LEGISLATIVE COUNCIL

Wednesday 4 June 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:02 and read prayers.

VISITORS

The PRESIDENT: I advise members of the presence in the gallery today of students from Salisbury High School.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:03): 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.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:04): I move:

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

Motion carried.

The Hon. P. HOLLOWAY: I move:

That standing orders be so far suspended as to enable notices of motion, orders of the day: private members' business and matters of interest to be taken into consideration after question time.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee.

(Continued from Tuesday 3 June 2008. Page 3056.)

Clause 8.

The Hon. A. BRESSINGTON: I move:

Page 12, after line 39—Insert:

(a1) Section 28A(1)—after 'The Corporation may' insert:

, as part of a rehabilitation program,

This amendment requires that rehabilitation programs commence at the earliest possible opportunity and that the WorkCover Corporation make rehabilitation part of its ongoing practices, which would be quite novel.

I have just heard Mr Kris Hanna talking about a WorkCover recipient who required a knee reconstruction. After medical advice, EML rang the practising doctor and said, 'Come on! Can't we just do a cartilage replacement? We don't want to pay for a knee reconstruction and all that goes with that.' It seems that, regardless of the wording of any legislation, WorkCover and EML want to focus on rehabilitation.

I notice that the government also has quite a resistance to have the words 'effectiveness', 'rehabilitation' and anything else that might require WorkCover to actually abide by the original intent of this bill included in any of these amendments. I do ask that members see the need for the wording to be there and for it to be made a little clearer to WorkCover Corporation that it is actually a workers' compensation and rehabilitation scheme and not merely an insurance company.

The Hon. P. HOLLOWAY: Let us just clear the record. Let me indicate what the government's proposal is in relation to clause 8 of this bill: it is an amendment to section 28A, rehabilitation and return-to-work plans. First, it changes the three-month period to 13 weeks, which is obviously a technical amendment, but the second part is:

Section 28A(3)—after paragraph (a) insert: (ab) must consult with the relevant rehabilitation and return-to-work coordinator under section 28D (if appointed); and

So, the government's amendment is very much dealing with the need to ensure that we do get improved rehabilitation and return-to-work outcomes.

The government opposes this particular amendment, as section 28A deals specifically with rehabilitation and return-to-work plans, not rehabilitation programs. Plans and programs are separate documents. They serve different purposes and they are established under differing circumstances. To incorporate one within the other is not consistent with the intention of the act. That is essentially why we oppose this amendment, which really is a technical amendment which aims to introduce a requirement for rehabilitation and return-to-work plans to be developed as part of a rehabilitation program. It is really mixing up the two.

The government's amendment contained in clause 8 proposes to substitute a reference to three months to 13 weeks within section 28A of the act, as I have already said, and to insert a requirement for WorkCover to consult with a workplace-based rehabilitation and return-to-work coordinator (if appointed) when preparing a rehabilitation and return-to-work plan.

As I say, our opposition to this particular amendment is because plans and programs are separate documents. They do serve different purposes; they are established under differing circumstances, and to incorporate one within the other is not consistent with the intention of the act.

The Hon. A. BRESSINGTON: Can the minister provide us with any information on how many rehabilitation plans actually lead to a rehabilitation program. Just to clarify: a plan and a program are, apparently, two separate things, but why would you have a rehabilitation plan if there was not going to be a program to follow it? It would not be necessary, I would think. As far as a rehabilitation program goes, you would not be able to have that without a plan, either.

The Hon. P. HOLLOWAY: My advice is that a plan applies when there is a return-to-work focus; in other words, if someone has a capacity to return to work then that is when we are referring to plans. However, a program can be used in a situation where there is no likelihood of return to work. So, it can apply in those situations for a worker who is more catastrophically injured, shall we say, whereas a plan, as I said, has a particular return-to-work focus.

The Hon. M. PARNELL: The minister described the change of time from three months to 13 weeks as technical. My guess is that not all months are of equal duration but all weeks are: they are seven days rather than a range of between 28 and 31 days. So, first, could the minister clarify that that is the only effect of the change? Secondly, are there any cost impacts of this clause? I am talking about the government's clause rather than the member's amendment: are there any cost implications?

The Hon. P. HOLLOWAY: My advice is that it is being introduced for consistency within the act. The entitlement provisions within the act refer to 13 weeks, so this is really to bring some consistency within the act. I think for most times of the year 13 weeks—which I have just worked out is 91 days—particularly if February was involved, would be in excess of a three-month period.

The Hon. M. PARNELL: And in relation to any cost implications of this clause?

The Hon. P. HOLLOWAY: Thirteen weeks is 91 days and most months are about 30 days; some have 31 and one has 28. I would not think it would be a huge cost; it would be very marginal.

The Hon. M. PARNELL: In relation to the second part of the government's amendment, there is the consultation that has been included. Are there cost implications of that? Is there consultation that is not occurring at the moment, in which case, what costings have been done in relation to the impact of that clause?

The Hon. P. HOLLOWAY: The government recognises that there will be some impact on business in relation to this, as it will be required to employ workplace coordinators if they have more than 30 employees. This was recommended by the Clayton review because it has been seen to be successful elsewhere. Like so much of this debate on WorkCover, a good deal of the focus has been on those workers who have been injured in the system. However, if they could be got back to work and not suffer the process of the WorkCover system, not only would the community at large be better off, both financially and socially, but also the injured workers themselves would be better off.

I think that is the point that has to be made through this entire debate—that, if we are successful in reducing the number of workers who stay longer on WorkCover, it would be beneficial not only economically to the community but also socially to the individuals themselves.

The Hon. M. PARNELL: I thank the minister for his answer. In relation to the honourable member's amendment, I understand the government's position, namely, that it sees it as confusing rehabilitation programs with return-to-work plans. I do not think that causes any great offence to this legislation. The greatest offence I see is the fact that, in other parts of the bill, we are reducing the income entitlements to injured workers and bringing that ahead 49 weeks, but we are not bringing rehabilitation ahead: that stays where it is. It is just the payments that are cut. I can see no great harm in the honourable's amendment and I will support it.

The Hon. A. BRESSINGTON: The minister mentions the difference between a rehabilitation plan and a rehabilitation program. I am still at a loss to see that it will be terribly confusing. I point out that it states that 'the corporation may', not 'must'. Obviously, it would follow that, if a person has been assessed and has a case management plan (which few do have), it would be worked out then. If a rehabilitation plan was in fact necessary, or if it was a minor injury that needed minor medical attention or treatment, they would go down that road; if they require intense rehabilitation, it is provided for in this amendment and in the act.

As I said, this seems to be one of the great bugbears of many of the injured workers who contact my office—that some of them have waited anything up to three, four or five years for a rehabilitation plan or program because it is not stipulated in the act, and it is not a requirement of WorkCover or EML to ensure that people get a rehabilitation they deserve and need. I feel that if we do not start stipulating in terms of rehabilitation being part of the focus of this bill, it is, as the Hon. Mark Parnell said, cutting workers' entitlements and not putting anything else in place to guarantee that there is an understanding that many do require rehabilitation plans and programs.

The Hon. P. HOLLOWAY: The difference between programs and plans is really defined in section 26 of the original act, 'Rehabilitation programs' and section 28A, 'Rehabilitation and return to work plans'. The definition is really contained in those two sections of the act. However, in relation to section 28A, 'Rehabilitation and return to work plans', it is important to point out that subsection (1) provides:

> The Corporation may establish a rehabilitation and return to work plan for a worker who is incapacitated for work by a compensable disability.

So, they may do it for any worker, but subsection (2) provides that, if the worker is or is likely to be incapacitated for more than three months (now 13 weeks), but has some prospect of returning to work, the corporation must prepare a rehabilitation and return-to-work plan. The point is that, if someone is likely to be off work for more than 13 weeks, the corporation must prepare a rehabilitation and return-to-work plan, whereas they may do it in other circumstances if the period is less than 13 weeks. That is really the distinction.

The committee divided on the amendment:

AYES (5)

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

NOES (13)

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

PAIRS (2)

Evans, A.L.	Finnigan, B.V.

Majority of 8 for the noes.

Amendment thus negatived.

The Hon. A. BRESSINGTON: I move:

Page 12, line 41—Delete '13' and substitute:

This amendment, again, ensures that rehabilitation plans or programs are developed after four weeks of a person making a claim rather than after 13 weeks. The reason for this is that the self-insured sector tells us that early intervention is the key to whether people return to work in a relatively short time or whether a long-term determination is made about the direction that particular claim will take.

Having a requirement on WorkCover to provide that sort of rehabilitation plan within 13 weeks means that many people do not even hear from a claims manager in that time and have no idea where they are going or what sort of treatment they will get—if they get any treatment at all. If we are serious about wanting to improve return-to-work rates we should also be serious about wanting to provide some sort of plan or process for an injured worker to follow as soon as possible rather than waiting for 13 weeks. According to core competencies interstate and other schemes four weeks is, if you like, a respectable time frame for those sorts of plans and processes to be worked out, in cooperation with the injured worker.

The Hon. M. PARNELL: The Greens very strongly support this amendment, and I believe all members should support it if they are serious about improving rehabilitation and return-to-work rates. All the rhetoric we have had from the government and from WorkCover has been around the importance of an early return to work. Those are the words, but the action is basically just to cut the injured worker's entitlements. This amendment proposes to get the rehabilitation process in train earlier and, from what I have heard from WorkCover and others, I do not believe there is any serious debate to be had around the question of whether rehabilitation should start sooner rather than later.

I would like to go back to the words of the section, which provide:

> If a worker—
>
> (a) is receiving compensation by way of income maintenance; and
>
> (b) is (or is likely to be) incapacitated for work by a compensable disability for more three months [which will now be 13 weeks] (but has some prospect of returning to work),
>
> the corporation must prepare a rehabilitation and return to work plan for the worker.

Think about it. If it is apparent early on that a person is likely to be incapacitated for more than four weeks but they clearly have some prospect of returning to work, then why not start the rehabilitation program earlier? Why have the threshold of looking like they will be off work for three months before you create the obligation on the corporation to prepare a rehabilitation and return-to-work plan? Of course, it is not the fact of the plan itself which gets a worker back to work; clearly, it is the content of the plan. However, the driver for getting the content right is the need to have a plan established in the first place. So, the two things are connected.

Ultimately, the honourable member's amendment is about making sure there is faster action to put rehabilitation in place. If an injury is serious enough to have a person off work for four weeks, then it is serious enough to make it a requirement that there be a proper examination of what could help the injured worker get back to work. They will also be getting back into the community, as we discussed previously, and getting better in general terms and not just in their role as an economic unit. So this is a sensible and important amendment and puts the government to task to put into place something that would back the rhetoric. This amendment will make it more likely that people return to work early after injury.

The Hon. P. HOLLOWAY: The government opposes this amendment. The current time frame is set at 13 weeks or two months because that is the expected time frame within which a strain or sprain should have healed, and soft tissue injuries make up the majority of injuries covered by workers compensation. Further, 13 weeks is a key time frame within the bill as the time when the first step-down will come into place. Requiring every injured person who is likely to be incapacitated for more than four weeks to have a plan will impose an unnecessary amount of red tape on WorkCover, businesses and rehabilitation co-ordinators for injuries that are likely to heal quickly without an extensive rehabilitation plan. From memory, the figures from Clayton are that about 80 per cent of workers will be back at work within the 13-week period.

I read out earlier on the previous amendment that WorkCover may establish a plan at any time, but it is mandatory to do so after the 13 weeks. It is after 13 weeks when you have the 20 per cent tail, and we all know that is the great failing of the WorkCover scheme in this state, that we are much less effective about getting that 20 per cent tail back to work within the two-year time frame and that is obviously where the effort needs to go—in the first 13 weeks. Why would we want to add a whole lot more unnecessary red tape when 80 per cent of those workers will be back

anyway? If there are difficulties identified within the 13 weeks, WorkCover may do it and that is covered within the act. There is nothing preventing the establishment of a rehabilitation and return-to-work plan earlier than 13 weeks, even from the first week. The reference to 13 weeks of actual or likely incapacity is the point at which a plan becomes mandatory.

The Hon. M. PARNELL: In response to what the minister has said, it seems that the key people protected by the Hon. Ann Bressington's amendment are those who fall in that period in between, those who are likely to be off work for more than four weeks but less than 13 weeks, which is where the obligation to prepare a plan currently arises. I can accept what the minister says, that there may be an unnecessary plan prepared by someone who was always going to go back to work some time before the 13 weeks but not before four weeks, but let us look at this in toto: at the cost (or red tape, if you call it that) of preparing a plan compared with the benefit of an injured worker getting back to work sooner as a result of rehabilitation starting earlier.

Whilst I am no expert on the administrative cost of preparing a plan, I would have thought that if a worker goes back to work one week earlier than they would have otherwise, then we have a saving. WorkCover is saving because it no longer has to pay that person their weekly payments. I do not accept that the additional cost of preparing some plans, a few of which may turn out to be unnecessary, is the death knell for an amendment like this. It is a sensible amendment and, if we are serious about getting people back to work, it deserves members' support.

The Hon. A. BRESSINGTON: I refer to the core competencies booklet, which says that a rehabilitation plan is a document prepared with the client, which outlines the goals of any rehabilitation program. The plan also outlines the services to be provided, who will provide those services, the time frame on the provision of those services and an approximate cost for the rehabilitation program. What is the advertisement on the radio: people do not plan to fail, they fail to plan. That is exactly what is going wrong with the WorkCover Corporation. I ask the minister to find out how many of those people on the long tail of the WorkCover scheme actually have a rehabilitation plan and a rehabilitation program, because not all of them do and some have been on that scheme now for two, three or four years and they still do not have a plan—they do not even have a program. As the Hon. Mark Parnell said, if we are serious about this rhetoric we are hearing about return to work being so important—

The CHAIRMAN: The honourable member will stick to the clause and stop debating.

The Hon. A. BRESSINGTON: That is it, four weeks. If we are not to have any requirement on WorkCover to get a rehabilitation plan and a program in place for people after four weeks of being off work, then we are not serious about this whole return-to-work stuff we are talking about. The self-insured sector said early intervention is the key, whether the injury involves soft tissue damage or major damage. I have had a number of people coming to my office from the self-insured sector who, if something is not in place within two weeks of an injured worker putting in a claim, feel they are dragging their tail. At 13 weeks we are looking at the first step-down of an injured worker's entitlements and then we start to develop a plan and program for them, after we have already stepped them down for the first stage. They then have to cope with perhaps undergoing a rehabilitation program on less income than they were earlier receiving. It seems to me that medical professionals would know if someone will be back at work within 13 weeks or six months after four weeks of a claim being made.

The Hon. P. HOLLOWAY: I am advised that the Campbell National Return to Work Monitor, which looks at these sorts of statistics across the country, indicates that South Australia has the most plans of any state relative to population but it has the worst return-to-work rates. I think that underlines the point that just having plans (and if this amendment is carried we would have a lot more of them) will not of itself solve the problem. I suggest that what we need is perhaps fewer but better plans for those who require them.

It would be wrong to suggest that, during the first four weeks (or, for that matter, the first 13 weeks), nothing is happening in relation to the treatment of injured workers. That is the period when there will be the medical management. Significant medical management will be taking place, particularly in the early days of an injury. Again I make the point that, under the act, WorkCover may establish these plans, but they are mandatory after 13 weeks, because we know that that is the time beyond which most soft tissue injuries should have healed.

However, if we require a plan for everyone after four weeks it will mean that even more resources from WorkCover will be going into this area, and that will obviously put a strain on improving the quality where it needs to be done with respect to those longer term injuries. I think the fact that we have the most plans across the country with the worst return-to-work rate really is a

statistic that tells a story; that we really need to make sure that we introduce those plans when they are most needed and make them better, and that will give a better outcome.

The Hon. A. BRESSINGTON: I find it quite disturbing for the minister to suggest that, because we have more plans, we have a poorer return-to-work rate. Could it not be that it is because the plans are not being implemented, that they are not effective and that they are not followed with a rehabilitation program, and that is why we are having poor return-to-work rates?

The Hon. P. Holloway: What I am saying is that your amendment is not the answer to the problem. We have a problem, but this is not the answer.

The CHAIRMAN: Order! The honourable member will stop debating the matter and the minister will stop encouraging the honourable member to debate it: we might move along a lot more quickly.

The Hon. A. BRESSINGTON: Can we find out how many of those 3,700 workers on the long tail of this scheme have a rehabilitation plan and are currently involved in a rehabilitation program?

The committee divided on the amendment:

AYES (5)

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

NOES (14)

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.	

PAIRS (2)

Evans, A.L.	Dawkins, J.S.L.

Majority of 9 for the noes.

Amendment thus negatived; clause passed.

New Clause 8A.

The Hon. A. BRESSINGTON: I move:

Page 13, after line 3—Insert:

8A—Amendment of section 28C—Rehabilitation standards and requirements

(1) Section 28C(1)—delete 'by regulation' and substitute:

—

(a) by regulation; or

(b) by the Corporation.

(2) Section 28C—after subsection (1) insert:

(1a) Any standards or requirements developed by the Corporation under subsection (1) must be consistent with any relevant nationally recognised standards.

(1b) The Corporation must take reasonable steps to ensure that the standards and requirements under subsection (1) include a comprehensive set of scales of charges for the purposes of rehabilitation facilities and services provided for disabled workers for the purposes of this Act.

(1c) A scale of charges must be based on the average charge to members of the public for the relevant services (to such extent as this is reasonably practicable to ascertain).

(1d) In connection with the preceding subsections, a provider of a rehabilitation service must prepare a comprehensive statement of charges associated with the provision of services to a disabled worker within 7 days after the worker is referred to the provider for the provision of those services.

(3) Section 28C(2)—delete 'regulations imposing standards and requirements for rehabilitation programs and return to work plans, the Corporation must consult on the proposed regulations' and substitute:

standards and requirements under this section, the Corporation must consult

(4) Section 28C(2)—after paragraph (a) insert:

(ab) the Australian Rehabilitation Counsellors Association; and

It is intended that the corporation will be encouraged, if you like, to declare the standards to be set for rehabilitation providers and, in doing so, hopefully we can raise the bar with this amendment. It also aims to compel the corporation to play a more proactive regulatory role to ensure that service providers comply with the highest professional standards.

This has come about because we were able to communicate with rehabilitation providers, both here and interstate. Our standards just do not compare to interstate assessment, evaluation and the requirements of that industry. In South Australia it is pretty much a mixed bag, if you like. I have three rehabilitation people who have been working with my office for quite some time and they were the ones responsible for the drafting of this amendment and including in this bill a reference to standards and requirements so that, if a rehabilitation service reaches those standards and requirements, then they will actually be utilised by the corporation. Apparently, this is not occurring now as much as it should be. There seems to be a streamlining of services going to one or two service providers in particular. If there is a level playing field for rehabilitation providers and they are all measured and assessed at the same standard, there should be no reason why all rehabilitation providers cannot be utilised to their full potential.

The Hon. M. PARNELL: I support the general thrust of this amendment. There is one minor glitch in it for me, but I do not think it is fatal, and that is in relation to the proposed new clause 8A(1b) (and perhaps it is a drafting issue) which allows WorkCover to set standards by its own decision rather than by regulation. It is very desirable that rehabilitation standards that are set for WorkCover purposes have a consistency with national standards. That is very much the thrust of the honourable member's amendment. I want to briefly address the issue raised by the honourable member's proposed new subparagraph (1c), which states:

A scale of charges must be based on the average charge to members of the public for the relevant services (to such extent as this is reasonably practicable to ascertain).

I think that is a very important amendment because it highlights one of the problems WorkCover has at present. Because WorkCover has very much taken a cost-containment approach to setting fees for many service providers—whether they be doctors or rehabilitation experts or whatever—many of those professionals can actually earn more doing the same work for people who are not under the SA workers compensation scheme; in other words, people whose injuries are covered by private health insurance or people who simply have to pay for those services themselves.

What this has resulted in, according to the many people who have contacted me, is that many professionals refuse to take on WorkCover cases. That, together with other frustrations that professionals often have in dealing with WorkCover, leads to the result that injured workers are finding it more and more difficult to obtain the best quality help to enable them to get better and get back to work. Requiring fees to be set at a level that reflects what the relevant professionals could otherwise expect for their services is an important step in attempting to restore injured workers with access to professional services and thereby helping them to get better.

I would like to also very briefly comment on the proposed new subsection (4). In support of that I say that it makes absolute sense to me to require that the Australian Rehabilitation Counsellors Association should be consulted on these matters. It is a sensible amendment and, as I say, I support some aspects of it very strongly but, overall, support the package.

The Hon. A. BRESSINGTON: I would like to clarify the point that the Hon. Mark Parnell made about having subsection (1b) included in this amendment. I would like to assure the member that I tried very hard not to allow the corporation to set any of these standards but, for some reason that is unclear to me, it needed to be included in there. It would have been my desire for this amendment to have it set strictly by regulation and, therefore, it would have meant that the corporation needed to comply with those regulations rather than set their own standards. However, that was not possible; perhaps parliamentary counsel might be able to clarify why it was not possible.

I also would have much preferred for this amendment to include SafeWork SA, as in the case of occupational health and safety, to set some of these standards. However, that also was not

possible. There is a reason (but I am not quite sure what it is) why subsection (1b) is included there.

The Hon. P. HOLLOWAY: The government opposes the new clause, as it duplicates arrangements that are already in place through regulation. Alan Clayton did a review of rehabilitation in 2005 and made a number of recommendations to improve rehabilitation, and these are under way. There is extensive work under way to increase the level of expertise required of rehabilitation providers and to add more rigour to the management of the vocational rehabilitation contracts. So, for those reasons the government opposes the new clause.

The Hon. A. BRESSINGTON: Can the minister share with the chamber the standards that WorkCover is working towards under these regulations? Who is the assessing body, if you like, or the organisation or authority that is setting the standards for rehabilitation providers in South Australia?

The Hon. P. HOLLOWAY: The relevant qualifications are a bachelor's degree, a graduate diploma, or higher; for example, a masters or a doctorate. WorkCover has determined that the minimum qualification for consideration of registration from 1 July 2006 is an approved tertiary qualification with at least three years of study (or higher) in one of the following: Bachelor of Arts (majoring in psychology), Bachelor of Science (including behavioural or applied social or health science, with a major in psychology or disability studies), Bachelor of Psychology, Bachelor of Social Worker or Bachelor of Nursing; a graduate diploma (or higher) in one of the following social work areas: psychology, rehabilitation, counselling, disability studies counselling or nursing; or qualifications as one of the following: a registered nurse, an occupational therapist, a physiotherapist, a psychologist or a medical doctor.

WorkCover developed a comprehensive supervision and training program for vocational rehabilitation providers in 2006. This training program remains available to rehabilitation providers for staff training and competency assessment. In January 2008, following consultation with the key stakeholders, WorkCover developed WorkCover SA competency guidelines for vocational rehabilitation providers. These guidelines have been developed to provide agreed alternative methods for demonstrating competency and are available under the new agreement, effective 10 March 2008.

The guidelines set out the minimum competency requirements, depending on the consultants' qualifications, skills and experience. The development of a supervision and training program was one of the key recommendations made in Alan Clayton's 2005 report titled Review of the Framework for Rehabilitation in the South Australian WorkCover Scheme.

New clause negatived.

Clause 9.

The Hon. M. PARNELL: Before moving my amendment, I have a few questions on this clause. This clause seeks to insert a new section 28D into the act, which will require employers to appoint rehabilitation and return-to-work coordinators. The coordinator is to be an employee of the employer, and the new clause sets out their functions. My question of the minister is whether or not what is proposed here is, in effect, what we already have, and I will explain that question.

We know that the government has claimed that the introduction of rehabilitation and return-to-work coordinators will deliver a substantial improvement in return-to-work and rehabilitation, but I am very suspicious about whether these coordinators will actually make any meaningful difference under the current proposals in the bill because, under the bill, there is no need for a rehabilitation and return-to-work coordinator to devote any particular amount of time to that topic or to have any more authority than, say, a fire warden or a first aid officer. In other words, it can be a position that is filled in title only but does not have any meaningful role. The only obligation that the employer has is to nominate someone to be the rehabilitation and return-to-work coordinator. Other than that, they might potentially attend some training at some stage, but they are under no obligation to actually do anything once they are appointed.

The reason I ask the minister whether or not what is being proposed here is what we already have is that it seems to me that many medium and large employers already have people fulfilling this sort of role; they already assign these responsibilities to a particular employee. Given that is the case, I would appreciate the minister's answer as to the additional benefits the government sees in the creation of these positions when there is no obligation under them to do a great deal of work.

