherapy or a TAFE course from approved providers, and it costs less than a certain amount, then you can just get on with it. That is what this amendment is about. The amendment leaves the details of such a scheme to the government. Anyone who wants to claim that this is not necessary because WorkCover and exempt employers all deal with such requests quickly and efficiently is in fantasyland because all the evidence is that that does not happen. It is only those who are not listening to injured workers who would think that the system is working. My proposed new paragraph (b) provides:

> the Corporation should seek to establish a scheme under which rehabilitation may be provided within specified monetary limits to a disabled worker without needing to obtain prior approval of the Corporation...

It is similar to the amendment we were discussing before where you can be paid retrospectively. This amendment proposes that we set the parameters within which an injured worker can obtain their own retraining. It is not open-ended. The government will set the rules. If the government chooses not to set any rules, that is for the government, but I think this is a sensible way to go and the more control we give people over their rehabilitation or retraining I think the better it will be for them.

The third point in my amendment is proposed new paragraph (c), which is about trying to get WorkCover and some of the exempt employers to do the job that they should already be doing. My amendment provides:

> if it appears that the provision of equipment, facilities or services at home would make a significant contribution to the rehabilitation of the disabled worker, the Corporation should take reasonable steps to undertake an assessment of the home and to provide appropriate forms or levels of equipment, facilities or services.

Members who are familiar with the effects of back, shoulder, wrist injuries (and probably a range of other injuries as well) should know that there are many basic household tasks that either simply cannot be done or, if they are done through necessity, will set back a person's rehabilitation. My proposal is to address that situation, but in the vast majority of cases the option is never raised with injured workers by WorkCover. Often, when injured workers raise it, they get a straightforward 'no' without any serious consideration or they cannot even get an answer without going to the Workers Compensation Tribunal.

One case that came to me was of a worker who had many medical records saying that certain tasks at home that had to be done were setting their recovery back but, once again, WorkCover would not even make a decision on the request for assistance until it was brought before the Workers Compensation Tribunal. I am saying that we can cut through that red tape. The government can establish the parameters and every step should be taken to help people to live their lives in a way that does not exacerbate their injuries, and that is what paragraph (c) seeks to do.

If we are serious about rehabilitating injured workers, we have to tackle all the things that stop or delay their getting back to work. So, this amendment is about getting WorkCover, some of the exempt employers and the state government off their backsides and actually helping injured workers to recover and get back to work. If we are to take the government at face value, and we

agree that return to work is the overwhelming imperative of this legislation, then my amendment supports that endeavour and I urge all members to support it.

The Hon. P. HOLLOWAY: First, in his proposed new section 26A(a) the Hon. Mr Parnell, as one of the principles, discusses a period of four weeks of injury, after which point training or retraining would be looked at. I would indicate to the committee that this is still very early in the claim and, whereas it could help in some situations and could be provided, it would not be suited to all. It does seem that the honourable member is adopting a bit of a blanket approach in that area.

The government opposes the insertion of this new section 26A for a number of other reasons. Retraining is already recognised as an important principle within the field of rehabilitation. An injured worker's claim manager or vocational rehabilitation provider is responsible for organising suitable training or retraining and evaluating an injured worker's progress in returning to work.

If the worker is unable to return to their old job with their old employer post injury or illness, an injured worker may need to retrain for a new role or a new career. In these circumstances they may be offered retraining to help them learn new skills, either with their pre-injury employer or with a new company. In recent years there has been a significant increase in expenditure on retraining. In fact, there has been an increase of more than three times.

In addition to this, the government has endorsed the establishment of a return-to-work fund, which will have retraining activities as a key focus. The government has already introduced a proposal to establish a scheme based on the principles of provisional liability. Clause 12 of the amendment bill, in conjunction with clause 29, introduces a system whereby WorkCover is enabled to provisionally accept liability for medical expenses under section 32, up to $5,000 indexed.

Home assessments and/or activity of daily living assessments already exist as a recognised rehabilitation service and are provided to eligible injured workers upon recommendation by medical experts. The proposed amendment would not add any value to the existing situation.

The Hon. M. PARNELL: Just briefly in reply, I think these amendments do add value. For me it is fairly straightforward. If the minister is correct and these things can all happen anyway, yet they are not happening, then one of the things that we can do is increase the likelihood of them happening by putting it in the legislation and making it very clear. I know that time is pressing on, but this is one of my important amendments and I really do want to test the will of the committee on this one.

The Hon. R.D. LAWSON: I should indicate that we do not support this particular amendment. The honourable member suggests that it will have the effect of cutting through the red tape. On the contrary, we believe that it will create red tape. To mandate principles of this kind in legislation is really to create a fruitful field for legal disputation. One can see in these three subsections countless arguments and contentions before the tribunal, which whilst it might suit the lawyers will not assist disabled workers.

The Hon. A. BRESSINGTON: If we are going to get onto the fact that these amendments are going to cause further litigious arguments and litigation to solve the problems that may be created by some of these amendments, I would actually ask the minister whether he could give us a figure of how much money the WorkCover Corporation has spent in the past two years litigating against injured workers.

The Hon. P. HOLLOWAY: We will see whether we can get an answer tomorrow.

The committee divided on the new section:

AYES (6)

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

NOES (15)

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

Majority of 9 for the noes.

New section thus negatived.

Progress reported; committee to sit again.

FIREARMS (FIREARMS PROHIBITION ORDERS) AMENDMENT BILL

The House of Assembly agreed to the bill with the suggested amendments indicated by the following schedule, to which suggested amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1 Clause 27, page 19, lines 35 and 36 [clause 27, inserted section 26C(1)(a)]—

Delete paragraph (a) and substitute:

(a) a decision of the Registrar that has been affirmed by the Firearms Review Committee; or

CRIMINAL LAW (SENTENCING) (VICTIMS OF CRIME) AMENDMENT BILL

The House of Assembly requested that a conference be granted to it respecting certain amendments to the bill. In the event of a conference being granted, the House of Assembly would be represented at the conference by five managers.

At 00:40 the council adjourned until Wednesday 4 June 2008 at 11:00.