The Hon. P. HOLLOWAY: First of all, new section 28D is in the government's bill as a proposed new section. The current Workers Rehabilitation and Compensation Act does not provide for rehabilitation and return-to-work coordinators. Sections 28, 28A, 28B and 28C of the current act deal with rehabilitation advisers and rehabilitation and return-to-work plans. It is widely acknowledged that the best return-to-work results are gained from workplace-based arrangements in which the employer actively participates in the rehabilitation process.

The current injury management process can be too centralised to be of an office-based nature. The proposed insertion of section 28D will introduce these return-to-work coordinators into many South Australian workplaces. The regulations will initially prescribe that any workplace with 30 or more workers must employ a rehabilitation and return-to-work coordinator within six months of the requirement to register with WorkCover. After three years, it is proposed to expand the requirements to businesses with 20 or more employees. The regulations may also exempt an employer or class of employer from a requirement under this section. The coordinator must be an employee and the employer must be based in South Australia. The coordinators will assist injured workers to:

- remain at or return to work as soon as possible after their injury;
- liaise with WorkCover to prepare and implement the injured worker's rehabilitation and return-to-work plan;
- liaise with medical and rehabilitation providers to monitor the progress of the worker's capacity to return to work; and
- take steps to try to prevent any secondary disability once the worker returns to work.

The advantages of this proposal are that research strongly supports the efficacy of workplace-based return-to-work programs. Similar examples in other jurisdictions have also demonstrated a high level of success with their implementation, and the proposal aims to successfully return more injured workers to work sooner, thereby substantially reducing the cost of workers compensation claims. Of course, they are in line with the Clayton report. That is why the government is introducing section 28D.

The Hon. Mark Parnell's amendment proposes to insert a new section 28E to make explicit an injured worker's right to make any reasonable request for assistance with rehabilitation and that WorkCover must determine a request for assistance with rehabilitation made by a worker as expeditiously as possible and, wherever possible, it should endeavour to act on such a request within two business days.

The government opposes this amendment. as it is completely unrealistic to expect case managers to consider and responsibly determine requests for rehabilitation that they may never have heard of before within two business days. In addition to this, injured workers may already request assistance with rehabilitation, as this falls within the spirit of existing legislation. One of the primary objectives of WorkCover, as defined in the WorkCover Corporation Act 1994, is to 'ensure as far as practicable the prompt and effective rehabilitation of workers who suffer work-related injuries'. This is a key objective to which WorkCover is held. However, this unrealistic amendment will not serve to improve how the objective is delivered.

The Hon. M. PARNELL: I thank the minister for his addressing my amendment, which I will move shortly, and certainly I will not ask him to repeat his explanation then. My further question of the minister follows the question I asked before in relation to the fact that most small employers will be exempt from this provision and, on the information I have, most big employers are already doing it. Does the government have any information about the number of employers, and the number of workers who work for those employers, who would be appointing someone in this type of role for the first time whether or not they have this exact same label of a rehabilitation/return-to-work coordinator? I want to get a feel for whether this amendment is going to capture more people on the ground, other than those who are already doing it.

The Hon. P. HOLLOWAY: Obviously it is hard to be precise, but our rough estimates are that about 2,000 employers might be covered—that is, those with greater than 30 employees. That is roughly.

The Hon. M. PARNELL: I move:

Page 14, after line 6—

Insert:

28E—Action on request for rehabilitation and assistance

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

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

As the minister has pointed out, this amendment requires the corporation to determine in a short period of time any reasonable request for assistance with rehabilitation. The rationale for my moving this amendment is that it acknowledges that rehabilitation should be addressed sooner rather than later and, if possible, even from the date of the injury. Under the present arrangements, workers cannot get through the current bureaucracy in a reasonable time frame in order to get the assistance that they need to progress their rehabilitation.

It seems clear to me that the costs to the scheme of early intervention will be beneficial in the long term by preventing the continued growth of the long tail in the scheme, and WorkCover and the claims managers have effectively become experts in building this long tail. Access to rehabilitation is currently limited by a range of policy and procedural failures, including workers having no say in their rehabilitation and having inadequate mechanisms to make the claims manager respond to their need and request for assistance.

Under the present arrangements, workers are often not meaningfully consulted and often receive limited or no response—for example, to their requests regarding retraining, which is an issue we dealt with yesterday, or their need to improve their fitness, which we dealt with yesterday when we talked about people trying to get gymnasium access and being thwarted at every turn, or even people being able to be provided with special medical requirements.

I do not think this amendment actually asks for very much. It is asking that, if a worker asks for some help with rehabilitation, WorkCover does something about that request within two business days of receiving it. They just have to respond to the request and do more than just say, 'Thanks; we've got it and we will just sit on it for months and months, and we will make you go to the tribunal in order to have something done about it.' It puts this pressure back on WorkCover to respond. I guess it gives some power or authority to the worker; if they do need to go to another level to make sure something happens, then at least they have the benefit of my proposed section.

If the case manager needs a medical opinion about the request, that is fine, but get onto it fast: set up the appointment or ask for the report within two days. Certainly, the outcome will take longer than that, but this makes people get things happening faster. If the case manager thinks they need more information about what jobs a worker might be able to get if they do a particular course, that is fine, but let us make them at least ask for that information sooner rather than later. If WorkCover says that the request is not practicable, the obvious reason is at present the chronic under-staffing of case managers. The information that I have is that they are so overworked they have not actually got a hope of pursuing decent rehabilitation requests, because they are desperately trying to get other basic jobs done.

Too many workers have told me that, after months of no response to a request for rehabilitation, when they take the failure to respond to the Workers Compensation Tribunal it is only then that WorkCover actually asks for a medical report to help it make its decision, and then that takes even more time to arrive. It seems that, if the government is serious about assisting those who are injured to get back to work, and if it is serious about reducing employers' levies and improving the scheme performance, then this is an amendment that will help bring that about.

In conclusion, I will refer to one person who contacted me on Friday of last week. My staff received a very distressing phone call from a person on WorkCover who was highly distressed about the legislation and the changes that it was going to bring in. This person described how they had had a complete mental breakdown following a very bad case of workplace bullying. The workplace, in a subsequent court case, was found to be completely negligent. The person was extremely upset about the potential loss of income. They described how much financial strain their family is currently under, let alone what will happen when their income is cut.

The main reason for me describing that person's story is that it is not yet another complaint about the bill: it is directly relevant to this amendment. The crux of the person's story was that it had taken them two years to even get rehabilitation to begin. That example opens up, I think, that whole

question of psychiatric injuries which do not neatly fit into the 13-week mould of rehabilitation and recovery that this bill seeks to impose. Often rehabilitation takes much longer.

What this person who communicated to my office was most concerned about was that, if they were currently well advanced in their return-to-work program—and in this case the person was about to return to work after undertaking a series of rehabilitation programs—they were very concerned that they are going to be kicked off WorkCover, despite the fact that after two years they were only just commencing their rehabilitation.

So, the two things go hand in hand: the timeframe within which people commence rehabilitation and the timeframe within which their benefits are going to be cut. It seems to me eminently sensible to bring forward the rehabilitation, because the sooner people start getting help, the sooner they are likely to get back to work. I would urge all honourable members to support this amendment.

The Hon. P. HOLLOWAY: I want to point out one thing that I think the Hon. Mark Parnell seems to be neglecting, and that is that the early intervention following a workplace injury is likely to be medical intervention. There is intervention straight away. It is medical intervention. The rehabilitation plan and so on follow on from the early medical intervention. In relation to that, of course, under clause 12 of the bill, which we will come to in a moment, there is the section on provisional liability which will enable up to $5,000 in medical expenses to be incurred before a determination is made.

The point is that what we are trying to do is to get the medical intervention quicker. The provision under clause 12 will significantly assist in that. The rehabilitation plans will then come in following that medical assessment and intervention. In any case, I would point out to the committee that, if there is any unreasonable delay in preparing a plan, then there are sections of the act (part 6A) where an expedited decision can be requested. So, there are substantial provisions in the Workers Rehabilitation and Compensation Act which can deal with the issue of unreasonable delay, should that occur. We should not overlook the fact that it is the medical intervention which is the necessary early intervention.

The Hon. M. PARNELL: This amendment does not downplay or devalue the importance of early medical intervention. What it does is provide that, as part of a package of measures, early rehabilitation intervention can be just as important. So, I think that this amendment is still one that is deserving of support. Members need only think about other areas of law that we have dealt with where the law has tried to provide a solution for bureaucratic delay.

The minister has referred to one provision, which is more cumbersome than what I am proposing. I am proposing a very simple 'We will get back to you within a very short period of time.' The other way we could approach it is to say, as we do in other bits of legislation, 'The default position is that if you do not get an answer within a certain period of time then the answer is yes.' That would be another way we could have gone.

I have not gone down that path. I have gone down a path which basically forces an early response. It does not mean that it will be a final answer, but it at least forces bureaucrats to take requests seriously and to respond to them seriously. I have not had anyone tell me that it is a bad thing for injured workers to be given more control, more responsibility and more dignity in dealing with their situation, rather than less.

The committee divided on the amendment:

AYES (5)

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

NOES (13)

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

PAIRS (2)

Evans, A.L.	Dawkins, J.S.L.

Majority of 8 for the noes.

Amendment thus negatived; clause passed.

Clause 10.

The Hon. M. PARNELL: Clause 10 amends section 30. The explanation of clauses states:

As a consequence of this amendment, a worker's employment will include attendance at a place for the purposes of a rehabilitation and return to work plan.

My question to the minister is: am I correct in my understanding that this clause fixes what may be seen as a technical issue—that is, at the moment, if a worker is injured when attending for treatment under a rehabilitation program, they are covered by workers compensation, but they are not if their attendance is in relation to a rehabilitation return-to-work plan? Will the minister clarify whether that is the effect of the amendment?

The Hon. P. HOLLOWAY: My advice is that that is the case. I believe it was a drafting omission when the bill was drafted in 1995.

Clause passed.

Clause 11.

The Hon. M. PARNELL: Before I move my amendment, I have a question of the minister. Why has the government amended this section in the way it has when it does not seem to follow any issues raised in the Clayton report or elsewhere?

The Hon. P. HOLLOWAY: I am advised that this was a recommendation of the board in November 2006. The advantage of this proposal is that clause 11 of the bill provides for a more responsive and flexible fee-setting process under section 32 of the act. The proposal would provide the minister with the authority to set fees after consultation has occurred with relevant stakeholder organisations.

Eliminating the need to regulate fees not only increases flexibility in purchasing services but also enhances access to timely services that will deliver improved outcomes for injured workers. Amending the act to give the minister the authority to set medical fees after consultation has occurred with relevant stakeholder organisations streamlines the fee-setting process, removes unnecessary red tape, increases flexibility in purchasing services, and facilitates access to timely services for injured workers.

The Hon. M. PARNELL: I thank the minister for his answer. I am not entirely convinced it is the way to go, because we are removing some level of scrutiny, whether it is through the Legislative Review Committee or even through parliament. However, I do not have a particular amendment to deal with that issue, and we have previously discussed the merits of different provisions being passed by regulation or simply by proclamation. I move:

Page 14, after line 12—Insert:

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

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

This amendment proposes a new subsection (3a). The purpose of the amendment is to ensure that when workers have regular medication needs WorkCover will take the fairest, most efficient and least stressful option for the worker in providing for those needs. It could work by WorkCover simply establishing an account with a relevant pharmacy so that it is billed directly for the medicines it approves.

It would come as no surprise to members to know that having to pay for medications and then wait, sometimes for months, to be reimbursed for those costs can put great stress on family budgets. It would have the additional advantage of providing a better recording method for the medications used, because the records would be directly between the pharmacy and WorkCover. I believe an amendment such as this would lead to less of an administrative burden, and would remove the need for injured workers to submit receipts. It minimises paper; therefore, it minimises costs.

It also eliminates the problems of claims managers losing receipts and repeated requests of injured workers to resubmit paperwork. A number of injured workers have come to me complaining quite bitterly when paperwork or receipts go missing; often they see a conspiracy, that they are being punished for criticising the system or causing trouble—and, as we had some time ago, injured workers even talking to each other can result in what they see as discrimination. I think a measure such as this will provide for a better experience for workers in relation to them obtaining their medicines and would remove a major source of frustration people currently have with the system.

Of course, it could be said that WorkCover or exempt employers could do this now; they could introduce such a scheme. However, my point is that I understand it is very rare for them to actually offer this type of facility to injured workers. As I understand it, injured workers usually do not know that this is a possibility and, therefore, do not ask for it; it is not something that is offered to them as a matter of course.

There will be some circumstances where it is not appropriate to provide for a system such as this, but many workers who have long-term injuries have the same medication week in week out for years. This has nothing to do with the prescriptions themselves; it has nothing to do with circumventing doctors' prescribing role: it is simply about the dispensing role. The amendment puts the onus on WorkCover to make arrangements that will take pressure off injured workers, and I expect it will make the administration of the scheme simpler and cheaper. For those reasons, I believe all members should support this amendment.

The Hon. P. HOLLOWAY: The government opposes this amendment, as a worker is already entitled to be compensated for the costs of medicines or other materials (such as support bandages, heat packs or the like) where these have been purchased on the prescription or recommendation of a medical expert. We also oppose the amendment on the basis that this is a matter already suitably addressed at an operational level. Where there is an ongoing need for provider services such as pharmacy items, the claims agent can suggest to the worker that they discuss with the provider the establishment of an account. The claims agent should also assist the worker to arrange this if necessary.

This practice is in the interests of both workers and agents. In the case of chemist expenses, it means that the agent has to deal with only one consolidated account for the worker's expenses rather than individual accounts for numerous purchases. In other cases, it ensures that the worker is not out of pocket whilst awaiting reimbursement.

The Hon. M. PARNELL: I agree that they should do it, but the evidence I have is that they do not. Whilst my amendment does not force them to, it says that the corporation should take reasonable steps to arrange for this. Yes, perhaps some are doing it; but, as I understand it, the vast bulk are not. Putting it in legislation makes it much more likely that it will happen, and it seems to me, even from the minister's answer, that there is no great harm putting this in. It simply puts up front that it is an obligation on the corporation to take these reasonable steps. I maintain my amendment.

The committee divided on the amendment:

AYES (4)

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

NOES (12)

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

PAIRS (4)

Evans, A.L.	Dawkins, J.S.L.
Hood, D.G.E.	Hunter, I.K.

Majority of eight for the noes.

Amendment thus negatived; clause passed.

Clause 12.

The Hon. M. PARNELL: This clause inserts a new section 32A in relation to special provisions for payment of medical expenses after initial notification of a disability. Given that many case managers do not have medical experience, how will medical expenses be determined to be reasonable or unreasonable without seeking a medical report? Medical reports, as we all know, are one of the biggest causes of delay. If case managers continue to seek medical reports to answer their questions, will not the result under this new regime be exactly the same as under the present regime?

The Hon. P. HOLLOWAY: It will not change from the current situation. Obviously the case manager has to determine what is reasonable and base it on their judgment and awareness of the facts.

The Hon. M. PARNELL: I take it from the minister's answer that there is probably no great improvement in this case, because that is what they would be doing already. It seems that if they require medical reports to help them form their view they will still do that, so we are not saving anything there. My next question relates to the figure for payment of medical expenses, which is set at $5,000. On what basis was that figure calculated?

The Hon. P. HOLLOWAY: It is based on the Clayton review, which in turn I understand is based largely on the New South Wales experience. I refer the honourable member to pages 174 and 175 of the Clayton report, section 543, 'Provisional liability'.

The Hon. M. PARNELL: The clause also inserts in the new section 32A a new subclause (10), which provides for a range of decisions not to be reviewable. The first of those is a decision to accept or not accept liability under the section. What justification is there for having non-medical personnel being able to make decisions that clearly involve some medical judgment without having those decisions subject to some form of review? What is the justification for the non-reviewability of these decisions?

The Hon. P. HOLLOWAY: My advice is that this clause provides for provisional acceptance before a claim is made, and that must be made within seven days. There are six exceptions, which we will discuss in clause 29. If the case manager does not accept the provisional claim, the provisions that are currently in the act will apply: in other words, a formal claim is lodged. So, the new system allows the provisional claim before a claim is formally made, and it has to be within seven days. There are six exceptions to that. If the case manager does not agree, it just goes back to what the current system is.

The Hon. M. PARNELL: My final question relates to the applications that are made by workers. The new provision talks about applications being made to the corporation in the designated manner and in the designated form. What type of information is it envisaged the worker will have to provide in order for the corporation to make a preliminary decision, and what steps will the government take to make sure that these requirements are not so onerous as to make an interim application, as it were, hardly worth the effort? It does not take a lot of imagination to realise that, if the paperwork was too difficult, people would not seek to avail themselves of this provision.

The Hon. P. HOLLOWAY: My advice on this section is based on the New South Wales experience. So, we are relying on what has happened there. The minister will be gazetting provisional payment guidelines, but the whole thrust behind this new measure is to require a minimal amount of detail. As I said, that is really based on what happens in New South Wales.

The Hon. M. PARNELL: I move:

Page 15, line 6—Delete 'designated manner and the designated form' and substitute:

prescribed manner and form

This amendment follows somewhat of a theme in relation to the appropriateness of different measures being included in regulations other than just being designated. It seems to me that, in relation to the forms under this provision, these are important enough that they should be subject to parliamentary oversight and, therefore, be done through regulations rather than just designated by the minister.

It seems to me that the way this is currently drafted means that unelected and unaccountable bureaucrats will ultimately have the final say on an important question in relation to the rules for injured workers getting their payments. I take some comfort from the minister's statement that they are proposing a minimalist rather than an exhaustive process but, nevertheless, I do not think WorkCover's performance to date instils in us any confidence that it will be an efficient and user-friendly system. However, because this amendment does follow others

where we have discussed the issue of regulation versus designation, I do not propose to divide on it.

The Hon. P. HOLLOWAY: The government opposes this amendment, as we have made several proposals in the original bill to remove the requirement for WorkCover to regulate the forms. The regulation of forms requires ministerial endorsement, parliamentary approval and then proclamation by the Governor in Executive Council and then, presumably, perusal by the Legislative Review Committee.

This is an administratively inefficient process which severely limits opportunities to amend the forms so that they remain up to date with changes to contemporary business practice. As I think I indicated in the debate we had yesterday, I do not think any other state requires them.

Amendment negatived; clause passed.

Clause 13.

The Hon. M. PARNELL: This clause involves the topic of transportation for initial treatment. My question to the minister is: why is this amendment proposed? Currently, the regulations under the Workers Rehabilitation and Compensation Act prescribe the figure, under the existing section 33(4), as being $150. Section 33(4) states:

> If the cost of transportation provided by an employer, other than an exempt employer, to a worker in accordance with subsection (1), exceeds an amount prescribed by the regulations, the employer is, on application to the corporation in a manner and form approved by the corporation, entitled to recover the excess from the corporation.

It seems the way the system currently works is that the employer bears the cost and it claims back any additional costs over that $150 from WorkCover. It seems odd that this government and WorkCover itself (despite all the other problems that we have seen with WorkCover where it is not doing anything about problems such as the failure to provide decent rehabilitation) want to change a part of the act which no government has seen fit to change since 1999. It hardly seems to be a burning issue. My understanding is that this was not raised in the Clayton report. There was no case made for why these changes were necessary in the WorkCover proposal.

It seems to me to be a case of the government fiddling around with a fairly inconsequential issue while the bigger issues of workers' entitlements are where it should be devoting its attention. I can see no case for change. If there is a genuine case that the $150 is inadequate, my question is: why have the regulations not changed? There may be some merit in this amendment but no case has been put to us to justify it. In addition to this question, I ask how many claims are made each year under section 33 and, of those claims (which all result in a shortfall), what is the average shortfall for those claims? Under WorkCover's proposal to increase the regulated amount to $240 indexed, what will be the extra cost paid by employers? What is the actuarial assessed impact of this proposal and what impact will it have on unfunded liabilities?

The Hon. P. HOLLOWAY: My advice is that it will have no impact on unfunded liability. Under the current law, section 33 provides:

> Where a worker is injured at their workplace during the course of work and an injury requires immediate medical treatment, the employer shall transport the worker to a hospital or medical expert for initial treatment at their own expense.

Section 33(4) provides:

> Where transportation costs exceed an amount prescribed by regulation the employer can apply to recover the excess from WorkCover.

Under regulation 5 of the Workers Rehabilitation and Compensation General Regulations 1999, the prescribed amount for transportation costs is $150. The amount of $150 was prescribed in 1988 but no further amounts have been prescribed. The figure that was set on 17 October 1988 was not subject to indexation. The proposal to automatically index the cap adds much needed flexibility to the process which will ensure that, from this point, the cap can keep pace with inflation. The actual transportation costs, in most cases by ambulance, greatly exceed the regulated amount. Ambulance costs are based on a call-out fee of $660 in most cases, and then $3.85 per kilometre travelled.

I think the Hon. Mr Parnell also asked for some statistics, and my advice is that we are unable to provide data in relation to how much compensation WorkCover has paid under that section in the last five years because , unfortunately, claims under section 33(4) are not allocated separate payment codes to allow for their easy reporting.

The Hon. M. PARNELL: I thank the minister for his answer. It seems to me that there may be simpler ways of dealing with this. The fundamental principle at stake here is that there is no limit on the amount of money that an employer can claim back under section 33 as long as their expenditure is over the legal minimum; in other words, it is not capped. That puts this provision at odds with the other provisions, such as workers claiming medical expenses for costs reasonably incurred. There is no requirement for these travel costs to have to be reasonably incurred, and there is no cap. So, my question to the minister is: what consideration does the government give to the possibility of capping what an employer can recover under this section and, in addition, or, alternatively, to imposing a requirement before it can be recovered that it had been reasonably incurred; and, if the government did consider those options, why did it not proceed with either capping or a requirement for reasonableness?

The Hon. P. HOLLOWAY: As I indicated, we are talking here about the transport of an injured worker, in most cases to a hospital and in most cases by an ambulance. Given that the ambulance service is, after all, provided through the government, it is really the government that sets the fees. This is really what this provision is all about. It is just about ensuring that the employer meets up to the cap or above the cap. What we are doing here is increasing the excess, but the honourable member is talking about why there is no cap. As I said, in most cases we are talking about ambulance transport, which is a government organisation with a set fee, anyway.

Clause passed.

Clause 14.

The Hon. M. PARNELL: Clause 14 amends section 34, which provides for compensation for property damage. The effect of this amendment is fairly minor; it is in relation to indexing. My question in relation to compensation for property damage is more fundamental, and I want to make some observations on how the system works. Under regulation 6 of this act, there is a provision for compensation for property damage. It basically provides that, for the purposes of section 34 of the act, the following limits apply in relation to the compensation payable for damage to personal property. It then states that, for damage to therapeutic appliances and tools of trade, there is no limit and, for damage to clothes and personal effects, there is a $1,500 limit.

The regulation then goes on to say that the amount prescribed under subregulation (1)(b) will be adjusted on an annual basis according to calendar years so that the relevant amount for a year from time to time will be an amount that is effectively indexed. I will not quote verbatim the whole clause but, basically, it refers to the consumer price index. That regulation, as I understand it, was first made by the former Liberal government in 1999.

One of the things that leap out at me when considering this clause is that the change that the bill proposes is to allow the regulation to include indexing, but the existing regulation already includes indexing. Does that mean, therefore, that the former Liberal government made an invalid regulation and that we now need to re-regulate that topic, or does it also mean, in fact, that the present government has done nothing about an invalid regulation for the past six years? I would first like to get a response from the minister to that question.

The Hon. P. HOLLOWAY: I have been advised by parliamentary counsel that it is desirable to have the capacity to index included in the act rather than in the regulations themselves. It just ensures that the regulating power—which will include indexation—is properly endorsed in the act itself. So, it is really just making absolutely sure that the current indexation in the 1999 regulations is valid and effective.

The Hon. M. PARNELL: I thank the minister for his answer. Just to follow that further, was there some suggestion from any quarter that the regulations were not valid, hence the need to clarify it?

The Hon. P. HOLLOWAY: It is just a technical issue. Certainly, no stakeholders have expressed a view on it, but I guess it is just one of those things that is picked up by parliamentary counsel when drafting these bills. We all like to make sure that it is as effective as possible.

Progress reported; committee to sit again.

[Sitting suspended from 12:59 to 14:15]

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the written answers to questions, as detailed in the schedule I now table, be distributed and printed in *Hansard*.

WOMEN IN LEADERSHIP

514 The Hon. J.M.A. LENSINK (7 February 2007) (First Session). Can the Minister for the Status of Women advise how many women undertook the 'Women in Leadership' program to enable them to serve on boards and committees during the 2005-06 financial year period?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health): The Minister for the Status of Women has advised:

The Office for Women has advised me that the number of women who have participated in the 'Women @ the Board Table' training in the 2005-06 financial year is 153. This includes 36 women from the community who participated in the course through sponsorship provided by the Premier.

In 2005 an accredited 18 week women's leadership course for women from culturally and linguistically diverse backgrounds was delivered in the Riverland.

Twenty-four women from Barmera, Berri, Renmark, Loxton and Paringa graduated from the course. The diversity of the cultural backgrounds of the participants reflects the diversity of cultures in the Riverland region. They included women from Italian, Indian, Greek, Turkish, Romanian and Russian backgrounds.

MINISTERIAL STAFF

138 The Hon. R.I. LUCAS (12 February 2008).

1. Can the Minister for Transport advise the names of all officers working in the minister's office as at 1 December 2007?

2. What positions were vacant as at 1 December 2007?

3. For each position, was the person employed under ministerial contract, or appointed under the Public Sector Management Act?

4. What was the salary for each position and any other financial benefit included in the remuneration package?

5. (a) What was the total approved budget for the minister's office in 2007-08; and

   (b) Can the Minister detail any of the salaries paid by a Department or Agency rather than the minister's office budget?

6. Can the minister detail any expenditure incurred since 2 December 2006 and up to 1 December 2007 on renovations to the minister's office and the purchase of any new items of furniture with a value greater than $500?

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:

1. Details of ministerial contract staff are due to be printed in the *Government Gazette* in July 2008.

Details of public servant staff located in the minister's office as at 1 December 2007 were as follows:

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary and Other Benefits
Snr Ministerial Liaison Officer	PSM Act Contract	88,750
Snr Ministerial Liaison Officer	PSM Act Contract	85,367
Office Manager	PSM Act Contract	80,053
Ministerial Liaison Officer	PSM Act Contract	68,623
Ministerial Liaison Officer	PSM Act Contract	68,335
Personal Assistant to the Minister	PSM Act Contract	66,356
Ministerial Liaison Officer	PSM Act Contract	61,502

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary and Other Benefits
Ministerial Liaison Officer	PSM Act Contract	66,356
Parliamentary Liaison Officer	PSM Act Contract	55,569
Ministerial Assistant	PSM Act Contract	49,762
PA to Chief of Staff	PSM Act Contract	46,475
Correspondence Officer	PSM Act Contract	43,193
Correspondence Officer	PSM Act Contract	43,193
Administration Officer	PSM Act Contract	43,193
Correspondence Officer	PSM Act Contract	43,193
Receptionist	PSM Act Contract	41,550

2. Ministerial Liaison Officer

Correspondence Clerk

3. See table above.

4. See table above.

5. (a) $1.654 million.

(b) DTEI does not pay for the minister's office staff. However there are 10 DTEI staff that are located in the minister's offices that provide a liaison function between the minister's office and the various divisions of the department.

Division	FTE	$'000
Energy	1	85
Corporate Svs	1	58
OCE	1	100
Transport Svs	2	176
Public Transport	2	129
Policy and Planning	2	116
LMC	1	80
TOTAL	10	744

6.

Renovations/Furniture	Amount
Modify workstations	4297.00
Modify workstations	2660.15
Shelves	656.00
Workstation furniture	6934.00
	Total 14,547.15

MINISTERIAL TRAVEL

183 The Hon. R.I. LUCAS (12 February 2008). Can the Minister for Transport state:

1. What was the total cost of any overseas trip undertaken by the minister and staff since 2 December 2006 up to 1 December 2007?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the Minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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 for the period 2 December 2006 and up to 1 December 2007:

1. Cost of trip	2. Accompanying Officers	3. Private leave taken	4. Cost met by Minister's Office or Dept/Agency	5. (a). Cities & locations visited	5. (b). Purpose of trip
$20,849.43	Media Adviser	Nil	Minister's Office	Frankfurt/Munich, Germany	Meeting with the Director of the German Aerospace Research Centre (DLR) in Frankfurt. Meeting with the Ausbird Munich Industrial Team and meeting with the Minister for Science, Research and the Arts in Munich.

MINISTERIAL TRAVEL

194 The Hon. R.I. LUCAS (12 February 2008). Can the Minister for State/Local Government Relations state—

1. What was the total cost of any overseas trip undertaken by the minister and staff since 2 December 2006 up to 1 December 2007?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health): The Minister for State/Local Government Relations has advised that for the period 2 December 2006 and up to 1 December 2007:

1. Cost of Trip	2. Accompanying Officers	3. Private Leave Taken	4. Cost met by Minister's Office or Dept/Agency	5. (a) Cities & Locations Visited	5.(b) Purpose of Trip
The total cost of all overseas travel undertaken by the Minister and staff since 2 December 2006 up to 1 December 2007 was $13,819.17 for travel to New Zealand.	The Minister's Chief of Staff, Angela Duigan, accompanied the Minister on the trip to New Zealand.	No.	The cost of travel, for the Minister and her staff member, was met through the Minister's office budget.	Auckland Whakatane Wellington	Commonwealth Local Government Conference—to increase knowledge of Local Government and Planning Issues at an international level. Local Government and Planning Minister's Council—to review key areas and challenges facing Local Governments. Individual meetings with relevant senior agency representatives/site visits. Country Fire Service public information/volunteer recruitment day. Individual meetings with New Zealand Ministerial

1. Cost of Trip	2. Accompanying Officers	3. Private Leave Taken	4. Cost met by Minister's Office or Dept/Agency	5. (a) Cities & Locations Visited	5.(b) Purpose of Trip
					counterparts, Local Government Representatives, Liquor Licensing Authority, Alcohol Advisory Council and the National Director of Financial Education.

INFRINGEMENT NOTICES

196 The Hon. SANDRA KANCK (13 February 2008). How many infringement notices have been issued to motorists, for each year of the past five years, for:

1. Parking in a designated bicycle lane; and?

2. Driving in a designated bicycle lane?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs): The Minister for Police has provided the following information:

Parking in a designated bicycle lane

EXPIATION NOTICES ISSUED EACH CALENDAR YEAR, SINCE 1/1/2003, FOR PARK IN DESIGNATED BICYCLE LANE				
2003	2004	2005	2006	2007
198	206	263	390	315

Driving in a designated bicycle lane

EXPIATION NOTICES ISSUED EACH CALENDAR YEAR, SINCE 1/1/2003, FOR DRIVE IN DESIGNATED BICYCLE LANE				
2003	2004	2005	2006	2007
27	37	33	42	54

The total of expiation notices issued per calendar year is a combined total of both cautions and expiable notices.

NATURAL RESOURCES COMMITTEE

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:18): I lay on the table an addendum to the government response to the committee's Deep Creek report.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:18): I bring up the 20th report of the committee 2007-08.

Report received.

QUESTION TIME

POLICE HEADQUARTERS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:19): I seek leave to make a brief explanation before asking the Minister for Police a question regarding the leak or announcement from the budget that we are likely to see tomorrow of the $38 million to be provided—

The Hon. G.E. Gago interjecting:

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: Is this the newspaper?

The PRESIDENT: Order! The Hon. Mr Ridgway will not be so easily distracted.

The Hon. D.W. RIDGWAY: Sorry, Mr President. I am a little tired from last night and I am easily distracted today. However, I will attempt to stay focused on the question. In *The Advertiser* today and by press release on radio this morning with the Treasurer speaking about it, we have heard that $38 million is to be provided—

The PRESIDENT: Order! You have to seek leave.

The Hon. D.W. RIDGWAY: I thought I did.

The PRESIDENT: You kept going. Is leave granted?

Leave granted.

The Hon. D.W. RIDGWAY: On radio this morning the Treasurer discussed his commitment to provide $38 million in the budget (to be announced tomorrow)—as reported in *The Advertiser* today by Mr Greg Kelton—to help establish for the South Australian police a new state-of-the-art headquarters in the city. The press announcement states:

> Mr Foley said the $38 million would help police establish a new site and called for registrations of interest for the new building.

This is the second time that this has been proposed by the government. I would refer you to an article published in *The Australian* of 14 June 2007, which states:

> The Department for Transport, Energy and Infrastructure went to the market last year with plans to relocate 860 staff from its ageing suburban Walkerville base—as well as 500 more from other locations—to a flood of new office tower accommodation either being built or planned in the CBD. A handful of developers were...shortlisted after the expressions of interest process. But government concerns about the department having to pay rent of about $12.5 million per year resulted in the planned move being delayed for at least 12 months. 'It's very frustrating when developers spend thousands of dollars putting up proposals, and then have the carpet pulled from under them at the last minute', said one developer...Another said he believed developers were 'pissed off' by the department's time wasting...'.

They believed government priorities were for different new buildings. The Department for Transport, Energy and Infrastructure delay is stated to be the second time in a year that the state government agency has disappointed local developers. The South Australian police also went to the market seeking new space and finally decided (last year) to exercise a new four-year lease option enabling them to continue in their existing premises until 2012.

We know that this particular proposal is post-2012. My question to the minister is: how will the $38 million provided for this exciting (as they describe it) new state-of-the-art city headquarters for SAPOL be spent? Will it be spent on providing a process for expressions of interest for the fit-out of the new building, or for what other particular equipment or rent will that $38 million be provided and when will it be provided?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:22): I am pleased that the Leader of the Opposition has given me the opportunity to talk about the police budget, because it is indeed very good news for South Australia. In the budget to be brought down tomorrow, we will see another record budget for police. In addition to the 11 per cent increase in operational funding for police, for the first time in the budget there is the provision of the $38 million that the honourable member has mentioned for the relocation of police headquarters.

The honourable member is quite correct: the police have been looking for some time at their building. The contract for their current Flinders Street office, which is increasingly becoming less satisfactory for police operations, will expire in 2012. That is why the government has been looking at the options in relation—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: The $38 million is the cost that will be involved in relocating police headquarters. There are a number of options. As I indicated today, the government will shortly be calling for registrations of interest for the new building. The $38 million is the estimate of what a new fit-out and relocation expenses would be. The Flinders Street building has been used as police headquarters since 1993. The police were previously in Victoria Square, where the new High Court building is now located. They were shifted then to the Flinders Street building. The contract was continued some years ago.

By the time the lease expires in 2012, the police will be well and truly due for new accommodation. It is important that they have state-of-the-art headquarters in the city. There will be

costs involved with a fit-out that will need to meet the requirements of a modern police force. They have very sophisticated computer equipment and other sections, which obviously will be located within the new building. So, those costs (the $38 million) amount to the current estimate of what it will cost to provide for the fit-out and the relocation costs involved with SAPOL moving to new headquarters.

POLICE HEADQUARTERS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): I have a supplementary question. Given that the minister is talking about $38 million as the current estimate for the fit-out, what is the current estimate for the annual rent or lease on the premises to which the police intend to move?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:26): I do not have those sorts of details. I am happy to get them and—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: What does the honourable member think? The government will shortly call for registrations of interest for the new building. What you need to do in government when budgeting is put money aside for the future to allow for the costs. You have to base it on estimates.

Members interjecting:

The Hon. P. HOLLOWAY: The figure I am releasing—the $38 million—is the cost involved in relocation. However, obviously the ongoing lease costs will depend on the registrations of interest. How do you know what the rent will be until you know which building you will be moving into? The government has said that it would like to go into five-star accommodation, and it is government policy that it should do so. Of course, when those registrations of interest come in, I guess the government will have the option of whether it leases or seeks to provide its own building. However, at this stage it is asking for registrations of interest.

POLICE HEADQUARTERS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): Given my explanation, when I stated that, in relation to the Department of Transport, Energy and Infrastructure building, the government backed out of its commitment because it said that the $12.2 million a year was too expensive, my supplementary question is: what band of dollar value has the minister put on the rent? You cannot seek expressions of interest and commit $38 million if do not have a band of expected rent.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:28): I am happy to get some further detail in relation to that.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: There is a commitment, because $38 million is being set aside in the out years in the budget tomorrow to pay for it. What will happen is that South Australia Police headquarters will need to relocate from Flinders Street by the time the lease expires in 2012 because that building is no longer suitable. Through its announcement that it will call shortly for expressions of interest for the new building, those matters will be dealt with. Of course, these property transactions are handled through the relevant government department, and the Department of Transport, Energy and Infrastructure is the body responsible for the negotiations. Those matters are not handled directly by the police but, like all other government departments, by the proper agencies.

Members interjecting:

The Hon. P. HOLLOWAY: If the Leader of the Opposition, as the shadow minister for police, wants to go to the next election saying that he will require the police to remain in the totally inadequate building where they are now in 2012, he can do so. He is welcome to do that, but we are not going to do it. We are saying that we will give the police a quality, state of the art premises in the city for their headquarters, and tomorrow we will set aside money in the budget for that purpose. How much rent we pay will depend on the state of the market in 2012 or 2013, when the lease expires.

LANDSCAPE FUTURES PROJECT

The Hon. J.M.A. LENSINK (14:30): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Landscape Futures project.

Leave granted.

The Hon. J.M.A. LENSINK: Scientists have indicated that they wish to have more control over the decision-making of the natural resource management boards, and I cite one Professor Meyer who says that in many ways some of the local boards do not understand some of the greater priorities and that therefore some projects that are provided with scarce resources are actually not the right priorities. Last month it was reported that a watering project for river red gums on the Chowilla flood plain had actually failed. My questions are:

1. Can the minister advise whether this particular project was part of the Landscape Futures project?

2. What other projects fall within initiatives that have not been successful?

The Hon. R.P. Wortley interjecting:

The PRESIDENT: I call the Minister for Environment and Conservation—without the help of the Hon. Mr Wortley!

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 thank the honourable member for her question. Although not a great deal of detail was given, I gleaned from the information provided by the honourable member that the Chowilla watering project she referred to was part of a River Murray initiative that provided environmental flows to, I think, six of our iconic sites. It is a project that is actually run through the Minister for the River Murray, the Hon. Karlene Maywald. As I said, from the information the honourable member gave I believe that is the project to which she was referring.

The Murray-Darling Water Commission gave priority to watering six sites in the last round. It has been providing these environmental flows periodically for some time now, and I understand this particular site had been watered previously a number of years ago. As I said, it is not my portfolio responsibility, but from what I can recollect it had been watered previously and was identified as a site for rewatering. The site contains a very important group of our river red gums, which are under considerable stress at the moment, and is an area that is particularly environmentally important.

I absolutely challenge the assertion made by the honourable member that the project failed: I do not believe that was so at all. However, as I have said, it is not my portfolio responsibility. I understand there were some project challenges, but a good part of the water was delivered as planned—that is, if it is the project I mentioned. However, I am happy to obtain further details from the honourable member so that I am very clear about the exact water project to which she referred, and I will be happy to bring back a response.

PRISONERS, TOBACCO USE

The Hon. S.G. WADE (14:34): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question relating to smoking in prisons.

Leave granted.

The Hon. S.G. WADE: With 20 per cent overcrowding and with 80 per cent of prisoners being smokers, the opportunity to have access to a smoke-free cell are increasingly limited. However, the government has made clear that its rack 'em, pack 'em and stack 'em approach to prisons means that prisoner welfare is no longer a priority. Prisons, however, are also workplaces. In legislating to ban smoking in all enclosed workplaces the Rann government specifically excluded prisons, the workplace of 870 correctional services officers.

The Public Service Association's ongoing pleas for a smoke-free workplace for its members have been ignored. In contrast, there is a growing trend worldwide toward smoke-free prisons. In 2004 smoking was outlawed in the 105 federal penitentiaries of the United States of America, and in 2005 California banned the possession, sale and use of tobacco products for inmates, employees and visitors to the state's 32 prisons. At least 10 US states have bans where the use and possession of tobacco products is outlawed on prison property. In Western Australia Greenough Regional Prison is currently implementing a 12-month trial of a full indoor smoking ban.

The Western Australian government has declared its intention to make all its prisons smoke free. My questions to the minister are:

1. Considering that general smoking rates in the community have fallen from around 40 per cent to less than 20 per cent since 1990, what is the government doing to reduce the estimated 80 per cent prevalence of smoking amongst prisoners?

2. Will the government follow the lead of the United States and the Western Australian government and trial smoke-free workplaces for the benefit of our correctional services officers?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:37): It is correct that approximately 80 per cent of the prison population smoke. For many prisoners entry into the prison system is a stressful experience, and the added anxiety associated with not having access to tobacco could significantly increase trauma levels and contribute to prisoner unrest, self-harming behaviour and other management issues. It is correct that prisons were excluded from no smoking legislation under the Tobacco Products Regulation Act 1997, but I place on record that prisoners are allowed to smoke only in designated site-specific areas, including their cells. Any breach of those rules is likely to result in a warning, followed by appropriate action if the prisoner continues to disregard the restrictions.

Prisoners are permitted to smoke in their cells, provided the cell door is closed. The air from the cells is vented outside the building and is not recirculated. Prisoners and staff are not allowed to smoke in enclosed association areas, buildings or accommodation units. These areas include the gymnasiums, the infirmaries, the kitchens, recreation areas and the laundries. Every effort is made not to accommodate smokers and non-smokers in the same cell. The department offers assistance to prisoners who wish to quit smoking. Occasionally it does happen that non-smoking prisoners have been or are temporarily accommodated with smokers, and in such circumstances officers ensure that the prisoners are agreeable to sharing a cell and that they are relocated as soon as is practicable. The new prisons being opened in 2011 clearly offer the department the opportunity, with a greater footprint, for the issue of where smoking is and is not allowed in our prisons to be re-examined.

RIVER TORRENS LINEAR PARK

The Hon. R.P. WORTLEY (14:39): Will the Minister for Urban Development and Planning provide details of any new funding arrangements for the River Torrens Linear Park, and has he seen the report that suggests the government plans to fence off this important river flowing through the heart of Adelaide?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:40): I am delighted to inform members that the state government has decided to provide $850,000 to eradicate safety black spots along the 35-kilometre length of the River Torrens Linear Park. So, when one adds the $100,000 already earmarked for improvements to the River Street section of the Linear Park at Hindmarsh, one will see that the government has committed almost $1 million in the first part of this year to upgrading this important public asset.

This additional funding for the Torrens River safety initiative was prompted by a detailed safety and risk assessment of the Linear Park commissioned by the South Australian government and the Local Government Association after two tragic drownings. I take this opportunity to thank Wendy Campana and the other members of the Local Government Association for their support in ensuring that governments at the state and local levels responded in an effective way to these tragedies.

The new spending announced last month to tackle safety black spots along the river trail also builds on the $3 million previously provided by the state government through the Planning and Development Fund to improve the Torrens River Linear Park. Both the state government and local councils share a common objective in that not only do we want to maintain this special Linear Park that connects the Adelaide Hills with the sea but we also want to improve the level of safety for all users.

It is, of course, impossible to remove all risk from a watercourse without destroying its intrinsic natural beauty, and members of the public will still need to exercise caution when using the trail, particularly in areas with steep banks. However, there are measures that can be taken along

the 70 kilometres of trails (it is a 35 kilometre park with trails along both sides) that will ensure a higher standard of safety for pedestrians and cyclists using the pathways and bridges.

The 35 kilometre trail running along both sides of the river crosses nine council boundaries and comprises land owned by the state, local government and private individuals. The safety and risk assessment conducted on behalf of the state government and the Local Government Association examined the physical condition of the path alignment and width as well as the path surfaces, slopes, gradients, cross falls, batters and banks, steps, stairs and ramps.

After consideration of that report by local councils, and based on advice from the Public Space Advisory Committee, the government has decided to provide open space funding to fix a number of black spots identified as high priority risks along the length of the river. Except for a $60,000 joint contribution from the City of Charles Sturt and the City of West Torrens to replace the Kanbara Street footbridge at Flinders Park, the state government will carry the full cost of these necessary upgrades.

The latest safety upgradings identified by the assessment report and local councils build on the extensive work already carried out on sections of the River Torrens Linear Park by this government through open space grants. Funds provided by the state government include:

- $845,000 for the Seaview Road underpass at Henley Beach South that links the River Torrens Linear Park and Adelaide's Coast Park;
- $1.5 million for the upgrading of the Underdale section near the old UniSA campus;
- $575,000 for the purchase of land along the Felixstow section; and
- $100,000 for recently approved improvements along the River Street section at Hindmarsh.

I would like to point out that this list does not include the money provided by the local government bodies themselves, many of which contribute up to 50 per cent towards the cost of these important public infrastructure projects.

The Rann Labor government has now invested more than $37 million from the planning and development fund to encourage local government bodies and community groups throughout the state to develop open space in their local area for recreation, walking and cycling. When matched by local government contributions, that is a large sum of money being spent throughout South Australia for the provision and improvement of public space for the benefit of all the community. Apart from improving safety aspects along the River Torrens Linear Park, the work to be carried out by the eight councils is consistent in delivering the South Australian Strategic Plan's objectives of improving wellbeing through the provision of quality open space.

The Hon. Mr Wortley asked whether I had seen reports about the safety initiative which has characterised this spending as evidence of some sort of nanny state mentality which will lead to the fencing off of the river. I believe that is a gross misrepresentation of the government's intention. Of the 70 kilometres of trails alongside the river, only a few lengths of fencing will be required, and only where the safety assessment has identified a very high risk. The Linear Park consists of two banks sloping down to a river and, therefore, a level of danger is inherent in that natural state.

However, many of the safety black spots can be addressed by widening pathways, by restoring and replacing bridges, by changing the camber of the trail and providing appropriate resurfacing rather than the holus-bolus erection of fences and guardrails. There is no intention by this government to fence off the Torrens. That would be an overreaction and would be at odds with the natural character we have strived to preserve along the 70 kilometres of trails. However, if there is something the state government and local councils can do to improve the safety of the park, without detracting from its intrinsic natural beauty, we would be foolish not to take those steps. If the removal of safety black spots along the River Torrens can save just one life or prevent one nasty accident, I think it will be money well spent.

ANGASTON RAILWAY STATION

The Hon. D.G.E. HOOD (14:45): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Transport, a question.

Leave granted.

The Hon. D.G.E. HOOD: Some concerned constituents—namely, Paul Henley, Trevor Langridge and Sandra Williams, who I name for the record for the tremendous work they do for rail in South Australia—recently forwarded to me some photographs of the disused Angaston railway

station. These photographs are very concerning indeed because, first of all, they show this historic station in a state of absolute disrepair, completely covered in graffiti and with walls kicked in. Essentially, the place is dilapidated and has been vandalised. As a result, I have contacted the minister's office about the concerns and I was advised that the company GWA actually signed a 50-year lease in 1997 for the station. A term of the lease that the company signed provides:

> ...to the extent necessary to avoid nuisance to neighbouring properties, to safeguard public safety and to maintain the lessee's ability to conduct railway operations...keep the lessee's property clean and in good repair and condition...keep any buildings on the land clean and in good condition.

That is a direct quote from the agreement. Clearly, that level of care has not been undertaken by the company involved, and that is most concerning considering the historic nature of the site. Perhaps an even more concerning aspect is that survey markers are seen in the photographs. From further inquiry to the minister, it has become apparent that Eblen Subaru in Angaston has been granted authority by the department to construct a shed on part of the site of the Angaston railway station and that tracks leading to the rail turntable will be pulled up to make this happen. This will rule out the return of tourist steam locomotives to the station, as they require a turntable to operate. My questions to the minister are:

1. Will the government demand that GWA immediately repair the station in accordance with the lessee agreement it has signed, and revoke the authority granted to build over the station's rail lines?

2. When will the government revoke the lease to GWA over a rail line that it barely uses and allow significant numbers of tourists and commuters to again travel by train to the Barossa Valley—South Australia's most famous tourist destination?

3. Is this neglect of one of our most historic railway stations indicative of the government's attitude towards public transport in general in South Australia? This is at a time when New South Wales is pouring vast amounts of money into new rail lines (such as the North West Metro, Epping to Chatswood and the CBD lines) and Queensland is doing similar work, so why is South Australia also not doing this work?

4. Will the minister confirm or deny persistent rumours that, rather than encourage the use of public transport (like British Columbia has recently done in almost halving its public transport fares), he intends to announce a significant increase in the cost of a standard Metro ticket in the upcoming budget?

5. How does the government intend to meet its own Strategic Plan target, which calls for a near doubling of public transport usage, in the face of such continual deterioration of public transport and especially our rail network in South Australia?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:49): This government has done more than any government for decades in relation to public transport. One only has to look out to the street in front of this building to see the tramline extension.

The Hon. D.W. Ridgway: Where does it go?

The Hon. P. HOLLOWAY: The member interjecting over there was a party to that. The opposition's policy was to keep the trams (which were constructed in 1929) ending in Victoria Square. What would have happened if new trams had not been purchased and the tramline had not been upgraded and extended? Inevitably, the Glenelg tramline would have closed down. That is the only possible outcome. You cannot run 1929 trams forever. Yet, all we have had is criticism from members opposite.

It is my understanding that the Angaston railway station has not been used for many years. The honourable member asked the question about what has occurred at the Angaston railway station. I cannot comment on that without in some way reflecting the government's policy towards public transport. If the government was spending money on maintaining every railway station that is no longer used within the state, we would not have a lot of money left to spend on upgrading public transport. I will refer the details of the contract which the honourable member raised—and I think they are, at least on the face of it, reasonable questions—to the Minister for Transport for a response.

In addition to the tramline upgrade, this government has, of course, in past budgets allocated significant amounts of money for upgrading the track. Part of the problem we have with our railway system is that the tracks are using sleepers which in some cases go back to the 1950s and before. There has been a gross underspending on public transport in this state for decades.

So, this government is actually allocating significant amounts of money—tens, leading into hundreds, of millions of dollars—just on upgrading the tracks of our railway system which have been so badly neglected over previous decades.

This government has already set about the task of rebuilding our public transport system, but the priority has to be making it viable and not spending it on disused stations. Nonetheless, if contracts have been given to private parties for the use of stations, the question of whether those contracts are exercised is something that is worth considering, and I will certainly ensure that that matter is considered by the minister and bring back a reply.

UNIVERSITY COLLEGE LONDON

The Hon. R.D. LAWSON (14:52): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, a question about the University College London.

Leave granted.

The Hon. R.D. LAWSON: Members will have seen recently an announcement by the Premier whilst visiting London—amongst other places—that the government has signed a memorandum of understanding with University College London (claimed to be a world-leading British organisation) to establish a campus in Adelaide. The Premier's announcement states that $4 million will be made available immediately towards the refurbishment of the Torrens Building to accommodate the new institution, and that the government will support the set-up and operation over the first seven years of this institution.

The Premier's statement also says that the memorandum of understanding follows a major feasibility study with the University College London which began in October 2006. I should also add that this particular institution will be offering a post-graduate Masters of Science in Energy and Resource Management, as well as offering places to a small number of doctoral students. My questions to the Premier are:

1. Did the feasibility study referred to in this statement involve any discussion with any of Adelaide's three excellent university institutions to ascertain whether they could provide comparable courses if offered $4 million plus financial support over the next seven years?

2. Whether or not any such discussions took place, was any offer made to any South Australian institution to provide comparable support for the offering of courses of this kind?

3. Will the Premier deny recent reports that enrolments in the Carnegie Mellon University, established in Adelaide in May 2006 with $20 million of South Australian dollars of taxpayer support, have fallen far short of initial expectations and predictions?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:56): In relation to the energy and resource industry, this government has provided millions of dollars to both the University of Adelaide and the University of South Australia to establish the key institutions which lead this country in their respective areas. I am sure members can recall my answering questions in the past in relation to the institute we have to investigate exploration under cover; that has been extremely successful.

I have spoken in this council before about how we recruited the noted geologist Professor Ian Plimer for the mining engineering course that this state has pioneered—an extremely successful course. We have more geology undergraduates at the University of Adelaide than any other university in this country. That is how successful it has been. Professor Richard Hillis and his group have been sponsored by Santos, and through them we have the School of Petroleum, which is a world leader. Through my own department those academic institutions have received significant support, including the funding of additional chairs to ensure that we are world leaders in those areas.

These programs I have mentioned are just at the University of Adelaide, but there is also the Ian Wark Institute and the Institute of Mineral Processing that this government has supported to the tune of some millions of dollars through my colleague the Minister for Employment, Training and Further Education at the University of South Australia. The new Chancellor of the University of South Australia is Dr Ian Gould who is the chair of the South Australian Minerals and Petroleum Expert Group (SAMPEG). He is also a member of the Resources and Industry Development Board and a former managing director of CRA and group managing director of Normandy Mining.

So, this government is well aware of the importance of the energy and resources sector. The University College of London is one of the top universities in the world and the fact that, in addition to the building up of our own local institutions in these areas, we can bring another institution the calibre and quality of the University College of London simply underlines the determination of the Premier and this government to make Adelaide a centre of excellence in university education. It is the reason why we now have unprecedented numbers of students in the state.

In the six years of the Rann government, the number of students attending these institutions in South Australia has grown enormously, and it has been because of the efforts that this government has put in to elevate the higher education system within South Australia. As to the specifics of what the government has done, I will take that question on notice, refer it to the Premier and bring back a response.

MOUNT LOFTY BOTANIC GARDENS

The Hon. B.V. FINNIGAN (14:59): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Mount Lofty Botanic Gardens.

Leave granted.

The Hon. B.V. FINNIGAN: South Australian is blessed with many fine gardens, including our famous botanic gardens which sit in the heart of the city. The many different displays, including the Amazon Waterlily Pavilion and the SA Water Mediterranean garden, which are both recent additions, are a testament to the skill of the horticulturists who lovingly tend the gardens and to God's good rain which waters them.

Just as magnificent are the botanic gardens which have been long established at Mount Lofty. Although the last time I was there I did, in fact, slip down an embankment and do myself some detriment, nonetheless Mount Lofty is home to some of the most historically significant roses in the state. Could the minister update the house on conservation efforts at the Mount Lofty Botanic Gardens?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:00): I thank the honourable member for his most important question. Indeed, the Hon. Bernie Finnigan is showing his sensitive side. I must go and check out the claw marks on the side of the bank.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: I share his sentiments that the Mount Lofty Botanic Garden is a truly spectacular South Australian icon, which is loved by just as many as the better known Adelaide Botanic Gardens. Testament to this was the recent announcement that the South Australian heritage rose collection and national species rose collection located in the Mount Lofty Botanic Garden would be revitalised thanks to the generosity of the ATCO Group contributing $142,500.

The sponsorship was made in the name of the late Clive Armour, chairman and secretary of ATCO's Australian operations, a former vice-president of the Nature Foundation of South Australia, who was also a strong supporter and passionate advocate of the botanic gardens of Adelaide. I am delighted to inform the council today that plans are underway to rename the rose garden at the Mount Lofty Botanic Garden in honour of Mr Armour.

Clive was chairman of the board of the Botanic Gardens and State Herbarium from 1995 to 1999. This period was a very significant one in the gardens' history. Projects included the restoration of the historic Palm House, the remediation and transfer of the old Hackney bus depot site to the gardens and significant improvements to traffic management and parking in Botanic Park and Mount Lofty Botanic Garden.

Clive's contribution as chairman left the gardens as a more confident, resilient and better connected scientific and cultural institution. Clive's commitment and enthusiasm for the gardens continued beyond his period as chairman. His enthusiasm and good auspices initiated the development and very significant success of the Gardens 150 Foundation. His extensive support for the continuing development of the gardens for community enjoyment, inspiration and learning should not be overlooked.

Clive also found time to lead the development of a concept for music in the gardens and to guide the delivery of a diverse and successful program that provided the gardens with the experience and capacity to support the range of functions and events that the establishment of the foundation has required.

The generous donation of the ATCO Group will ensure the rose heritage species gardens will be around for many years to come, as it will enable these collections to be upgraded with efficient watering systems and sustainable maintenance programs. The heritage and national species rose collection is a living timeline, tracing the long and complex history of the rose from its wild origins through domestication and breeding.

Adelaide is recognised as one of the premier rose-growing regions in the world. Our Mediterranean climate is ideal for roses to thrive and many South Australians have taken advantage of this. For those who are keen to see a world class display a little closer to home, the Botanic Gardens of Adelaide also have displays to highlight different aspects of rose history and cultivation. In fact, the International Rose Garden has more than 5,000 different species of roses on display, which I am sure will engross even the most experienced of rose lovers.

The site also benefits research, with the adjacent national rose trial garden assisting the rose industry to determine which roses are best suited to Australian conditions before commercial release. I would like to thank the ATCO Group on behalf of the council for its generous donation. I urge all South Australians and rose lovers to visit another of the state's greatest botanic gardens at Mount Lofty.

LAKE BONNEY TURTLES

The Hon. SANDRA KANCK (15:05): I seek leave to make an explanation before asking the Minister for Environment a question about the die-off of turtles at Lake Bonney in the Riverland.

Leave granted.

The Hon. SANDRA KANCK: Members may recall that last year I asked a question about the impact of what was then the proposed Lake Bonney closure on the broad-shelled turtle, which is known scientifically as *Chelodina expansa* and which is classified in South Australia as rare. The Institute of Applied Ecology at the University of Canberra has been studying this turtle in Lake Bonney, particularly as a local man, John Baneer, has been actively restocking the lake with turtles over a period of 20 years.

However, since Lake Bonney was cut off from the Murray, dead turtles have been washing up on its shores, which is a very disturbing sign and shows that the lake's ecosystem is under stress. Salinity levels have risen from 6,450 ECs in September 2007 to 13,490. As these are freshwater turtles, with a salinity tolerance of around 15,000 ECs, their future may soon be very limited.

The predictions by locals of the possible collapse of Lake Bonney have been given credence by the experience at Lake Boga, a lake near Swan Hill that was cut off from the Avoca River as part of a Victorian government water savings project. This action has seen a fish die-off that has resulted in a stench that extends kilometres beyond the town and an infestation of gnats. Concerned residents believe that Lake Bonney urgently needs a top-up of fresh water to reduce the salinity and a build-up of excessive nutrients, otherwise we could see a repeat of what has happened at Lake Boga. My questions are:

1. Is the minister aware of the turtle deaths thus far at Lake Bonney, and is she also aware of the collapse of the system at Lake Boga in Victoria?

2. Is her department actively monitoring the impact of the closure of the Riverland wetlands, including Lake Bonney, on threatened and vulnerable flora and fauna in these wetland ecosystems?

3. Is her department aware of any monitoring of Lake Bonney being conducted by other departments or agencies; if so, what are the results of that monitoring?

4. Will the minister approach the Minister for Water Security to secure a small release of environmental water from Chambers Creek into Lake Bonney to prevent the collapse of that lake and its ecosystem?

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 most important question and her ongoing interest in

environmental matters. The drought we are currently experiencing is one of the worst ever on record and is indeed having a significant impact right across our community and our environment.

The area of Lake Bonney and the impact on turtles is of concern, as is a wide variety of issues there. However, I am informed that the effect of increasing salinity levels in the lake, and the concern about its impact on turtles, is being investigated in conjunction with the Berri Barmera Council, and I understand that work is being undertaken. In terms of the environmental impact of the drought across the Murray-Darling Basin system and other areas, one of the things the department is doing is monitoring the impact the drought is having, and a number of measures have already been put in place.

For example, we were able to announce the successful captive breeding program of the Yarra pygmy perch, and I think there is also the hardyhead gudgeon as well as a number of other species that have been threatened because of the current drought. Where possible, species suitable for captive breeding programs have been put into those programs. So, monitoring is occurring and a number of responses have been put in place—and I understand that the situation with the turtles is being monitored.

Obviously, the environmental impacts of the drought are of great concern to us. In terms of environmental flows and top-up water being available, again these are very difficult decisions for us to make. We monitor what is occurring, and environmental flows are allocated to those areas that are considered to be of highest priority. For instance, with Lake Albert and the acid sulphate soil there we need to pump into that lake from Lake Alexandrina, because it has become disconnected.

We have to put in place a number of measures to ensure the health of the environment now and into the future. Obviously, if we did not respond to that, there would ultimately be a catastrophic impact on that area with a devastating effect on the flora, fauna and soil of the area for an estimated 30 or 40 years. So, all the various priorities and needs have to be considered and weighed up. We put those resources where they are needed the most, and we continue to monitor and respond where we can.

LAKE BONNEY TURTLES

The Hon. SANDRA KANCK (15:11): I have a supplementary question. In weighing up the priorities, as the minister has described it, what priority will these turtles get, given that they are only 1,000 ECs in salinity off extinction levels in Lake Bonney?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:11): As I said, they are being monitored and if there are appropriate courses of action available for us to take they will be taken.

The Hon. R.I. Lucas: They'll send Russell along for resuscitation.

The PRESIDENT: Order!

DRUGS, SUPPLY

The Hon. R.I. LUCAS (15:13): I seek leave to make a brief explanation before asking the Leader of the Government a question on the subject of heroin death fears for club ravers.

Leave granted.

The Hon. R.I. LUCAS: An article in this morning's newspaper, under the heading 'Heroin death fears for club ravers', claimed:

> Adelaide is being flooded with dangerous heroin-laced ecstasy pills for the first time, sparking fears of drug overdoses, deaths and addiction. Legal sources had told *The Advertiser* batches of 'afghani brown' pills are being sold in the lead-up to three major dance and rave events over the next month, including two this weekend. Dealers are selling them in 10-packs for as little as $150...'A warning needs to be out there because there are a heap of rave parties coming up in Adelaide. The drugs have been here for the past two or three weeks and we need to stop these kids from killing themselves,' one source, who did not wish to be named, said. 'The afghani browns, or brown-speckled pills, contain brown heroin produced from opium in Afghanistan and it's a great danger to those who take it, especially smaller females.'

Matt Williams, the writer of the article, then notes:

> Legislation introduced three months ago, which gives police the power to use sniffer dogs to search people at entertainment venues, is yet to pass state parliament.

As both you and the minister would be aware, Mr President, that legislation has been delayed almost two years since questions were first raised about Molly, Jay and Hooch and when they

would be able to undertake the work for which they had been trained back in the middle of 2006. My questions to the police minister are:

1. What police advice has he received in relation to concerns about heroin laced ecstasy being made available in nightclubs and at rave parties here in Adelaide?

2. Does he share the concerns being expressed by the quoted legal sources in *The Advertiser* this morning about the potential impact on young people and others who use the heroin laced ecstasy currently being sold?

3. Does he now finally accept personal responsibility for the two-year delay in introducing and implementing the legislation, which would have allowed Molly, Jay and Hooch to actually be out there this weekend at those rave parties checking for the availability of this sort of heroin laced ecstasy in these clubs and parties, and which has reduced the chances of police cracking down on these drug dealers operating in clubs and rave parties as described in this morning's newspaper?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:17): What an extraordinary last question that was!

The Hon. R.I. Lucas: You are the minister, and it has been two years.

The Hon. P. HOLLOWAY: Yes. In every other parliament in this country there is a tradition where the government is in control of business. This is one of the few parliaments in the world where government business is consistently taken out of the hands of the government by a majority of members of this council. We have seen an unprecedented number of examples over the past few weeks where government business has been taken out of the hands of the government by the opposition and other members combined. It is absolutely outrageous in that situation that the Hon. Rob Lucas should be accusing this government of delaying legislation. Everybody who has looked at this place in the past few years, particularly the past few weeks, knows what has happened to the government's legislative program. It is not just that piece of legislation relating to the PAD dogs but also some other significant pieces of legislation have been held up in this place.

It was not me who voted against the extension of this parliament two or three weeks ago to sit for extra time to deal with the government's priority legislation. Members did not want to sit on Friday or the following week. It ill behoves the Hon. Mr Lucas to try to get me personally to accept responsibility for this legislation.

In relation to this bill, we had almost finalised consideration of it in this place, but if I recall correctly there were some issues that the Leader of the Opposition wished to check on in relation to one of the amendments, which was reasonable. Where we have almost completed debate on that bill, we could have finished off on that day, but after discussion with the Leader of the Opposition we deferred it. It was a reasonable request because we have to get legislation right, and there was an issue in relation to one particular clause that warranted further consideration.

It would certainly be my wish that if we can finally get this parliament to complete debate on the WorkCover bills, which we now know will happen this week one way or the other, however late in the week, then the PAD dog legislation, the Controlled Substances (Drug Detection Powers) Amendment Bill, needs to be passed. It ill behoves members opposite to take control. It is their decision to take control of the business of the council over the government. That is fine, but they cannot then turn around and blame the government for not having legislation passed, and we will not accept that.

In relation to the other matters, I read that article this morning. I will be having my weekly meeting with the Police Commissioner later this afternoon (if I break out of here). Having read that article in the paper, I intended to raise that issue with him. To date, I am not aware of any information about that issue other than what was in the paper this morning. However, I will obtain a briefing from the Commissioner later on today in relation to that.

Do I share the concerns about its potential impact? Of course I do. These rave parties are dangerous. It is interesting that what that article talks about is that heroin is again being used as a drug, and I guess that is what happens with these illicit drugs: as the police get on top of one drug—as technology or a concerted effort reduces the incidence of one drug—other drugs rise in their place. I think the lesson from that is that we have to be totally vigilant in the fight against drugs, because as we get on top of one issue another will arise.

The Minister for Mental Health and Substance Abuse might be able to confirm this, but at our meeting of the ministerial council on drug abuse some weeks ago there were some indications, I believe from Sydney and Melbourne, that heroin was making its presence felt in those areas. That is the useful thing about those conferences. That related to the eastern states, but I have not had any information about it being mixed with other types of drugs here.

However, clearly, if one makes headway and achieves success in dealing with the precursor drugs that are used to make methamphetamines and other drugs, such as cannabis, you tend to get a breakout in other drugs. Obviously, that depends on world supply. That is why we need intelligence from the police (and intelligence from the opposition, too, but we do not get a lot). We need effective intelligence to know what is happening within the drug scene. Of course this government shares concerns about any outbreak of drug use, and I am sure the police will be paying close attention to these events.

MATTERS OF INTEREST

KIDMAN TRAIL

The Hon. R.P. WORTLEY (15:23): I rise today to speak about the completion and opening of the Kidman Trail, which I recently attended on behalf of the Minister for Recreation, Sport and Racing. Present at the opening were Mr Nick Champion, federal member for Wakefield, Leon Bignell, member for Mawson, Iain Evans, member for Davenport, Brian Hurn, Mayor of Barossa Council, Helen Whittle, Chairperson of Horse SA, Julie Fielder, Kidman Trail Project Manager and representatives from Walking SA and Bike SA.

It was a pleasure to represent the minister and to celebrate the completion of the Kidman Trail with those involved in the development, who share a common interest and commitment to the success of recreational trails in South Australia. The organisations involved in the development of the trail celebrated its completion at the State Library's Circulating Library on 19 May. The venue was fascinating, and it is worth members going along just to have a look at the character of that lovely, well kept library.

To commemorate the completion of the trail, horse riders delivered trail maps in saddlebags to the steps of the entrance to the library, where they were handed over to mountain bikers and walkers and then transferred to dignitaries The celebration went on to acknowledge Sir Sidney Kidman, after whom the trail is named, and the influence he had on regional South Australia; the support provided to R.M. Williams to generate a saddle and related products; the significance of the horse in South Australia's landscape; and the need to formalise recreational routes, providing health, social and environmental benefits for South Australians.

Extending 255 kilometres from Willunga to Kapunda, the Kidman Trail is South Australia's first multi-use trail, used for horse riding, mountain biking and walking. The trail is made up of roadsides, quiet farm routes, forest tracks and unmade road reserves passing through McLaren Vale and the Fleurieu Peninsula, the Mount Lofty Ranges and the Barossa Valley.

The track will complement other iconic and popular South Australian trails, such as the Riesling, Heysen and Mawson trails. The trail is proudly named after Sir Sidney Kidman, who was a prominent local pastoralist and horse breeder. Kidman was one of the greatest pioneers of his time, with unparalleled forethought in business and inimitable community spirit.

The Kidman Trail has been funded by the state government and the federal government. The state government, along with the Office of Recreation and Sport, is the trail manager, and the operational manager is Horse SA. The development of the trail would not have been a success without the partnership between seven local councils (Onkaparinga, Alexandrina, Mount Barker, Murray Bridge, Mid Murray, Barossa and Light), Forestry SA and three private land owners. To make the trail easy to use, directional and trail head signs have been erected. These signs will not only make the trail user-friendly but will also encourage users to take advantage of day trips and extended trail experiences, covering the full 255 kilometres.

The situation of the trail within close proximity to many major retail regional towns embraces community recreation and will encourage and support community recreational infrastructure. The trail will also cater not only for the locals but also for interstate and international visitors to the state, as it has been designed to be accessible all year round.

The Kidman Trail provides a sustainable, safe and scenic experience that highlights the natural beauty, cultural history and major points of interest from Willunga to Kapunda. The Kidman Trail is a fabulous asset for South Australians and thanks should go to all involved in its

development. I encourage all members of this chamber to get out and experience what the trail has to offer, as I know I am very keen to do.

The trail is a fantastic tourist attraction, giving access to some of the most beautiful country in South Australia. It is now really up to Tourism SA and the regional tourism areas to market it and sell it to the world. It will provide great economic value not only to the local regions but also to the state of South Australia.

Time expired.

GOVERNMENT INITIATIVES

The Hon. T.J. STEPHENS (15:28): Mr President, as you well know, I am and have always been a man who is happy to give credit where credit is due. Today I would like to congratulate the Rann government on a number of recent initiatives and decisions that it has made.

My colleagues in this place are well aware that I have argued passionately for the introduction of tasers across operational policing roles, so I was delighted to see the Minister for Police, Paul Holloway, announce the six-month trial of tasers in two metropolitan local service areas. My decision to strongly back the Police Association's calls for the introduction of tasers earned me the moniker of 'Taser Terry' from the other side. As I have said before, I am happy to wear that sort of abuse, and I congratulate the government for being big enough to take my advice and support the taser trial.

Honourable members will also recall that I heavily backed the Police Association's call for the outdated Smith and Wesson revolver to be replaced by semi-automatic firearms. It was wonderful to see the Minister for Police announce, not so long ago, that our frontline police officers would now be equipped with semi-automatic firearms. Again, I congratulate the government on making this move.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.J. STEPHENS: I thank them for taking the advice of the opposition. Of course, there was some name-calling during this process, with the Minister for Police calling me 'Rambo Stephens'. Again, I am happy to wear that, because officers will now have the latest and best equipment, as they rightly should.

It seems the Rann government is on somewhat of a roll of late in taking up the opposition's suggestions. It does not just stop at tasers and firearms. As the man in the ad used to say, 'But wait; there's more.' As opposition sports spokesman I was recently on radio asking why the women's NBL champions, Adelaide Lightning, were not being offered a state reception, just as our men's champion sporting teams, such as Port Power, the Adelaide Football Club and the Adelaide 36ers, have received in the past.

Sports minister Michael Wright took up the suggestion and a public reception is now being planned, and I, for one, am looking forward to it. Once more, I say to the government: well done. I will give credit where credit is due. We do not stop there. For months, Netball SA has been requesting financial assistance for the state government to purchase a portable floating court so that big netball matches, such as international fixtures, could be held at venues such as the Distinctive Homes Dome or the Entertainment Centre. So, while ETSA Park is an excellent facility, it sometimes cannot cater for bigger games purely because of its smaller capacity.

The opposition helpfully suggested that the government should stop dragging its feet and provide what was not a massive amount of funding in the scheme of things, and the government took up our suggestion. Again, it was listening and we say: well done. The figure was $150,000—not a large figure, I would have thought (football has just been granted $100 million)—so, while the government is in form, I thought that today I would make just a few more helpful suggestions.

Yesterday, during question time, I called on the Rann government to pressure its federal colleagues to honour the delivery of much needed funds to north-eastern sporting clubs. Once they take up this suggestion, I would like the Rann government to address the state of the running track at Santos Stadium, which Athletics SA and our young athletes want fixed. To date, their calls are falling on deaf ears. Athletes are injuring themselves on this substandard surface, and they are forced to train in the parklands, give the game away or train interstate. It is facilities like these that urgently need to be addressed.

Please listen to Hockey SA's calls for new synthetic pitches. Please let our swimmers know what is happening with the proposed new aquatic centre at Marion, given that the Howard federal government has had $15 million invested in the project for two years. Please let our youngsters, who have been turned away from soccer clubs, know that you will help build new soccer pitches to accommodate the skyrocketing popularity of the sport.

Additionally, and finally, I call on the government to seriously look at ways to make sport more affordable for families. At a time when we are facing an obesity epidemic and many kids prefer a PlayStation to a ball game in the park, we need to provide incentives for parents to get their children outdoors and active, not price themselves out of participating. So, I say to the Rann government today: well done on taking up our suggestions of late. I reiterate that I am happy to give credit where it is due, and I call on the government to keep it up.

Time expired.

MERCY MINISTRIES

The Hon. I.K. HUNTER (15:32): In my last contribution, I talked about Mercy Ministries and its appalling treatment of young women who were in need of care. Subsequent to that, I was approached by a number of young women who told their stories about the treatment they received at the hands of the Mercy Ministries. I would like to tell the story of one of those young women. However, she fears retribution from the Mercy Ministries so, for her protection, I will today call her Anna Roberts. Her story is as follows:

When I accepted a place at Mercy Ministries, I had no idea that I was walking into a cult. As a regular churchgoer, I had heard a lot about Hillsong. I had most of their CDs with Darlene Zschech's image on them. So, when I heard that Hillsong was involved in Mercy Ministries, and that Darlene was actually the CEO of Mercy Ministries at the time, I had no reason to doubt that it was a legitimate organisation. In my mind, Hillsong, after all, had a good reputation.

Going to Mercy Ministries was by no means an easy decision, and not one I took lightly. I was studying at university and was under very good treatment at home. But the promise of a Christian program with 24/7 care by qualified professionals who could treat mental illness for free seemed too good to just ignore. Before applying, I had contacted the Mercy Ministries office in Sydney to find out as much as I could about the program. I was told that the staff caring for the young women were qualified to treat mental illness and that the counsellors were all qualified also. Armed with that information and a printout about its program, I went to my family, my Christian counsellor and doctor, and discussed my option to go into treatment at Mercy Ministries with them.

The main drawcards for me were that I could have access to qualified professionals 24/7 whenever I needed them, and also that the program was Christian. It sounded much too good to be true and, unfortunately for me, it was. I went into the program with the perception that I knew what I was getting into. All conversations with the Mercy Ministries staff up to that point—and indeed all of its advertising materials—presented Mercy Ministries as a Christian 'live-in' treatment centre where professional treatment, coupled also with Christian teachings, assisted young women to recover from their illnesses.

In actual fact, the picture painted in my mind of what Mercy may be like and the kind of treatment they may offer was very far removed from the reality of what the program was. When I got to Mercy Ministries, I had the Resident's Handbook thrust into my hands. I remember reading it and wondering why they were suddenly taking away any independence and self-management I had. It is true that I went to the program seeking treatment for my illness which I was coping with but at the same time I knew it was holding me back. I had been responsible for seeking support from professionals in the past, I was studying at university, and yet it seemed like Mercy Ministries were trying to revert me into being totally dependent, totally controlled and a child who was not trusted to make her own responsible decisions.

There is no doubt that residential treatment centres need basic rules to keep things running smoothly but this went well beyond basic rules, even down to telling residents what to wear (i.e. no trousers allowed at church). As time went on, I also found there were many unwritten rules such as no speaking with volunteers about the day-to-day running of the house. Mercy Ministries soon arranged for my Centrelink payments to be deposited into their account. I was a little surprised that they would advertise that the program was provided at no charge to young women and claimed they needed more donations to be able to treat young women when in fact they were taking significant payment for their services from the young women themselves. I wasn't too upset, though, after all I think it is only fair for a young woman to pay her own way, and I held on to the promise that I was going to be treated by qualified staff.

I did feel that Mercy Ministries might have been taking advantage of well-meaning members of the public when asking for donations, however. Back then their advertising campaign was not as large as it is today. You could sit down and have a coffee without being splashed with Mercy Ministries propaganda with false promises about their program and asking for more money. As time went on it became apparent that the staff caring for me were not qualified to treat medical and psychiatric illness at all. I learned that some of them had been to Bible College and that was the extent of their qualifications.

By this stage, I was very confused about the kind of program that Mercy Ministries was. I had been forbidden from being treated by my own counsellor from home. The only counselling allowed was to be done by Mercy Ministries counsellors. I had been there for perhaps 1½ or two weeks and I had still not met my counsellor.

Surely she would be qualified as promised. My Mercy Ministries counsellor turned out to be unqualified and unregistered. By this stage I had given up so much to be at Mercy Ministries, tying up loose ends at home—after all, I was told to expect to be at Mercy Ministries for approximately 12 months—turning down job opportunities, deferring my university studies and directing all of my payments into Mercy Ministries accounts.

I had invested so much that I didn't feel like I could just go home, even though in hindsight I wish I had. The indoctrination, even after a short while, had taken its toll.

Given the time constraints, I may continue this exposition of Mercy Ministries at my next contribution.

Time expired.

LIQUOR LICENSING HOURS

The Hon. R.I. LUCAS (15:38): I rise to strongly oppose any proposed lockout of bars and clubs from 2am or 3am. At the outset, I indicate that this is my personal view which does not purport to represent the view of my party. Ministers Gago and Holloway attended the recent Ministerial Council on Drug Strategy meeting. The joint communiqué stated:

A key outcome was the agreement to assess late-night lock-outs from licensed premises based on analysis across the nation of existing and trial lockouts to recommend a preferred framework.

It is clear from statements by the Rann government and the Police Commissioner that they are considering the introduction of a compulsory lockout. In *The Advertiser* recently of 24 May Greg Kelton ran a headline 'Pubs face binge curfew', stating:

Early morning lockouts from bars could be enforced nationally as part of a unified political pledge to combat binge drinking. Federal, state and territory governments have agreed to work together on the plan...Police Commissioner Mal Hyde said extended licensing hours contributed to public nuisance and public safety concerns. 'We should be looking at ways to limit 24-hour access to alcohol', he said.

This proposal is a knee-jerk, ill-conceived, unworkable and unfair proposal which is part of a nanny state policy-making mentality. Again, a majority of young people who happily enjoy themselves in clubs and bars will be penalised by a small minority of troublemakers, governments and politicians wanting to be seen to be doing something about the issue of binge drinking.

For many young people, two o'clock or three o'clock in the morning is not late and they enjoy themselves at bars and clubs until 5am, not returning home until breakfast time at seven or eight o'clock in the morning. Young people these days are different to when people of our generation were at that age. They do not go out in many cases until 11 or 12 o'clock in the evening on weekends and, as I said, they do not return until the sun is up for breakfast and then you do not see them until the early afternoon on Saturday or Sunday.

The proposed lockout will potentially create even more problems as young people locked out after 2 o'clock will instead remain on the streets of Adelaide and visit cafes or fast food outlets which will still be open. Many of these young people in Adelaide will not go home at 2 o'clock: they will stay with their friends on the streets, as I said, seeking their entertainment in other venues on a Saturday evening.

If young people are locked in after 2 o'clock in some of these venues it will mean that they will not be able to leave a venue to take an intoxicated friend safely to a taxi or, in the case of some young men, to take a young female friend to a taxi to see them leave safely from there to go home, and then to go back into the venue, to have a cigarette, visit an ATM or to take a telephone call, because in some of these clubs and venues you cannot hear anything on a telephone.

It also means that if you have a friend in another venue at 4 o'clock in the morning who says, 'Hey, get over to the Vodka Bar', instead of the Electric Circus (or whatever), you will not be able to go over there to join that friend. There are people who move between the clubs, like the Vodka Bar and the Electric Circus at the bottom end of Hindley Street, freely on a Saturday night as the crowd ebbs and flows in those particular places.

It will mean that when concerts or functions finish at 1 o'clock many young people will not be able to get into clubs and bars in the city by 2am, especially when some venues have queues which might delay entry for up to an hour. There are many cases where if you go to the Earth Club, for example, in Hindley Street a band might be performing until 2 o'clock in the morning and then the young people, having heard their favourite band, will move on to another venue like the Electric Circus or the Vodka Bar.

It will also mean that shiftworkers, including hospitality staff and others, who work in our cafes and restaurants and finish work at 1 o'clock or so in the morning, will themselves be

restricted from going to clubs and bars after they have finished work. This policy will make Adelaide a laughing stock. Can you just imagine visiting performers and clubbers like the Foo Fighters or Justin Timberlake, depending on your musical preference, following their shows here in Adelaide, trying to visit a club like Escobar at 2am and being told they are locked out? It would not happen in New York or most other locations around the world.

In Victoria, the Brumby Labor government last weekend introduced a 2am lockout and there have already been mass protests of more than 3,000 people, as well as legal action to overturn the decision. There also exists an online Facebook group titled 'Official Melbourne 2am lockout petition', of which there are almost 30,000 members, highlighting the unpopularity of the proposal.

Now is the time for opponents in South Australia to organise and oppose and make it clear to the Rann government that they will not accept a lockout and that alternative more effective measures to combat the effects of excessive drinking should be adopted. This government will not listen on any issues unless it is hit over the head with the baseball bat of mass opposition, so now is the time for action.

The ACTING PRESIDENT (Hon. B.V. Finnigan): Thank you, the Hon. Mr Lucas. Youthful though you are, I am not sure we are of the same generation.

MERCY MINISTRIES

The Hon. A.L. EVANS (15:43): I am talking about the Mercy Ministries today. I have titled my paper, 'The truth about Mercy Ministries'. Mercy Ministries was founded in the United States 25 years ago and now operates across the US and internationally. Mercy Ministries Australia commenced in the year 2000 as a Christian-based charity and currently operates a home in Sydney and another on the Sunshine Coast and is in no way attached to Hillsong. That is the truth.

Since being founded in Australia, the program has made a tremendous difference in the lives of many young women via a six-month residential program. The program assists young women who are struggling with life to control issues such as abuse, self-harm, eating disorders, depression and anxiety. Prior to entering the program all young women are made aware of the details of the program, including financial arrangements, to enable them to make an informed decision before entering into the home. The program is voluntary and the young women may choose to leave at any time.

As a Christian-based charity they offer a holistic client-focused approach, which includes physical, mental, social and spiritual needs. The Mercy Ministries is not a medical facility and they are quite happy for the young women to visit psychiatrists, general practitioners and other allied health professionals as required. Mercy Ministries staff are appropriately qualified, including counsellors who have professional and academic qualifications, and a number of staff are continuing in ongoing education.

The program receives regular external reviews, and the staff also request client feedback to ensure quality of service. Mercy Ministries Australia is largely funded by private donations, fund-raising activities and some corporate sponsorship. There is no direct cost for a young woman to attend the program. The lives of Chelle and Ness have been changed for the better since they went through the Mercy Ministries program. Chelle says:

> My life was a mess. Fear, anxiety, panic attacks controlled me. For 18 months, after multiple suicide attempts, I had continuous appointments with psychiatrists and dieticians to no effect. I was diagnosed as never being able to live a life free from fear and anxiety. In Mercy Ministries I found hope for the future. I underwent counselling and saw a dietician on a regular basis to overcome my physical struggles. Mercy Ministries was safe, encouraging and offered help and freedom from my past. Since leaving the program, I am no longer on medication. I have not self-harmed once. I am working and have started full-time university studies.

Ness says:

> Until 15 I was abused by people close to me. I was hopeless, having depraved thinking about my identity and trusted nobody. Abuse led me to self-harm, suicide attempts, severe substance abuse, violence, anger and eventually living on the streets. I was accepted into Mercy Ministries and surrounded by staff who loved me, valued and accepted me, no strings attached. I graduated in May 2006 and now live with strength and freedom instead of powerlessness and judgment. I am passionate about the cause of justice in my community because Mercy Ministries impacted my life and freed me from what my life would have become.

Over 100 young women like Chelle and Ness have graduated from the program since its commencement, and approximately 90 per cent of graduates have gone on to lead a better life, including attending university, gaining employment and commencing a family.

I note that it is rare and brave for an institution such as Mercy Ministries to have a benchmark that puts it on the public record. I challenge any mental health body or other institution to boast of such a success rate. It is all well and good for others to make accusations, but Mercy Ministries has its benchmark and is happy to stand by its record.

LEGISLATIVE COUNCIL

The Hon. R.D. LAWSON (15:47): A ruling by the President last week highlighted something of which I had not previously been aware—namely, the fact that in this chamber, in a debate on a motion for the suspension of standing orders, speakers are limited to five minutes. Standing order 458 is the only standing order in the Legislative Council of South Australia that imposes any time limit on members speaking.

The long second reading speeches of the Hon. Mark Parnell and the Hon. Ann Bressington recently attracted unfavourable press coverage and abuse from some government ministers in another place, notably the Treasurer. I do not propose to join in the criticism of those members or to make any criticism of them in relation to that issue. However, I mention the incident to say that it has drawn public attention to the practices of this council.

If members of the public were more often present in the galleries during question time, there would be a public outcry because they would observe the current practice of ministers responding to questions by reading verbatim long passages from material furnished by their advisers or simply reading lengthy quotes from press releases. This is especially obvious in responses to questions from government members, the so-called Dorothy Dixers.

I believe that the time has come for us strongly to consider placing some limits on questions and answers to questions; other parliaments have done so. I should go back a little in history to remind members that we have not had time limits in this place for a very long time. In Blackmore's *Manual of the Practice, Procedure and Usage of the Legislative Council of South Australia* (second edition, published in 1915), page 285 records, as follows:

> So long as a member observes the orders regulating debate there is no limit of time to his speech, excepting in one contingency, viz. when moving the suspension of the standing orders, is then limited to 10 minutes, as is also a minister if he speaks to the motion.

Well, that 10 minutes has subsequently altered to five minutes but, as I mentioned earlier, it is currently the only limit.

In some other parliaments in Australia, especially in upper houses, there have been limits imposed. For example, in the Senate a question without notice can occupy only one minute, and the minister's answer four minutes. Supplementary questions and answers are both limited to one minute. Similar limits apply in the Legislative Council in Victoria. On page 153 of the 10th edition of *Odgers' Australian Senate Practice* there is a record relating to the history of the introduction of time limits on questions and answers. It occurred in 1992.The result of the imposition of limits, after some trial periods, was the greater opportunity for senators to ask questions and an obligation on ministers to focus on pertinent responses. This once experimental process is now an established part of our Senate process.

In this council we have a tradition of members being given the opportunity—and I think it is an important opportunity—to provide an explanation before asking questions. I do not believe that if we in this place are to consider imposing limits that one minute for a question would be appropriate, but I do believe that members asking questions should be subject to the same disciplines we would expect of ministers and that, after discussion, we should seriously consider adopting new sessional orders on an experimental basis to provide an appropriate opportunity for members to ask a question with an appropriate explanation, as well a limit on the time available for ministers to answer the question. I look forward to the day this is introduced.

HERITAGE PRESERVATION

The Hon. SANDRA KANCK (15:52): It is nearly a month now since the Norwood Payneham St Peters council very sadly decided to demolish three 19th century cottages in Linde Reserve at Stepney. This was first rumoured late last year, and at that time I issued a media release calling on the council to preserve those cottages. They are clearly 19th century, they are intact and are in a compact group and, because they are located on a busy main road just opposite the Avenues Shopping Centre at St Peters, they are very visible.

They look like history and they are history. Research conducted by the council and other organisations has shown that these three cottages have real significance as part of South Australia's multicultural heritage. They are the last survivors of what was once a thriving German

community in Stepney. Most people do not know that there is more to South Australia's German heritage than Hahndorf and the Barossa. There was a distinct German settlement at Stepney, and there was even a report of what we would call a schutzenfest in 1864 on what is now known as Linde Reserve. The cottages were built by Haken Linde, a successful member of the German community after whom the reserve is named. Unfortunately, due to some sort of oversight by the council, these three cottages have not been heritage listed.

Members will recall that there have been other oversights by councils from time to time—the most spectacular probably being Burnside council's failure to nominate Fernilee Lodge. That is arguably the most prominent example in the metropolitan area, but we now have a situation where two grand old 19th century Port Augusta pubs, the Exchange Hotel and the Great Northern Hotel, have been approved for demolition because the Port Augusta council did not heritage list them.

The Norwood Payneham St Peters council released a draft master plan for the development of Linde Reserve and Dunstone Grove last year, and it received almost 300 submissions from the community, which is a very high return compared with most council consultations. Well over 100 residents wrote in their submissions that they wanted these cottages to be retained. Some have now mounted a campaign to save these cottages, and anyone driving along Nelson Street cannot miss the 'Save our cottages' banner out the front. I note also that the opposition has become involved in the campaign, with the front page story of the *East Torrens Messenger* this week being that of Martin Hamilton-Smith coming out in a call to preserve the cottages. Heritage experts have called for the cottages to be saved, as have the National Trust, the South Australian German Association and the council's own heritage adviser.

I understand that the night the decision was made the public gallery was packed with community members. The minority of councillors who argued to save the cottages did so in a way as to effectively demolish the case for the removal of the cottages. They demonstrated that the cottages would not prevent other aspects of the development of the reserve. It is, after all, a 2.8 hectare reserve and the three compact cottages take up very little room, and they showed how retaining these cottages could be cost neutral if they were rented out. But most councillors it seems had already made up their mind and were impervious to any of the arguments.

I am particularly saddened by the fate of one of these cottages, 64 Nelson Street, which is the home of the St Peters Women's Community Centre and has been so for 30 years. This was South Australia's first women's community centre and one of the first in Australia, so it is history in its own right. Thousands of women and their children have been helped by this centre. I understand that the council will be relocating the women's centre to the one cottage it will leave standing at 68 Nelson Street. However, there is still a great sense of loss at the impending demolition of this cottage. I have been inside and inspected it and those women have put in a lot of work in terms of renovation inside the cottage.

I am deeply disappointed that the Norwood Payneham St Peters council has taken this decision. It is one of our oldest councils. It has been a leading light in heritage protection and cultural history for a long time. The council was not obliged to protect these cottages, but it could have chosen to do so and the fact that it did not suggests now that it has lost its commitment to heritage protection.

PUBLIC TRANSPORT

Adjourned debate on motion of Hon. D.G.E. Hood:

That the Environment, Resources and Development Committee inquire into and report on the current and future public transport needs for South Australia, and in particular—

1. the development of an efficient and integrated public transport system incorporating all forms of public transport and necessary infrastructure improvements;

2. the needs of metropolitan and outer metropolitan regions;

3. the opportunities and impediments to increasing public transport patronage with a view to reducing greenhouse emissions and other relevant matters; and

4. an assessment and report of the feasibility and cost and benefits of the following proposals (to include the benefit to car users who remain on the road network, road crash cost savings, benefits to car drivers who shift to public transport, revenue, journey time savings, emission reductions, noise reductions, avoided car ownership)—

(a) the introduction of a high speed passenger train service between Adelaide and Angaston to service the Barossa tourist area, with a report on the feasibility of co-use leasing or of purchasing the current line from Gawler to Angaston from GWA to restore rail coverage to Lyndoch, Tanunda, Nuriootpa and Angaston;

(b) the introduction of a passenger train service between Adelaide and Mount Barker via either the duplication of a broad gauge line from Belair to Mount Barker or conversion of the Belair metropolitan train line to standard gauge during scheduled re-sleepering works in such a way that the metropolitan line can reconnect with the standard gauge ARTC line from Mount Barker to restore rail coverage to Mount Barker, Littlehampton, Balhannah, Bridgewater, Aldgate and Stirling;

(c) the re-laying of the now defunct Northfield line to include 'Park and Ride' stations at Port Wakefield Road and Main North Road, and to provide high-speed passenger rail coverage to the suburbs of Gepps Cross, Pooraka, Walkley Heights, Northfield, Gilles Plains, Ingle Farm and Valley View;

(d) the re-laying of the now defunct southern suburbs line from Reynella to Huntfield Heights (known as the 'Willunga line'), with an investigation as to the feasibility of using either the old corridor from Hallett Cove station, or of alternatively linking viable portions of the old corridor to a new line extending from Tonsley station to provide high-speed rail coverage to Sheidow Park, Trott Park, Fountain Valley, Reynella, Woodcroft, Morphett Vale, Hackham, and Huntfield Heights (and provide new coverage to Flinders University and Medical Centre, Darlington and O'Halloran Hill should the line extend from Tonsley station);

(e) costs and feasibility of providing high-speed rail services from Adelaide to Aldinga via a restored Willunga rail line and the feasibility of re-using the existing but defunct Willunga line bridge over the Onkaparinga River as an alternative to a new extension and new bridge from Noarlunga to restore rail coverage to Seaford and provide new coverage to Aldinga; and

(f) the re-instatement of regular regional passenger rail services, including services to Murray Bridge, Victor Harbor, Whyalla, Mount Gambier and Broken Hill;

and such report to include any other factors or recommendations that the committee deems appropriate, along with a summary of submissions provided in response to a request for community input regarding each proposal.

(Continued from 30 April 2008. Page 2513.)

The Hon. M. PARNELL (15:59): I rise to support this motion and do so as a member of the Environment, Resources and Development Committee because it is this committee to which this reference will be made. The Hon. Dennis Hood's motion seeks to have the ERD Committee inquire into and report on the current and future public transport needs for South Australia, and his motion then lists a number of specific items that he wants the committee to look into. That includes the extension of a number of our existing rail services and the reopening of a number of rail services that have been closed, and to do all this in the context of the development of an efficient and integrated public transport system.

The reference is timely in connection with fuel prices and peak oil—a concept that a large number of us have been aware of for a great many years but is only now starting to reach public consciousness—and also in relation to the debate on greenhouse gas emissions. However, in supporting the motion, I note that the Environment, Resources and Development Committee already has before it a motion to consider public transport. It was my expectation that, in dealing with that previous referral, we would probably have examined many of the issues on the Hon. Dennis Hood's list of specific items to report into. However, we may not have got to all of them, so I think it is helpful for us to have this additional list as well.

My understanding of the way in which referrals to statutory committees work is that, under the Parliamentary Committees Act, we are required to prioritise referrals from parliament ahead of any inquiries that we undertake of our own volition. That is my understanding of the pecking order, as it were, of inquiries. The ERD Committee will now need to work out whether we can incorporate the Hon. Dennis Hood's proposal, should it pass, into our existing public transport inquiry or whether, in fact, we defer some of these items until after we have concluded that inquiry.

With those brief remarks, I am happy to say that the Greens support the motion. I am happy to say that, as a member of the committee that is being asked to look into these matters, I also support an inquiry into these important topics.

The Hon. D.G.E. HOOD (16:02): I would like to thank the Hon. Mark Parnell for his contribution and his indication of support. I certainly appreciate it. This is a very important issue for the state of South Australia. Our rail infrastructure has been allowed to deteriorate for many years. That is not necessarily pointing the finger at this government: I think it has been an issue for all governments over many decades. The tragedy is that not that many years ago we had a very advanced rail network infrastructure available to us but, through decades of neglect, we now find ourselves in the state that we are in. We are clearly lagging behind every other mainland capital in Australia. We are the only capital city that does not have electrified rail and, in fact, as members

will note from some of the points I make during my summing up, we have become somewhat of a laughing stock to various bodies.

This motion expands on one proposed by the member for Schubert, which was passed in the other place on 2 April with support from both sides of the house. The Environment, Resources and Development Committee is now committed to some form of inquiry into public transport, as outlined by the Hon. Mark Parnell a moment ago. We have called for an earlier than usual vote on an expansion of the terms of reference, because research and discussion is already under way on this issue.

Now is the time, in the small window of opportunity we have left, to act on this important matter, before petrol prices become absolutely prohibitive for many people and before the environmental concerns become overwhelming, if they are not already. Indeed, Adelaide has the worst public transport of any capital city. One tourist web page states:

> Adelaide has the worst metropolitan rail service in the nation, and is the only major city in Australia without electric train services. In contrast to all other cities there are no plans for any development of the services and in fact there are even mild threats of service reduction and route curtailment.

I am sad to say that those are not just mild threats, as the quote states. In fact, in some cases they have been carried out, and I will outline those cases in a moment.

As South Australia continues to let its rail infrastructure crumble, New South Wales, on the other hand, is pouring vast amounts of money into new rail infrastructure such as the new North West Metro line, the Epping to Chatswood line and, indeed, the new CBD line. Queensland is doing similar things, and Western Australia has spent enormous amounts on its rail infrastructure, especially in the past decade. Victoria, which now has its own dedicated minister for public transport, has just put on an extra 200 new train services a week.

Overseas, China has spent a staggering $100 billion on its railways in the past three years. In the US, Dallas, Denver, Houston and Phoenix have recently chosen to build multi-billion dollar rail systems as traffic on their roads has becoming increasingly congested. Adelaide, unfortunately, lags behind. Instead of increasing funding for public transport infrastructure, it shows what can be called, at best, indifference towards it. For example, during its short history, Adelaide has laid—and then ripped up—14 separate rail lines, including a line that went straight past Seaford. We have closed lines to our premier tourist region, the Barossa Valley, and closed lines to places such as Mount Barker and Victor Harbor. Once upon a time they were sparsely populated regions but now, of course, they are thriving centres that have significant populations in their own right. They once had a train line but they no longer do.

We are still cutting back on our already limited rail services. In fact, the Greenfield station on the Gawler line has very recently lost 10 services a day. Dry Creek has lost five trains a day. A number of stations have also been closed on the Belair line, including Millswood and Clapham. We allow our historic railways stations, such as Angaston, to fall into ruin and disrepair–as I highlighted in question time today.

Even when other countries are lowering public transport fares, there are persistent rumours of a significant increase in the cost of Metro tickets in the upcoming budget tomorrow. Our use or patronage of rail services tells of its despair. Melbourne caters for over 162 million trips per year; Brisbane some 49 million trips per year; and London has over 1 billion metropolitan trips per year. Perth is a similar sized city to Adelaide and is, I think, a genuinely comparable capital city. It is marginally bigger, but very similar, and it has some 34 million rail trips per year. The Adelaide number is about 8 million. What is the explanation for that? The answer is simply that they have better infrastructure and they have trains that get people where they want to go quickly.

Although the Strategic Plan contains a target to increase public transport usage to some 10 per cent of metropolitan weekday passenger vehicle kilometres—which I understand equates to doubling our public transport usage by 2018—frankly, we are not doing anything to achieve that target, or anything substantial, anyway. *The Advertiser* today has the Prime Minister roundly criticising the funding of public transport as Australia falls far behind other OECD countries, and Adelaide falls far behind other Australian capital cities.

The Book entitled *Back on Track: Rethinking Transport Policy in Australia and New Zealand* makes the point as follows:

> Bus speeds are universally non-competitive with car speeds...we conclude that the only way to ensure speed competitiveness of public transport in any city is to develop a quality rail system.

When I spoke to this motion only a few weeks ago, I raised the fact that the government needs to do more about petrol prices. Only 10 years ago crude oil was $US10 a barrel—just 10 years ago; $US10 a barrel for oil. In January this year it was $US100 a barrel. When I made my speech a few weeks ago, crude oil had just hit an all-time high then of $US119.48 a barrel—a jump of almost $US20 per barrel since January.

Now, just a few weeks afterwards, that seems cheap, with oil now spiking at around $US140 a barrel. A week ago Adelaide motorists were paying $1.64.9 a litre for petrol. It is not surprising that reports from the US mention that some farmers are turning back to mules—can you believe—to gather their crops. The farmers were reported to say, 'The fuel price is so high you can't afford it. We can feed these mules cheaper than we can buy fuel.' I certainly do not want to see Adelaide head in that direction.

It will only gets worse because demand for oil across the world is frantic at a time when the production of oil is no longer increasing to keep pace. Car sales in Russia were up 60 per cent last year—just last year; 30 per cent up in Brazil; and 20 per cent up in China—the world's most populous country. Indeed, the $2,500 Indian Tata car (so called) was recently launched, allowing literally millions in that country to drive and consume even more petrol than has previously been the case.

Petrol consumption is increasing at a time when it is becoming increasingly scarce and prices are becoming prohibitive. So, what is the solution? The solution, of course, is to get people into public transport, and rail is the best form of public transport, as I have quoted previously from the experts. The environmental benefits alone are worth it. Our calculations put the greenhouse gas emissions saved from a revitalised high-speed rail system in Adelaide at approximately 200,000 to 300,000 tonnes of carbon dioxide per year. Pollution would be even less if the system were to be electrified, which is something that must happen sooner rather than later.

I remind members that, of all Australian capitals, Adelaide is alone in still running the noisier, slower, and indeed substantially more polluting diesel trains. I commend the opposition for its support of rail electrification. It simply seems that the time has come.

I have recommended that the committee examine six often discussed proposals for a cost-effective revitalisation of our rail network. In each case, the lines already exist. That is the key point here: these lines already exist. I am not proposing the building of massive infrastructure that does not exist. The lines are there. Why are we not maintaining them? Why are we not using them? They are currently occasionally used for freight in some cases, so they operate. In fact, in some cases the lines have been pulled up in small sections, but tunnels and bridges already exist and the lines can easily be replaced.

The first of the six proposals put forward under this motion is the reintroduction of passenger train services between Adelaide and Angaston to service the Barossa tourist area along the already existing rail freight line which, for some bewildering reason, was leased to a company called GWA some 10 years ago. This would restore rail coverage to Lyndoch, Tanunda, Nuriootpa and Angaston. Again, this area is now world famous. Whenever I travel overseas and mention Australian wine, everyone mentions the Barossa Valley: it is the standard response. We need to do more to ensure that this area is well serviced with adequate infrastructure and that people can move in and out of these areas quickly. We should be able to restore the Barossa Valley tourist line and have it running out to the Barossa again so that people can enjoy the wine region on a day trip or for a couple of days, as was the case just a few short years ago.

From a more inward-looking perspective, this area is now well populated. It used to be sparsely populated, but many housing estates have sprung up there in the past several years. This is a thriving community and it is no longer an outlying area that it perhaps was once thought to be. Some argue that it is now really the outer fringe of the Adelaide metropolitan area and, indeed, there is some credibility to that argument.

The second aspect is the rebuilding of the Northfield line to provide high-speed rail services to Pooraka, new Northfield sub-developments, Walkley Heights and Valley View, with major park'n'ride stations to be built on Port Wakefield and Main North Roads. Again, this entire corridor throughout that whole region was once not very well populated. Adelaide sort of built around those areas and almost let them be but now, of course, it is filled with housing and with young families and people who need to commute to and from the city.

The third proposal is for track extensions to reinstate Bridgewater rail services and service the booming Mount Barker subdivisions, as well as Stirling, Aldgate, Balhannah and Littlehampton. I probably sound a bit like a broken record, but the same argument applies here. These were once

sparsely populated areas but they are now densely populated areas. These people deserve a rail network that can get them in and out of the city as quickly as possible.

The fourth proposal is an extension of the Tonsley rail line to provide high-speed rail to the Flinders University and the Flinders Medical Centre and Darlington, and then connect with elements of the now defunct old southern suburbs rail line (which, sadly, has been pulled up, but with the corridor and bridges and tunnels still in place) to restore rail coverage to Sheidow Park, Reynella, Woodcroft, Morphett Vale, Hackham and Huntfield Heights. Can we seriously believe that we do not have a rail service to Morphett Vale? Morphett Vale is a massively populated suburb filled with young families, many of whom work in or near the city and deserve to have quick, efficient and cheap access to the city.

The fifth proposal is an investigation into reusing the old Willunga line bridge to connect this restored line to Seaford and Aldinga at a cost saving of some $51.7 million, instead of a costly new bridge from Noarlunga. The final proposal is for the reinstatement of regular regional passenger rail services, including services to Murray Bridge, Victor Harbor, Whyalla, Mount Gambier and Broken Hill.

I do not propose to have all the answers in terms of the precise costings for all of these issues; that is not my job. It will be the job of the committee to examine these issues and to report on their feasibility: whether or not it is possible or, indeed, desirable. I believe that Adelaide and South Australia need a fast, environmentally clean and cheap mass transport system. My proposal has outlined some avenues of inquiry for providing such a system in a cost-effective way to the government and the taxpayers of South Australia.

This is something we should do; this is something that South Australia needs to do. Our public transport is behind the eight ball. No matter which way we look at it, the truth is that our rail system really is the worst in the country. It should not be that way. Why should it be that way? If Perth can do it with a similar population base, why can't we do it? The answer is simple: we have not tried and we have not invested the money that we should have invested. I commend this motion to members.

Motion carried.

STATUTES AMENDMENT (ETHICAL INVESTMENT—STATE SUPERANNUATION) BILL

Clauses 1 to 3 passed.

Clause 4.

The Hon. D.G.E. HOOD: This is a test amendment. I have a series of amendments, as members can see, but they are all essentially the same amendment. As I said in my second reading speech, Family First is supportive of this measure. However, we have had some thoughts on it. This amendment is very simple. Basically, it seeks to expand in some ways the proposal in the bill introduced by the Hon. Mark Parnell in such a way as to incorporate issues of conscience—specifically, to include the words 'issues of conscience generally recognised within the community'.

A very simple explanation of that is that in the United States, for example, there are some ethical super funds—and I am not aware of one in South Australia at this stage but there are some in other states—that specifically preclude investing in companies that make money out of pornography, for example. It could be argued—and maybe the Hon. Mark Parnell will do this—that the bill without the amendment would already cater for that but, to us, that was not clear enough, hence the amendment. We are targeting that as one example.

By voting for this amendment, members will be agreeing that the ethical investment that has been made will also consider issues such as investing in companies, for example, that produce pornography or other material which people in the community may find offensive or distasteful. I certainly do not want my superannuation going to prop up companies that produce such material, hence the amendment. With those few words, I move:

Page 3, lines 12 and 13 [clause 4, inserted paragraph (b)]—

Delete all words in these lines after 'consideration of' in line 12 and substitute:

—

(a) the impact of the investments on society and the environment; or

(b) issues of conscience generally recognised within the community.

The Hon. M. PARNELL: I support the amendment, but I do so with the comment that I believe that the result that the honourable member seeks could have been achieved anyway without the amendment. I understand that what he is seeking to do is to obtain clarity, and that is fine, so I will support the amendment. It seems to me that including the concept of 'issues of conscience generally recognised within the community' would fall within the subset of the words in my current bill which are 'the impact of the investments on society', because issues of conscience relate to people in their own right but more commonly in connection with their view of society and how a proper society should run. I think it is unnecessary, but it does no harm, and I am happy to have it incorporated. Having said that, I would urge the mover to consider that, even though it is my bill and I am supporting it, if he does not have the support of the council for this amendment, he can still consider supporting the bill in its unamended form.

It is certainly my understanding and my intention that the words I have in there in relation to ethical investment, in terms of the impact of investments on society, would be broad enough. It would probably not be helpful to go down every rabbit burrow to try to use every little example. We saw a little bit of that in the second reading. Clearly, every individual has a different view on what is ethical, what is an adverse impact on society and what is an adverse impact on the environment.

The Hon. Rob Lucas, at some length, went through the different types of ethical investment products and how they deal with it: whether they try to exclude certain types of investment, whether they deliberately try to include other types of investment or whether they take a middle approach, which might be to take a best of sector approach—maybe they will take the best uranium mining company. I personally would probably not invest my funds in an ethical investment company where that was their approach, but it is an approach that some people take.

I was very pleased to spend some time this last week with Mr James Thier, the director of Australian Ethical Investment, and I discussed with him in general terms what it is that I was trying to achieve with this legislation. I mentioned to him, in a general sense, that an amendment in relation to issues of conscience was one that had been put. He expressed no great alarm that that would undermine the intent of the scheme.

The way this will operate in practice, as I see it, is that Super SA or Funds SA will go into the marketplace and they will purchase, off the shelf, an ethical investment product and then offer that to members. I reiterate that my bill does not make it mandatory or obligatory for any particular person to sign up to any particular ethical investment fund. It basically says: 'If we are going to have choices, let one of them be this choice', and I think that that is the way to go.

I am not going to speak at any great length because we have had the second reading, not just on this bill but I would remind members that we tested this at some length in relation to a government bill on police superannuation. The outcome of that debate was that a majority of this council supported an incorporation of ethical investment in relation to police. The bill also dealt with the Triple S scheme, so even though we were talking about police we, in fact, have already extended this scheme to more public servants.

With the assistance of parliamentary counsel, the effect of this bill is basically to tidy up the remnants, to make the situation that we have agreed should apply to police apply to all public servants and all members of parliament, so that those people have a choice in relation to ethical investment. I am not aware of any circumstances that have changed since we debated the police superannuation bill, and I am hoping that the support that my amendments had in that case will be reflected in general support for this bill, but for now I am happy to support the honourable member's amendment to my bill.

The Hon. CARMEL ZOLLO: If I could place on the record, as was done by the Hon. Paul Holloway, and reiterate that the government will not be supporting this bill. The government's view is that the introduction of such an option as outlined in the amendment should be done in harmony with the existing requirements of Funds SA, namely, to achieve the highest return possible and have proper regard for the need to maintain the risks relating to investments at an acceptable level.

Again, the potential increased costs from such an investment option conflicts with the existing requirements of Funds SA. There also needs to be appropriate consultation, which is very important, and communication with the relevant superannuation boards. I know that the Hon. Paul Holloway has already placed those comments on the record but I believe it is important to reiterate them.

The Hon. R.I. LUCAS: My question is to the mover of the amendment. Does the form of the words that he seeks to include in the legislation, or similar words, appear in schemes interstate or, indeed, elsewhere? Through my limited knowledge of the area as a result of having looked at it

in connection with the police superannuation bill, I am certainly aware of drafting which includes the sort of drafting the Hon. Mr Parnell has used (society and the environment) and I think I agree with him that it probably does encompass many of the issues in question.

The Hon. Mr Hood refers to perhaps the safest area of the issues of conscience in pornography, but there are many vexed issues of conscience, for example, abortion, various drugs that pharmaceutical companies might use to either hasten (or whatever) fertilisation, fertility drugs and those things which may well be issues of conscience for the Hon. Mr Hood and the Hon. Mr Evans but which may not be issues of concern to others. I understand why he has only highlighted pornography, because it is relatively safe ground about which to have an argument or debate and it is not a vexed issue. My question to the Hon. Mr Hood would be: is he aware of whether or not similar words and phrases are used in legislation governing ethical investment in other states and territories?

The Hon. D.G.E. HOOD: The short answer is no, I am not aware of other state legislation using that language. The briefing we gave to parliamentary counsel in deriving the amendment, if you like, was specifically to exclude pornography. We used that one example, and this was the wording which was returned to us and which we accepted in good faith.

The reason we chose to go further than the wording as originally existed from the Hon. Mark Parnell is quite simply that most of the current ethical investment products out there, so-called, do have a strong focus on environmental concerns. We do not disagree with that at all; in fact, we commend the people concerned for having that focus, but in some cases they do not consider what we have called here issues of conscience, and that is investing in places that make money out of pornography, for example. In the United States, they have several of those options. They exist in other states, but I am not sure of the wording.

The Hon. R.I. LUCAS: As I said, there are some vexed issues and questions in relation to the relatively safe ground of pornography. For example, some members of parliament may well see some of the offerings on commercial or publicly paid television late in the evening and the early hours of the morning that are tantamount to soft core or hard core pornography, depending on their point of view. They certainly incorporate full-frontal nudity, simulated or actual sex acts and a whole variety of other things which, in previous years, many people would have comfortably described as pornography; whether or not they still do is really up to the individual.

Therefore, if you say, 'Okay, we're sure about an investment in Channel 9 or the media company that produces *Big Brother*,' does that company produce pornography? Is that an ethical investment? As I said, whilst it is a relatively safe area to identify, I highlight that, clearly, there are such questions in relation to ethical investment or issues of conscience, as proposed by the Hon. Mr Hood.

A number of these companies would not exist without funding sources. The only way some of these companies survive is through a funding mechanism. In that way, are you indirectly supporting ethical investment by supporting a particular bank or financial institution that has a preponderance of lending to the areas such as media and perhaps soft core pornography or the companies that produce *Big Brother* and those sorts of things (and I am not suggesting that that is soft core pornography, but others might)? If a member has significant shares in banks or financial institutions, are they doing so through that mechanism? There are ethical investment issues in relation to that.

The position of the Liberal Party is that the joint party room has not addressed the issue of the Hon. Mr Hood's amendments, so we are in a little bit of a cleft stick. Rightly, the Hon. Mr Parnell wants to proceed to a vote today. The position of the joint party room has been to support the legislation as it was (and I have spoken on that on behalf of the party on a previous occasion), and I am therefore not armed at the moment with authority from the joint party room either to oppose or support.

In stating that today, I am not indicating that the party, if and when we have to consider this at another stage, might not support the sorts of amendments the honourable member suggests. I can speak personally and say that I suspect that, in any party room debate, I would probably have some difficulty in moving down the path the Hon. Mr Hood wants to move down. That is a personal view, and I do not wish it necessarily to reflect the party view, which may well be different. I would be happy to accept the party decision if that were ultimately the case on the issue.

Therefore, as we sit today, with the bill to go through, I am not in a position to support it and, reluctantly at this stage anyway, on behalf of the party I do not support the amendments moved by the Hon. Mr Hood. However, as I said, I do so on the basis that the party room has not

considered and rejected them; although it may well, on a future occasion, if we are asked to debate them on this legislation or, indeed, on any other legislation, ultimately choose to determine that. It really is in the hands of the shadow treasurer and the shadow minister for finance, and I do not have a position from them or the party room in relation to these amendments.

For those reasons, as we are required to vote on the amendments, I indicate on this occasion that, on behalf of the party, I will not be supporting the package being moved by the Hon. Mr Hood.

The Hon. D.G.E. HOOD: I have some brief comments. I thank the Hon. Mr Lucas for his comments, and I think that is understood. In order to clarify the intention, and in relation to the comments concerning investment in banking organisations, for example, that is certainly not the intention of this amendment. If somebody wants to invest in a bank, and that bank chooses to lend its money to organisations that pursue things that people may not want them to pursue, you have to draw a line somewhere

I do not think that, as an individual investor, one can be responsible for the indirect consequences of their investment, unless they had some prior knowledge of that. That certainly was not the intention. I certainly consider banks a very ethical investment; in fact, I have direct investments with the major banks at the moment, and I have to say that I am copping a flogging on them. However, I am hopeful that they will turn.

I have moved the amendment, although it seems that it will be defeated. So be it, but I want to clarify that the intention was really to prevent direct investment in organisations that produce pornography.

Amendment negatived; clause passed.

The CHAIRMAN: Does the Hon. Mr Hood intend to proceed with his other amendments?

The Hon. D.G.E. HOOD: No; they are consequential. Despite the fact that my amendments will clearly be defeated, Family First will still support the Hon. Mr Parnell's bill.

Remaining clauses (5 to 13) and title passed.

Bill reported without amendment.

The council divided on the third reading:

AYES (10)

Darley, J.A.	Evans, A.L.	Hood, D.G.E.
Kanck, S.M.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Parnell, M. (teller)	Stephens, T.J.
Wade, S.G.		

NOES (5)

Gago, G.E.	Gazzola, J.M.	Holloway, P.
Hunter, I.K.	Zollo, C. (teller)	

PAIRS (4)

Dawkins, J.S.L.	Finnigan, B.V.
Schaefer, C.V.	Wortley, R.P.

Majority of 5 for the ayes.

Third reading thus carried.

Bill passed.

JUSTICE SYSTEM

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (16:44): I lay on the table a copy of a ministerial statement relating to the 2008 budget increases across the South Australian justice system made earlier today in another place by my colleague the Attorney-General.

MENTAL HEALTH BILL

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (16:45): Obtained leave and introduced a bill for an act to make provision for the treatment, care and rehabilitation of persons with serious mental illness with the goal of bringing about their recovery as far as is possible; to confer powers to make orders for community treatment, or detention and treatment, of such persons where required; to provide protections of the freedom and legal rights of mentally ill persons; to repeal the Mental Health Act 1993; and for other purposes. Read a first time.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (16:45): I move:

That this bill be now read a second time.

A world-class mental health system depends on an effective legislative framework to ensure that society can fulfil its obligations to care for individuals with serious mental illness. There is an expectation in the community and an obligation on the part of the government that, where a person is unable to make an informed decision about their mental health and welfare and they are vulnerable or pose a risk to others, intervention can take place to ensure they obtain the assessment, treatment and care that is necessary. The Mental Health Bill 2008 is designed to replace the Mental Health Act 1993 and provide a contemporary framework for the provision of services to people with serious mental illness who are either unwilling or unable to consent to their own treatment.

To ensure that our mental health legislation is based on up-to-date knowledge and research and contemporary standards, a thorough review of the Mental Health Act 1993 and related legislation was undertaken. This review commenced in August 2004 and was chaired by Mr Ian Bidmeade, a legal policy consultant and solicitor. The terms of reference for the review focussed on the extent to which South Australia's legislation provided a framework for the management of mental health issues in a manner consistent with contemporary standards.

The report of the committee's finding, 'Paving the Way—Review of Mental Health Legislation in South Australia April 2005' (the report), was released for public comment by the Department of Health at the end of May 2005. The report was distributed to approximately 500 stakeholders and the recommendations received significant support. The report proposed a number of changes to modernise the legislation and improve responses to people with mental illness. These included: the need for a clear articulation of the rights of mental health service consumers and carers; greater emphasis on community care, not just hospital and institutional care; and a recognition of the particular circumstances of children, acknowledging the unique cultural perspective of Aboriginal and Torres Strait Islander people.

A majority of the changes recommended in the report were supported by the government, and in December 2006 cabinet approved the drafting of a bill for a new Mental Health Act. The report recommended the establishment of a mental health tribunal to hear appeals currently heard by the Guardianship Board and the Administrative and Disciplinary Division of the District Court. The government does not believe the establishment of a mental health tribunal is necessary. Some of the issues regarding the hearing of appeals can be remedied through the amendment of the Guardianship and Administration Act 1993, which the government is progressing.

In October 2007, a draft mental health bill was released for public comment; 55 written submissions were received through to late December. This process resulted in further refinements to the bill introduced here today. I take this opportunity to thank publicly all individuals and organisations who participated in this process and who have taken the time to formally submit a response to the review or participate in subsequent consultation. Their input has been of immense value in developing this bill and I am confident that the comprehensive consultation process has ensured that the government has been able to address key concerns, and their efforts will result in legislation which is clear in its focus, while retaining a degree of flexibility. I seek leave to insert the remainder of my second reading explanation in *Hansard* without my reading it.

Leave granted.

I would also like to acknowledge the significant contribution former mental health advocate and review and reference group committee member, the late Trevor Parry, made to ensuring mental health legislation and services have become more consumer focussed. Trevor was passionate about ensuring a balance between any new

provisions for early intervention with additional safeguards and supports for people who become subject to involuntary treatment, and this Bill achieves that balance.

The *Mental Health Bill 2008* incorporates provisions which bring South Australia into line with contemporary approaches to the management of serious mental health issues and includes innovations designed to assist people to obtain assistance in a manner which aims to minimise the extent to which their freedom is curtailed and to protect their rights.

The long title for the Bill states that it is a Bill for 'An Act to make provision for the treatment, care and rehabilitation of persons with serious mental illness…'. This Bill is primarily about the use of powers to treat people with serious mental illness against their will and provides for the checks, balances and protections necessary for the transparent and accountable exercise of these powers.

Most people with a mental illness are never subject to an order which requires them to have treatment. They are treated by their general practitioner, psychologist or possibly a psychiatrist, willingly seeking and obtaining treatment. The Bill which is before you today is designed to provide a framework for providing care and treatment, while protecting the rights of the small minority of people who are unwilling to accept treatment even though they may be placing their own safety or the safety of others in jeopardy. Research indicates that one in five or twenty percent of Australian adults will be affected by mental illness at some time in their life. Three percent will be seriously affected. It is primarily the three percent of the population who suffer from a major mental illness which seriously affects them that this Bill is concerned with.

The *Mental Health Bill 2008* contains a set of principles which are designed to provide guidance to all persons and bodies involved in the administration of the Act. The following principles are included in the Bill:

- mental health services should be designed to bring about the best therapeutic outcomes for patients, and, as far as possible, their recovery and participation in community life;
- the services should be provided on a voluntary basis as far as possible, and otherwise in the least restrictive way and in the least restrictive environment that is consistent with their efficacy and public safety, and at places as near as practicable to where the patients, or their families or other carers or supporters, reside;
- the services should—
    - be governed by comprehensive treatment plans that are developed in a multi disciplinary framework in consultation with the patients (including children) and their family or other carers or supporters; and
    - take into account the different developmental stages of children and young persons and the needs of the aged; and
    - take into account the different cultural backgrounds of patients; and
    - in the case of patients of Aboriginal or Torres Strait Islander descent, take into account the patients' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities;
- there should be regular medical examination of every patient's mental and physical health and regular medical review of any order applying to the patient;
- children and young persons should be cared for and treated separately from other patients as necessary to enable the care and treatment to be tailored to their different developmental stages;
- the rights, welfare and safety of the children and other dependants of patients should always be considered and protected as far as possible;
- medication should be used only for therapeutic purposes or safety reasons and not as a punishment or for the convenience of others;
- mechanical body restraints and seclusion should be used only as a last resort for safety reasons and not as a punishment or for the convenience of others;
- patients (together with their family or other carers or supporters) should be provided with comprehensive information about their illnesses, any orders that apply to them, their legal rights, the treatments and other services that are to be provided or offered to them and what alternatives are available;
- information should be provided in a way that ensures as far as practicable that it can be understood by those to whom it is provided.

I will now go on to discuss the key provisions of the Bill.

The *Mental Health Bill 2008* recognises the role of carers to ensure they can provide the best possible care and support to a person with a mental illness. The Bill includes a definition of a carer and refers to carers in the guiding principles as a category of people to whom information about the illness, any orders that apply, legal rights and the treatment and other services available to the person being cared for is to be given. The provisions regarding confidentiality and disclosure of information enable information to be disclosed to a carer, relative or friend of the person subject to an order if the disclosure is reasonably required for the treatment, care or rehabilitation of the person, and there is no reason to believe that the disclosure would be contrary to the person's best interests. If a person is subject to a Community Treatment Order or a Detention and Treatment Order, information reasonably required for their treatment, care or rehabilitation may be shared, despite their opposition to this. These provisions

overcome the barriers identified by Bidmeade regarding the sharing of information. Carers, professionals and some consumers consulted as part of the Bidmeade review all expressed concern that information necessary for the appropriate care and treatment of a person was not able to be shared. The *Mental Health Bill 2008* clarifies that information can be shared with the consent of the person concerned, or with a carer, relative or friend as described.

The *Mental Health Act 1993* has been identified as lacking a sufficient focus on consumer rights. The Bill, in contrast, articulates a number of rights for both voluntary and involuntary patients, as well as their carers, which are not included in the *Mental Health Act 1993*. These include:

- Providing a copy of orders and a statement of rights to a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose, as well as to the patient
- Providing for the use of interpreters where available and appropriate
- Entitling the patient to have another person's support
- Entitling the patient to communicate with people outside of the treatment centre
- Enabling information reasonably required for the treatment, care or rehabilitation of the person to be shared with a relative, carer or friend of the patient, where such disclosure is not contrary to the person's best interest
- The right to a comprehensive treatment and care plan and to input into the plan for patients and their carers or other persons providing support to them.

In recognition of the different and broader concept of mental health in Aboriginal and Torres Strait Islander and Torres Strait Islander culture, the Bill establishes as a principle that services should take into account the patient's traditional beliefs and practices, and when practicable and appropriate, services should involve collaboration with Aboriginal and Torres Strait Islander health workers and traditional healers. The definition of relative used in the Bill recognises traditional Aboriginal and Torres Strait Islander kinship rules for determining who is a relative.

The Bill enables the Minister to determine that a specified place will be a Limited Treatment Centre for the purposes of the Act. This provision will enable some country hospitals which are suitably equipped, to be declared Limited Treatment Centres. This will enable them to detain and treat a person, if they meet the criteria for the order, for up to 7 days on a level 1 Detention and Treatment Order, rather than having to transport the person to Adelaide. During the 7 day period the illness may resolve itself. These provisions will be of benefit to all South Australians who live in country areas and, in particular, to Aboriginal and Torres Strait Islander people.

If further detention and treatment is deemed necessary, the person should be transferred to an Approved Treatment Centre. Currently the metropolitan public hospitals and 2 private hospitals are approved treatment centres and it is not anticipated that this will change in the immediate future.

The *Mental Health Act 1993* does not contain provisions especially directed at children. The *Mental Health Bill 2008* includes express provision about the application of the Act to children and includes a number of provisions designed to protect children's interests. These include principles that children and young people would be cared for and treated separately from other patients to enable the care to be tailored to their developmental stages and that the rights, safety and welfare of children and other dependants of patients should always be considered and protected as far as possible. The latter principle is designed to ensure that the needs of children and young people are considered and responded to when either or both of their parents have a serious mental illness. While it is not appropriate to include specific provisions for how the children of patients should be treated in the Bill, this principle will provide guidance to mental health and other staff dealing with children in specific circumstances. It is proposed that the Department of Health undertake a review of the current practices regarding the children of patients to ensure that their needs are being adequately addressed.

The Bill provides additional protections and safeguards for children under 18 but recognises that a child of 16 may consent to their own treatment, in line with the *Consent to Medical Treatment and Palliative Care Act 1995.* The long term orders on which a child may be placed, an infrequent occurrence, are shorter than those for adults and require more frequent review. These provisions are designed to provide greater protection for children.

Bidmeade recommended that provisions for electro-convulsive therapy (ECT) should be separate from the provisions for the other, much less commonly used treatments, the use of which is regulated by mental health legislation. This has been done. The Bill includes a requirement that consent, either by or on behalf of the patient, or by the Board, can only be given for a maximum of 12 episodes of ECT in a maximum period of 3 months. The use of ECT without consent is allowed in an emergency, however the psychiatrist administering the treatment in these circumstances must advise the Chief Psychiatrist of their actions within one working day. This requirement will enable the provision of emergency ECT to be monitored.

The term psychosurgery in the current Act has been changed to neurosurgery in the Bill. Psychosurgery is more tightly controlled than ECT and is currently unable to be performed if the patient cannot consent in writing. In practice, this part of the Act has never been used in South Australia. The Bill retains the requirement that neurosurgery has to be authorised by the person who will carry it out and 2 psychiatrists (at least one of whom is a senior psychiatrist), and the patient has to give written consent. If the patient is unable to consent, the Guardianship Board can do so. These provisions retain significant protection for patients but recognise that someone who may benefit from neurosurgery for mental illness is often unable to consent. Enabling the Guardianship Board to consent is designed to assist patients who may benefit from this treatment to obtain it.

The criteria for compulsory intervention for the purpose of mental health care and treatment are a critical component of any mental health legislation as they determine when an individual's wishes can be overridden, and assessment and treatment provided compulsorily. The criteria for detention under the current Act are that:

- the person has a mental illness that requires immediate treatment; and
- such treatment is available in an approved treatment centre; and
- the person should be admitted as a patient and detained in an approved treatment centre in the interests of his or her own health and safety or for the protection of other persons.

The concept of 'health and safety' has proved problematic in practice, often setting the threshold for intervention too high to include people who are obviously deteriorating but have not yet reached the point where both their health and safety are compromised. The criteria included in the Bill for the issue of a Community Treatment Order or Detention and Treatment Order have been developed after giving close consideration to Bidmeade's recommendation, the United Nations Principles for the Protection of Persons with Mental Illness, the Model Mental Health Legislation agreed to by the Australian Health Ministers' Council and submissions received during the consultation period. The criteria for both forms of order require decisions that:

- the person has a mental illness; and
- because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
- there is no less restrictive means than the particular form of order in question for ensuring appropriate treatment of the person's mental illness.

The intent of the criteria for intervention in the *Mental Health Bill 2008* is to ensure that a person who needs a specialist psychiatric assessment will receive one. The intent is to broaden the basis for obtaining an order. In line with the recommendations of the 'Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau' (Palmer Report), initial orders for both detention and community treatment can be made where it 'appears' to the medical practitioner or authorised health professional that the person has a mental illness. This is a lower threshold than in the current Act where even a medical practitioner who makes a first order, not only a psychiatrist who confirms an order, has to be *satisfied* the person has a mental illness.

This set of criteria is also intended to address the problems identified by Australian researchers of mental health law. According to their research, mental health laws which place the emphasis on involuntary intervention only when persons are assessed as dangerous to themselves or others result in poorer outcomes for these people. They convincingly argue that placing the emphasis on the dangerousness of the person often results in the period of time between the first onset of the mental illness, usually psychosis including schizophrenia, and the time at which the illness is diagnosed and treated, being longer than necessary. This delay in receiving treatment can lead to a poorer prognosis for the patient and potentially homicide.

Recent data from both New South Wales and the United Kingdom show that the risk of a patient committing homicide during their first psychotic episode is in the order of one in 500 new cases. In contrast, the annual risk of homicide by patients who have received treatment is only about one in 10000 per year. The researchers note that the lethal assault was usually preceded by frightening delusional beliefs and most of the victims were family members or close associates. Only 15 per cent of victims were strangers.

It would be remiss of me not to point out that most people with a mental illness are not violent and that patients with psychosis are not generally violent once they have been treated and can be safely managed in the community. However it is now clear that untreated psychosis in particular can lead to violence and that mental health law in general, and the criteria for involuntary intervention in particular, can reduce this risk. The greatest risk of potential harm for people with mental illness arises from the potential for suicide if they are not treated. The suicide rate for people with a mental illness is up to one in 10 compared to an average of one in 100 for the whole population. The criteria in the Bill place the emphasis on the person's need for treatment with the aim of ensuring that patients who need an assessment and treatment will fall within the new legislative scheme. Enabling people to obtain an early assessment, and treatment if required, is designed to reduce the risk of both suicide and homicide arising from untreated illness.

Part 9 of the Bill enables 'authorised officers' to transport a person who appears to have a mental illness. This is in line with a 2006 Australian Labor Party election promise that mental health staff would be given the powers to do their jobs and police would be used where there was a danger involved.

Authorised officers are defined by the Bill as mental health clinicians, ambulance officers, and specific staff of the Royal Flying Doctor Service. Within this part of the Bill 'authorised officers' and police officers have broadly similar powers. The differences in powers are that some authorised officers, that is specific ambulance and Royal Flying Doctor Service staff, will be legally able to chemically restrain a person under the provisions of the *Controlled Substances Act 1984*, while a police officer, unlike an authorised officer, will be able to break into premises under certain circumstances. These provisions are not new provisions, merely a clearer articulation of existing powers.

Currently, the Mental Health Emergency Services Memorandum of Understanding between the Department of Health, South Australian Ambulance Services, the South Australian Police and the Royal Flying Doctor Service signed in June 2006 provides a framework and specific guidance to staff transporting people with a mental illness. The Bill refers to the Memorandum of Understanding and states that authorised officers, police officers and other persons engaged in the administration of this measure should endeavour to comply with it. It is planned that the Memorandum of Understanding will be updated prior to the new Act coming into force. Practices, driven by the Memorandum of Understanding, are already consistent with the intentions of the Bill and have resulted in the safe

transportation of people with mental illness. Police are no longer involved in inter-hospital transfers. The current *Mental Health Act 1993* lacks clarity regarding the power of various professionals to transport a person with a mental illness. The Bill and the Memorandum of Understanding clarify that in the main, responsibility for transporting people with a mental illness rests with health staff, however when there is a danger, assessed in line with agreed methods of risk assessment, then the police will be there to assist.

Recent reforms of mental health legislation in other Australian States and Territories have emphasised the 'treatment plan' as crucial to proper treatment, incorporating the involvement of both community services and hospitals as appropriate. Bidmeade argues that the treatment plan is the cornerstone of compulsory orders for treatment in the community or involuntary inpatient treatment, with the plans being individualised, multidisciplinary and comprehensive, not just focussing on medication.

Consistent with a focus on recovery from mental illness, treatment plans provide the means for clearly articulating the purpose of compulsory mental health orders and how treatment and care will be undertaken. The treatment plan, referred to as a treatment and care plan in the Bill to reflect the multidisciplinary nature of these plans, will specify the elements which are compulsory, for example, medication, and those which are voluntary, for example, counselling. While a treatment plan is a desirable component of a contemporary approach to the treatment of mental illness, the *Mental Health Bill 2008* does not allow the absence of a treatment plan as grounds for an appeal against an order. This is to encourage a comprehensive approach to treatment and care plans rather than a minimalist or token approach simply to be able to demonstrate compliance with a legislative requirement.

Organisations representing the interests of patients and their carers have welcomed the requirement for treatment and care plans in the Bill and their involvement in the development of such plans. Since the requirement for treatment plans was prescribed in legislation in Victoria, reportedly all patients have treatment plans and, there has been a significant increase in constructive dialogue and interaction between service providers and service users.

The most significant change in the provision of mental health services in the last century has been the development of care in the community. Facilitated by the development of new drugs to treat psychosis, including schizophrenia, and other major mental illnesses, care in the community has enabled the majority of people with a serious mental illness to remain in the community rather than being detained. This minimises the extent to which a person's freedom is limited while ensuring access to appropriate treatment.

The current Act enables only the Guardianship Board to make a Community Treatment Order. It is entirely appropriate for the Guardianship Board to continue to make longer term orders for community treatment or detention and treatment and it is pointed out that the Guardianship Board's role in making Community Treatment Orders on receipt of an application remains unchanged. It is expected that in most cases Community Treatment Orders will result from applications made to the Guardianship Board.

However, currently, Community Treatment Orders are generally made only after a person has deteriorated to the point where they have been hospitalised. The general trend in mental health legislation nationally is for orders similar to Community Treatment Orders to be available as a first treatment option if appropriate for a particular person at a particular time. This is also consistent with the principle, contained in the Bill that services are to be provided in the least restrictive environment and the least restrictive way that is consistent with their efficacy and public safety.

To prevent the present situation whereby a patient is often admitted as an inpatient, prior to a Community Treatment Order being made, the *Mental Health Bill 2008* enables medical practitioners or a few highly skilled and trained authorised health professionals to be able to make a level 1 Community Treatment Order for up to 28 days to facilitate early access to care and treatment if appropriate. The order must be confirmed by a psychiatrist or authorised medical practitioner within 24 hours or as soon as practicable.

The process used for the Board's review of a level 1 Community Treatment Order will, in fact, be similar to a Board hearing that is currently set up on receipt of an application by the Board for the Board's consideration of whether a Community Treatment Order should be made as only the Board can make a level 2 Community Treatment Order for up to 12 months.

Community Treatment Orders enable early intervention to occur with the aim of reducing the severity and impact of the mental illness. A level 1 order will be able to be made relatively quickly rather than taking up to 14 days for a hearing of the Guardianship Board as is the case at present. The current Act is also somewhat contradictory in enabling a person to be detained for up to 3 days by a medical practitioner, subject to confirmation of the order, but requiring the authority of the Guardianship Board for them to be treated in the community.

The criteria for both Community Treatment Orders and Detention and Treatment Orders contain common elements and the requirement that the order is the least restrictive means of ensuring appropriate treatment of the person's illness will mean that in appropriate cases a Community Treatment Order is made. This provision aligns with national and international approaches to managing serious mental illness.

The Chief Psychiatrist has a responsibility to ensure that a mental health clinician is responsible for monitoring compliance with the order which is aimed at preventing people falling through the cracks if they move to another area or even interstate. Rather than focussing narrowly on medication and medical treatment like the current Act, it is contemplated that a broader range of services will be included in a treatment and care plan under a Community Treatment Order.

In contrast to the other States and Territories, with the exception of Tasmania, the *Mental Health Act 1993* only allows a medical practitioner to make an order for detention and treatment. The Bill enables 'authorised health professionals' as well as medical practitioners to make both Community Treatment Orders and Detention and Treatment Orders. It is planned that 'authorised health professionals' will be a few individuals with advanced skills, knowledge and training in mental health.

Currently, the power to confirm an order is restricted to a psychiatrist. The *Mental Health Bill 2008* enables psychiatrists and 'authorised medical practitioners' to confirm an order. An authorised medical practitioner will be a person who has undertaken several years of psychiatric training at a reputable training institution and has considerable psychiatric experience. These people will be selected by the Minister, on the advice of the Chief Psychiatrist.

The Bill, unlike the current Act, makes it clear that audio-visual conferencing can be used as the basis for making, confirming, extending, reviewing and revoking orders. This will reduce the need for people from remote areas to be transported to Adelaide for an assessment if they can be appropriately and safely examined via audio-visual conferencing.

The timeframes for involuntary treatment, particularly detention and treatment in the *Mental Health Bill 2008* have been adjusted to more accurately correspond with the actual patterns of many mental illnesses and reflect a number of safeguards including specialist psychiatric and Board reviews. In contrast to the current Act all orders will expire at 2pm on a business day rather than at midnight.

The particular needs of children are addressed by provisions for shorter orders and more frequent reviews.

Patients can appeal at any time against any order and legal representation for appeals will continue to be provided. A range of people may make an application to the Board for a variation or revocation of a long term Community Treatment Order or a Detention and Treatment Order, both of which are made by the Board.

The *Mental Health Bill 2008* provides additional safeguards for people in receipt of mental health services. The position of Chief Psychiatrist will replace the existing position of a Chief Advisor in Psychiatry. The Chief Psychiatrist will have the authority to monitor and review the performance of mental health services with a focus on promoting continuous improvement and issue standards to apply in the treatment of patients.

The current Act is silent regarding the issue of how interstate orders apply in South Australia and how South Australian orders apply interstate. The Bill deals with these matters in a comprehensive fashion. A Ministerial Agreement will be negotiated with the other States and Territories, on an individual basis. These agreements will provide greater clarity for all parties regarding the inter-state management of people on mental health orders.

The *Mental Health Bill 2008* provides reforms which will complement the Government's recently announced $107.9 million mental health reform package to implement the Social Inclusion Board's recommendations. This reform package comprised funding for:

- 90 intermediate care beds;
- 73 supported accommodation places;
- 6 new community mental health centres;
- the employment of 8 new mental health nurse practitioners in the country;
- the establishment of a priority access service for about 800 people with chronic and complex needs, including those with drug and alcohol problems, a history of homelessness or who may be involved in the criminal justice system;
- the provision of non clinical community based support services by non-government organisations; and
- the establishment of an early intervention service for young people experiencing their first episode of psychosis.

The Social Inclusion Board also made recommendations about how care should be delivered in the future. The centre piece of their reforms was the stepped model of care which contains the following graduating steps:

- support across the community, including community mental health centres and care and support provided by non-government organisations
- 24-hour supported accommodation;
- community recovery centres;
- intermediate care beds;
- acute care beds; and
- secure care beds.

The Bill recognises the provision of care in the community to assist people leaving acute mental health facilities or to provide a place for early intervention. As a subset of the new stepped care system, the Government has already commenced the process of establishing community recovery centres and opened the first 20 bed centre at Mile End in June 2007. It recently opened the second, the Trevor Parry Centre, in January 2008 and the third facility is planned to open at Playford in June 2008.

As a further commitment to mental health reform, the Government released the Glenside Concept Master Plan in September 2007 which outlined the development of the Glenside Campus into a new world-class 129-bed hospital for mental illness and substance abuse called: 'SA Specialist Health Services' that will comprise:

- 40 secure rehabilitation beds;
- 6 mother and infant acute beds;

- 23 rural and remote acute beds;
- 20 acute adult beds;
- 10 psychiatric intensive care beds; and
- 30 drug and alcohol acute beds.

In anticipation of the Bill's provisions for early access to care and treatment, a new Mental Health Triage Service commenced operation in December 2007, providing for a single entry point and emergency response across Adelaide in partnership with SA Ambulance Service.

The broad definition of mental illness has been retained in the Mental Health Bill in response to the Coroner's concerns that people should not be denied access to services, including short term intervention in a crisis, on the basis of diagnosis. The Government's capital works program is replacing old and outmoded facilities with new inpatient mainstream facilities such as the Margaret Tobin Centre at the Flinders Medical Centre, the Repatriation General Hospital Aged Care Centre, a new 50 bed facility at Lyell Mc Ewin Health Service which is due for completion in late 2009 and a new 40-bed secure forensic mental health centre at Mobilong.

The Bill acknowledges traditional healers and recognises the cultural values and practices of Aboriginal people and the Government is working in partnership with Aboriginal Health Services to improve service access for Aboriginal people.

The importance of partnership cannot be over-emphasised. For example, it is partnership that underpinned the RAISE Wellbeing Program in Port Augusta between Pika Wiya Health Service and the local specialist mental health service that won a Margaret Tobin Award in 2006.

The Child and Adolescent Mental Health Service has commenced a visiting service to the APY Lands. The visiting team is comprised of a psychiatrist and a social worker. A number of services are provided on the Lands through the Nganampa Health Council and there are 2 Anangu men working in the APY Lands Men's Health Program which provides cultural and social, emotional wellbeing support for men at risk of mental health issues.

Housing resources for Aboriginal people with a mental illness who are homeless or at risk of becoming so are located in Adelaide, Port Augusta, Ceduna, Port Pirie, Port Lincoln, Whyalla, Berri, Murray Bridge, Mount Gambier and Coober Pedy.

The Australian Government is providing capital funding for a substance misuse facility for the APY Lands and the SA Government will provide recurrent funding to run the facility. A mobile drug and alcohol outreach service is currently operating on the APY Lands.

In line with the Bill's provisions for care in the community and in partnering with non-government organisations, the State Government is undertaking a training initiative for the non-government mental health sector to support the development of its workforce and build up its capacity to deliver high quality services. The Government has also provided funding to NGOs to enhance their governance arrangements as well as for the development of quality standards. These initiatives form part of a broader capacity building program to improve services to people with mental illness.

The Bill recognises the role of informal, unpaid, family carers as partners with service providers in providing care and treatment for people with mental illness. In line with the *Carers Recognition Act 2005*, carers have choices and the Bill provides for the appropriate sharing of information with carers who care for a person with a mental illness who is subject to an order.

The Government values the important role that carers play and provides support funding for mental health carer respite and other support programs. A number of carer organisations receive funding from the Government.

The Australian Government is also rolling out a number of programs through the Council of Australian Governments National Action Plan on Mental Health 2006-2011. The overall commitment of South Australia to this action plan, which includes the recent reforms, is approximately $234 million. It should also be noted that a number of Australian Government funded services arising from the National Action Plan are now being provided in South Australia. Some of these service programs include Personal Helpers and Mentors, Support for Day to Day Living and Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule.

The *Mental Health Bill 2008* and the service initiatives I have described will provide a modernised legislative framework and integrated service system to ensure that society can fulfil its obligation to care for individuals with serious mental illness.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out the terms that are defined for the purposes of the measure.

The Board is the Guardianship Board established under the *Guardianship and Administration Act 1993*.

Mental illness is given a general definition—any illness or disorder of the mind. Schedule 1 sets out conduct that will not on its own be taken to indicate mental illness.

Prescribed psychiatric treatment is defined as ECT or neurosurgery for mental illness or any other treatment declared by the regulations to be prescribed psychiatric treatment.

4—Application of Act to children

This clause provides that the measure applies to children in the same way as to persons of full age, subject to the following:

- in the case of a child under 16 years of age, a right conferred on a person may be exercised by a parent of guardian of the child on behalf of the child;
- an obligation to give a document to a person is, if the person is a child under 16 years of age, to be treated as an obligation to give the document to a parent or guardian of the child, and operates to the exclusion of any further obligation to send or give the document to a guardian, medical agent, relative, carer or friend.

5—Medical examinations by audio-visual conferencing

This clause makes provision for medical examinations to be conducted by audio-visual conferencing if it is not practicable in the circumstances for the medical practitioner or authorised health professional to carry out an examination of the person in the person's physical presence.

Part 2—Objects and guiding principles

6—Objects

The objects of the measure are—

- to ensure that persons with serious mental illness—
- receive a comprehensive range of services of the highest standard for their treatment, care and rehabilitation with the goal of bringing about their recovery as far as is possible; and
- retain their freedom, rights, dignity and self-respect as far as is consistent with the proper delivery of the services and the protection of the public; and
- for that purpose, to confer appropriately limited powers to make orders for community treatment, or detention and treatment, of such persons where required.

7—Guiding principles

The Minister, the Board, the Chief Psychiatrist, health professionals and other persons and bodies involved in the administration of the measure are to be guided by specified principles in the performance of their functions.

These are as follows:

- mental health services should be designed to bring about the best therapeutic outcomes for patients, and, as far as possible, their recovery and participation in community life;
- the services should be provided on a voluntary basis as far as possible, and otherwise in the least restrictive way and in the least restrictive environment that is consistent with their efficacy and public safety, and at places as near as practicable to where the patients, or their families or other carers or supporters, reside;
- the services should—
  - be governed by comprehensive treatment and care plans that are developed in a multi-disciplinary framework in consultation with the patients (including children) and their family or other carers or supporters; and
  - take into account the different developmental stages of children and young persons and the needs of the aged; and
  - take into account the different cultural backgrounds of patients; and
  - in the case of patients of Aboriginal or Torres Strait Islander descent, take into account the patients' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities;
- there should be regular medical examination of every patient's mental and physical health and regular medical review of any order applying to the patient;
- children and young persons should be cared for and treated separately from other patients as necessary to enable the care and treatment to be tailored to their different developmental stages;
- the rights, welfare and safety of the children and other dependants of patients should always be considered and protected as far as possible;
- medication should be used only for therapeutic purposes or safety reasons and not as a punishment or for the convenience of others;

- mechanical body restraints and seclusion should be used only as a last resort for safety reasons and not as a punishment or for the convenience of others;
- patients (together with their family or other carers or supporters) should be provided with comprehensive information about their illnesses, any orders that apply to them, their legal rights, the treatments and other services that are to be provided or offered to them and what alternatives are available;
- information should be provided in a way that ensures as far as practicable that it can be understood by those to whom it is provided.

Part 3—Voluntary patients

8—Voluntary patients

This clause provides that a person may be admitted as a voluntary patient in a treatment centre at his or her own request and that such a person may leave the centre at any time unless a detention and treatment order then applies to the person.

9—Voluntary patients to be given statement of rights

This clause provides that the Director of a treatment centre must ensure that a voluntary patient in the centre is given a written statement of rights informing the patient of his or her legal rights and containing any other information prescribed by the regulations.

The clause ensures that various measures are taken in circumstances where a patient is unable to read or otherwise comprehend the statement and that the director must cause a copy of the statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

Part 4—Orders for treatment of persons with mental illness

Division 1—Level 1 community treatment orders

10—Level 1 community treatment orders

This clause provides that a medical practitioner or authorised health professional may make an order for the treatment of a person (a *level 1 community treatment order)* if it appears to the medical practitioner or authorised health professional, after examining the person, that—

- the person has a mental illness; and
- because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
- there are facilities and services available for appropriate treatment of the illness; and
- here is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness.

A level 1 community treatment order, unless earlier revoked, expires at a time fixed in the order which must be 2pm on a business day not later than 28 days after the day on which it is made.

Subclause (4) provides that if a level 1 community treatment order is made by a person other than a psychiatrist or authorised medical practitioner, the following provisions apply:

- a psychiatrist or authorised medical practitioner must examine the patient within 24 hours;
- if it is not practicable to examine the patient within that period, a psychiatrist or authorised medical practitioner must examine the patient as soon as practicable thereafter;
- after completing the examination, the psychiatrist or authorised medical practitioner may confirm the level 1 community treatment order if satisfied that the grounds referred to above exist for the making of a level 1 community treatment order, but otherwise must revoke the order.

A level 1 community treatment order may be varied or revoked at any time by a psychiatrist or authorised medical practitioner who has examined a patient to whom the order applies.

Confirmation, variation or revocation of a level 1 community treatment order must be effected by written notice in the form approved by the Minister.

11—Board and Chief Psychiatrist to be notified of level 1 orders or their variation or revocation

This clause provides that a psychiatrist or authorised medical practitioner making, confirming, varying or revoking a level 1 community treatment order must ensure that the Board and the Chief Psychiatrist are each sent or given, within 1 business day, a written notice in the form approved by the Minister.

Receipt of the notice provided must be acknowledged in writing by the Registrar of the Board and the Chief Psychiatrist respectively within 1 business day.

12—Copies of level 1 orders, notices and statements of rights to be given to patients etc

A medical practitioner or authorised health professional making a level 1 community treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.

A medical practitioner or authorised health professional making a level 1 community treatment order must ensure that the patient is given a written statement of rights informing the patient of his or her legal rights and containing any other information prescribed by the regulations.

The clause ensures that various measures are taken in circumstances where a patient is unable to read or otherwise comprehend the statement and that the medical practitioner or authorised health professional must cause a copy of the statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

Subclause (5) provides that if a level 1 community treatment order is varied or revoked, the psychiatrist or authorised medical practitioner varying or revoking the order must—

- ensure that the patient is given, as soon as practicable, a copy of the notice of variation or revocation of the order; and
- cause a copy of the notice of variation or revocation to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

13—Treatment of patients to whom level 1 orders apply

A patient to whom a level 1 community treatment order applies may be given treatment for his or her mental illness of a kind authorised by a psychiatrist or authorised medical practitioner who has examined the patient. Such authorisation is not required if a medical practitioner considers that—

- the nature of the patient's mental illness is such that the treatment is urgently needed for the patient's well-being; and
- in the circumstances it is not practicable to obtain that authorisation.

Treatment may be given under this clause despite the absence or refusal of consent to the treatment.

This clause does not apply to prescribed psychiatric treatment (as defined by clause 3), or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

14—Chief Psychiatrist to ensure monitoring of compliance with level 1 orders

This clause provides that the Chief Psychiatrist must, after receiving notice of the making of a level 1 community treatment order, ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the patient's compliance with the order.

15—Board to review level 1 orders

This clause requires that the Board review a level 1 community treatment order as soon as practicable after receiving notice of the order and before the order expires and enables the Board to conduct a review in any manner it considers appropriate.

The Board must, on a review of a level 1 community treatment order, revoke the order unless satisfied that grounds exist for a level 2 community treatment order to be made.

Division 2—Level 2 community treatment orders

16—Level 2 community treatment orders

This clause provides that the Board may make an order for a level 2 community treatment order if satisfied as to the matters set out as the grounds for a level 1 community treatment order.

Subclause (2) provides that a level 2 community treatment order may be made in respect of a person—

- on an application to the Board for the Board's decision as to whether it should make a community treatment order in respect of the person (whether or not a level 1 community treatment order has been made in respect of the person); or
- on a review by the Board of a level 1 community treatment order that applies to the person; or
- on an application to the Board for the revocation of a level 3 detention and treatment order that applies to the person.

Subclause (3) specifies the persons who may make an application to the Board for the Board's decision as to whether it should make a community treatment order in respect of a person. The persons specified for the purpose of subclause (3) may also make an application for a variation or revocation of a level 2 community treatment order.

Subclause (6) provides that the Board may, on application, by order, vary or revoke a level 2 community treatment order at any time.

17—Chief Psychiatrist to be notified of level 2 orders or their variation or revocation

The Registrar of the Board is required to ensure that the Chief Psychiatrist is notified, within 1 business day, of the making, variation or revocation of a level 2 community treatment order by the Board.

18—Treatment of patients to whom level 2 orders apply

Under this clause, a patient to whom a level 2 community treatment order applies may be given treatment for his or her mental illness of a kind authorised by a psychiatrist or authorised medical practitioner who has examined the patient.

Authorisation is not required for treatment if a medical practitioner considers that—

- the nature of the patient's mental illness is such that the treatment is urgently needed for the patient's well-being; and
- in the circumstances it is not practicable to obtain that authorisation.

Treatment may be given under this clause despite the absence or refusal of consent to the treatment.

This clause does not apply to prescribed psychiatric treatment (as defined by clause 3), or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

19—Chief Psychiatrist to ensure monitoring of compliance with level 2 orders

Under this clause, the Chief Psychiatrist must ensure that for each patient to whom a level 2 community treatment order applies there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the patient's compliance with the order.

Part 5—Orders for detention and treatment of persons with mental illness

Division 1—Non-compliance with community treatment orders and making of detention and treatment orders

20—Non-compliance with community treatment orders and making of detention and treatment orders

This clause provides that a person's refusal or failure to comply with a community treatment order is a relevant consideration in deciding whether a detention and treatment order should be made in respect of the person under this Part.

However, nothing in the measure is to prevent the making of a detention and treatment order under this Part in respect of a person without a prior community treatment order having been made in respect of the person if a detention and treatment order is required in the particular circumstances.

Division 2—Level 1 detention and treatment orders

21—Level 1 detention and treatment orders

This clause provides that a medical practitioner or authorised health professional may make an order for the treatment of a person (a *level 1 detention and treatment order)* if it appears to the medical practitioner or authorised health professional, after examining the person, that—

- the person has a mental illness; and
- because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
- there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment for the person's illness.

The clause also sets out the form in which the order must be made.

A level 1 detention and treatment order, unless earlier revoked, expires at a time fixed in the order which must be 2pm on a business day not later than 7 days after the day on which it is made.

On the making of a level 1 detention and treatment order, the following provisions apply:

- the patient must be examined by a psychiatrist or authorised medical practitioner, who must, if the order was made by a psychiatrist or authorised medical practitioner, be a different psychiatrist or authorised medical practitioner;
- the examination must occur within 24 hours of the making of the order;
- if it is not practicable for the examination to occur within that period, it must occur as soon as practicable thereafter;
- after completion of the examination, the psychiatrist or authorised medical practitioner may confirm the level 1 detention and treatment order if satisfied that the grounds referred to above exist for the making of a level 1 detention and treatment order, but otherwise must revoke the order.

A medical practitioner or authorised health professional may form an opinion about a person under subclause (1) or (4) based on his or her own observations and any other available evidence that he or she considers reliable and relevant (which may include evidence about matters occurring outside the State).

A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 1 detention and treatment order applies may revoke the order at any time.

Confirmation or revocation of a level 1 detention and treatment order must be effected by written notice in the form approved by the Minister.

22—Board and Chief Psychiatrist to be notified of level 1 orders or their revocation

This clause provides that a psychiatrist or authorised medical practitioner making, confirming, or revoking a level 1 detention and treatment order must ensure that the Board and the Chief Psychiatrist are each sent or given, within 1 business day, a written notice in the form approved by the Minister.

Receipt of the notice must be acknowledged in writing by the Registrar of the Board and the Chief Psychiatrist respectively within 1 business day.

23—Copies of level 1 orders, notices and statements of rights to be given to patients etc

A medical practitioner or authorised health professional making a level 1 detention and treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.

A medical practitioner or authorised health professional making a level 1 detention and treatment order must ensure that the patient is given a written statement of rights informing the patient of his or her legal rights and containing any other information prescribed by the regulations.

The clause ensures that various measures are taken in circumstances where a patient is unable to read or otherwise comprehend the statement and that the director of a treatment centre in which a patient is first detained under a level 1 detention and treatment order must cause a copy of the order and statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

Subclause (5) provides that if a level 1 detention and treatment order is revoked, the director of the treatment centre in which the patient is detained must—

- ensure that the patient is given, as soon as practicable, a copy of the notice of revocation of the order; and
- cause a copy of the notice of revocation to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

24—Treatment of patients to whom level 1 orders apply

A patient to whom a level 1 detention and treatment order applies may be given treatment for his or her mental illness or any other illness of a kind authorised by a psychiatrist or authorised medical practitioner who has examined the patient.

Subclause (2) provides that the treatment may be given despite the absence or refusal of consent to the treatment.

This clause does not apply to prescribed psychiatric treatment (as defined by clause 3), or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*. The administration of prescribed psychiatric treatment (as defined by clause 3) is governed by Part 7 of the measure.

If a medical practitioner authorises treatment of a patient to whom a level 1 detention and treatment order applies that is treatment of a kind prescribed by the regulations, the medical practitioner must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister.

Division 3—Level 2 detention and treatment orders

25—Level 2 detention and treatment orders

This clause provides that if a level 1 detention and treatment order has been made or confirmed by a psychiatrist or authorised medical practitioner under Division 2, a psychiatrist or authorised medical practitioner may, after further examination of the patient carried out before the order expires, make a further order for the detention and treatment of the patient (a *level 2 detention and treatment order)*.

A psychiatrist or authorised medical practitioner may make a level 2 detention and treatment order if satisfied as to the matters set out as the grounds for a level 1 detention and treatment order.

Subclause (3) provides that a psychiatrist or authorised medical practitioner may form an opinion about a person based on his or her own observations and any other available evidence that he or she considers reliable and relevant (which may include evidence about matters occurring outside the State).

The clause also sets out the form in which the order must be made.

A level 2 detention and treatment order, unless earlier revoked, expires at a time fixed in the order which must be 2pm on a business day not later than 42 days after the day on which it is made.

A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 2 detention and treatment order applies may revoke the order at any time.

Revocation of a level 2 detention and treatment order must be effected by written notice in the form approved by the Minister.

26—Notices and reports relating to level 2 orders

This clause provides that a psychiatrist or authorised medical practitioner making or revoking a level 2 detention and treatment order must ensure that the Board and the Chief Psychiatrist are each sent or given, within 1 business day, a written notice in the form approved by the Minister.

Receipt of the notice must be acknowledged in writing by the Registrar of the Board and the Chief Psychiatrist respectively within 1 business day.

Subclause (4) provides that a psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must, as soon as practicable, provide the director of the approved treatment centre in which the patient is or is to be detained under the order with a written report of the results of his or her examination of the patient and of the reasons for making the order.

On receiving a report under subclause (4), the director must forward a copy of the report to the Board.

27—Copies of level 2 orders and notices to be given to patients etc

A psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.

A psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must ensure that the patient is given a written statement of rights informing the patient of his or her legal rights and containing any other information prescribed by the regulations.

The clause ensures that various measures are taken in circumstances where a patient is unable to read or otherwise comprehend the statement and that the director of a treatment centre in which a patient is first detained under a level 2 detention and treatment order must cause a copy of the order and statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

Subclause (5) provides that if a level 2 detention and treatment order is revoked, the director of the treatment centre in which the patient is detained must—

- ensure that the patient is given, as soon as practicable, a copy of the notice of revocation of the order; and
- cause a copy of the notice of revocation to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

28—Treatment of patients to whom level 2 orders apply

A patient to whom a level 2 detention and treatment order applies may be given treatment for his or her mental illness or any other illness of a kind authorised by a medical practitioner who has examined the patient.

Subclause (2) provides that the treatment may be given despite the absence or refusal of consent to the treatment.

This clause does not apply to prescribed psychiatric treatment (as defined by clause 3), or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*. The administration of prescribed psychiatric treatment (as defined by clause 3) is governed by Part 7 of the measure.

If a medical practitioner authorises treatment of a patient to whom a level 2 detention and treatment order applies that is treatment of a kind prescribed by the regulations, the medical practitioner must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister.

Division 4—Level 3 detention and treatment orders

29—Level 3 detention and treatment orders

Proposed section 29 provides that the Board may make an order that a person be detained and receive treatment in an approved treatment centre (a level 3 detention and treatment order) if satisfied as to the matters set out as the grounds for a level 1 or level 2 detention and treatment order.

A level 3 detention and treatment order may be made, on application, in respect of a person to whom a level 2 or level 3 detention and treatment order applies.

Subclause (6) provides that the Board may, on application, by order, vary or revoke a level 3 detention and treatment order at any time.

30—Chief Psychiatrist to be notified of level 3 orders or their variation or revocation

The Registrar of the Board must ensure that the Chief Psychiatrist is notified, within 1 business day, of the making, variation or revocation of a level 3 detention and treatment order by the Board.

31—Treatment of patients to whom level 3 orders apply

A patient to whom a level 3 detention and treatment order applies may be given treatment for his or her mental illness or any other illness of a kind authorised by a medical practitioner who has examined the patient.

Subclause (2) provides that the treatment may be given despite the absence or refusal of consent to the treatment.

This clause does not apply to prescribed psychiatric treatment (as defined by clause 3), or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*. The administration of prescribed psychiatric treatment (as defined by clause 3) is governed by Part 7 of the measure.

If a medical practitioner authorises treatment of a patient to whom a level 3 detention and treatment order applies that is treatment of a kind prescribed by the regulations, the medical practitioner must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister.

Division 5—General

32—Detention and treatment orders displace community treatment orders

This clause provides that if a detention and treatment order is made in respect of a person to whom a community treatment order applies and the community treatment order is not revoked, the requirements of the community treatment order do not apply for the period of operation of the detention and treatment order (and if the community treatment order remains in force at the end of that period, the requirements of the order will apply again according to their terms).

33—Duty of director of treatment centre to comply with detention and treatment orders

This clause provides that if a person to whom a detention and treatment order applies is in the care and control of treatment centre staff and a detention and treatment order is made in respect of a voluntary patient in a treatment centre, subject to clause 35, the director of the treatment centre must—

- if the person is not already admitted to the centre, admit the person to the centre; and
- comply with the detention and treatment order.

34—Powers required for carrying detention and treatment orders into effect

This clause provides that treatment centre staff may exercise, in relation to a patient to whom a detention and treatment order applies who is present at, or has been admitted to, the centre, any power (including the power to use reasonable force) that is reasonably required—

- for carrying the order into effect; or
- for the maintenance of order and security at the centre or the prevention of harm or nuisance to others.

35—Transfer of patients to whom detention and treatment orders apply

A patient to whom detention and treatment orders applies may be transferred to another treatment centre if the director of a treatment centre considers it is necessary or appropriate, after first arranging with the director of the other centre for the patient's admission to that centre.

Subclause (2) states that the director of a treatment centre in which a patient has been detained may give a direction—

- for the patient to be transferred to a hospital, or between hospitals, in circumstances where the patient has or has had an illness other than a mental illness, after first arranging with the person in charge of the relevant hospital for the patient's admission to the hospital;
- for the patient's transfer back to the treatment centre after completion of the hospital treatment.

If a patient to whom a detention and treatment order applies has been transferred to a hospital as a result of a direction under this clause—

- the patient is, while in the care and control of staff of the hospital to be taken to continue in the care and control of the treatment centre staff; and
- staff of the hospital may exercise the powers conferred by clause 34 in relation to the patient as if they were treatment centre staff.

The clause requires that a direction must be given in writing and that specified persons must be notified of a direction.

36—Leave of absence of patients detained under detention and treatment orders

This clause provides that the director of a treatment centre may, by written notice in the form approved by the Minister and subject to any conditions that the director considers appropriate, grant a patient detained in the centre leave of absence from the centre for any purpose and period that the director considers appropriate and specifies in the notice.

A copy of the notice by which the patient is granted leave of absence must be given to the patient before the patient commences the leave.

37—Persons granted leave of absence to be given statement of rights

The clause states that the director of a treatment centre who grants a patient detained in the centre leave of absence from the centre must ensure that the patient is given, before the patient commences the leave, a written statement of rights—

- informing the patient of his or her legal rights; and
- containing any other information prescribed by the regulations.

The clause ensures that various measures are taken in circumstances where a patient is unable to read or otherwise comprehend the statement and that the director must cause a copy of the statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

38—Cancellation of leave of absence

The director of a treatment centre may, by notice in the form approved by the Minister, cancel any leave of absence from the centre granted to a patient under this Division.

Part 6—Treatment and care plans

39—Treatment and care plans for voluntary patients

This clause requires that the treatment and care of a voluntary patient in a treatment centre must, as far as practicable, be governed by a treatment and care plan directed towards the recovery of the patient.

The treatment and care plan—

- must describe the treatment and care that will be provided to the patient at the treatment centre and should describe any rehabilitation services and other significant services that will be provided or available to the patient at the treatment centre or following the person's discharge from the centre; and
- must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient who is providing support to the patient.

40—Treatment and care plans for patients to whom community treatment orders apply

This clause requires that the treatment and care of a patient to whom a level 2 community treatment order applies must, as far as practicable, be governed by a treatment and care plan directed towards the recovery of the patient.

The treatment and care plan—

- must describe the treatment and care that will be provided to the patient under the requirements of the order and should describe any rehabilitation services and other significant services that will be provided or available to the patient under the requirements of the order or through the patient's voluntary participation; and
- must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient who is providing support to the patient.

41—Treatment and care plans for patients to whom detention and treatment orders apply

This clause requires that the treatment and care of a patient to whom a level 2 or level 3 detention and treatment order applies must, as far as practicable, be governed by a treatment and care plan directed towards the recovery of the patient.

The treatment and care plan—

- must describe the treatment and care that will be provided to the patient while in detention at the approved treatment centre and should describe any rehabilitation services and other significant services that will be provided or available to the patient while in detention at the treatment centre or following the person's discharge from the centre; and
- must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient who is providing support to the patient.

Part 7—Regulation of prescribed psychiatric treatments

Division 1—ECT

42—ECT

Under this clause, ECT (electro-convulsive therapy) must not be administered to a patient unless—

- the patient has a mental illness; and
- ECT, or a course of ECT, has been authorised for treatment of the illness by a psychiatrist who has examined the patient; and
- written consent to the treatment has been given—
- by or on behalf of the patient; or
- if the patient is under 16 years of age or consent cannot be given by or on behalf of the patient—by the Board on application under this clause.

Subclause (2) limits consent to a course of ECT to a maximum of 12 episodes of ECT and a maximum period of 3 months, and any second or subsequent course of ECT for a patient must be separately consented to after the commencement or completion of the preceding course.

ECT administered to a patient in order to determine the correct dose for future episodes of ECT in a course of treatment must be counted as a single episode of ECT in that course of treatment for the purposes of this clause.

Consent to the administration of ECT extends to the administration of anaesthetics required for the purposes of the ECT treatment.

Under subclause (6), consent to a particular episode of ECT is not required if a psychiatrist considers that—

- the patient has a mental illness of such a nature that administration of that particular episode of ECT is urgently needed for the patient's well-being; and
- in the circumstances it is not practicable to obtain that consent.

- Notice of the administration of an episode of ECT to a patient without consent in reliance on subclause (6) must be sent or given to the Chief Psychiatrist, within 1 business day—
    - advising the Chief Psychiatrist of that action; and
    - containing any other information prescribed by the regulations.

Subclause (8) makes it an offence to contravene subclause (1).

Division 2—Neurosurgery for mental illness

43—Neurosurgery for mental illness

This clause provides that despite any other Act or law, neurosurgery must not be carried out on a patient as a treatment for mental illness unless—

- the patient has a mental illness; and
- the neurosurgery has been authorised for treatment of the illness by the person who is to carry it out and by 2 psychiatrists (at least 1 of whom is a senior psychiatrist), each of whom has separately examined the patient; and
- the patient is of or over 16 years of age and written consent to the treatment has been given—
- by the patient; or
- if consent cannot be given by the patient—by the Board on application under this clause.

An application for the Board's consent under this clause may be made by a medical practitioner or mental health clinician.

Subclause (3) makes it an offence to contravene subclause (1).

Division 3—Other prescribed psychiatric treatments

44—Other prescribed psychiatric treatments

This clause provides that the regulations may regulate the administration of any prescribed psychiatric treatment (other than ECT or neurosurgery) by imposing requirements for prior authorisations or consents (or both).

Part 8—Further protections for persons with mental illness

45—Assistance of interpreters

This clause states that if—

- a medical practitioner or authorised health professional intends to conduct an examination of a person for the purposes of the measure; and
- the person is unable to communicate adequately in English but could communicate adequately with the assistance of an interpreter,

the medical practitioner or authorised health professional must arrange for a competent interpreter to assist during the examination of the person.

46—Copies of Board orders, decisions and statements of rights to be given

This clause provides that the Registrar of the Board must ensure that the patient is given, as soon as practicable after the making by the Board of an order or decision in respect of the patient, a copy of the order or decision and a written statement of rights informing the patient of his or her legal rights and containing any other information prescribed by the regulations.

The clause ensures that various measures are taken in circumstances where a patient is unable to read or otherwise comprehend the statement and that a copy of the order or decision and statement of rights are sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

47—Patients' right to be supported by guardian etc

This clause provides that a patient is entitled to have another person's support, wherever practicable, in—

- the exercise of a right under the measure; or
- any communications between the patient and a medical practitioner examining or treating the patient or between the patient and the director or staff of a treatment centre in which the patient is treated or detained.

48—Patients' right to communicate with others outside treatment centre

Subclause (1) ensures that a patient in a treatment centre is entitled to—

- communicate with persons outside the centre; and
- receive visitors at the centre; and
- be afforded reasonable privacy in his or her communications with others,

subject to any restrictions and conditions that have been approved by the Director of the centre as being reasonably required for carrying into effect any detention and treatment order that applies to the patient or for the maintenance of order and security at the centre or the prevention of harm or nuisance to others.

Subclause (2) provides that no restrictions or conditions are to be applied under this clause to communications by post between a patient in a treatment centre and any of the following, or to visits to a patient by any of the following:

- the Minister;
- the Board;
- the Public Advocate;
- the Chief Psychiatrist;
- the Health and Community Services Complaints Commissioner within the meaning of the *Health and Community Services Complaints Act 2004*;
- a member of Parliament;
- a legal practitioner (in the practitioner's professional capacity);
- a person representing, or acting on behalf of, a person or body referred to in any of the preceding paragraphs;
- a person of a class prescribed by the regulations.

49—Neglect or ill-treatment

This clause provides that a person having the oversight, care or control of a patient who ill-treats or wilfully neglects the patient is guilty of an offence.

Part 9—Powers relating to persons who have or appear to have mental illness

50—Issuing of patient transport requests

This clause provides that a patient transport request may be issued in respect of a patient as follows:

- if a community treatment order applies to the patient and the patient has not complied with the requirements of the order, a medical practitioner or mental health clinician may issue the request for the purpose of the patient's transport for treatment in accordance with the order;
- if a medical practitioner or authorised health professional has made a level 1 detention and treatment order in respect of the patient at a place other than a treatment centre, the medical practitioner or authorised health professional may issue the request for the purpose of the patient's transport to a treatment centre;
- if the patient is a patient at large, the director of a treatment centre, a medical practitioner or mental health clinician may issue the request for the purpose of the patient's transport to a treatment centre;
- if a detention and treatment order applies to the patient and the director of a treatment centre has given a direction for the transfer of the patient under Part 5 Division 5 to another treatment centre or hospital, the director may issue the request for the purpose of the patient's transport to the other treatment centre or hospital.

51—Powers of authorised officers relating to persons who have or appear to have mental illness

This clause sets out the powers of an authorised officer if—

- an authorised officer believes on reasonable grounds that the person is a patient in respect of whom a patient transport request has been issued; or
- an authorised officer believes on reasonable grounds that the person is a patient at large; or
- it appears to an authorised officer that—
  - the person has a mental illness; and
  - the person has caused, or there is a significant risk of the person causing, harm to himself or herself or others or property or the person otherwise requires medical examination.

The following powers may be exercised:

- the authorised officer may take the person into his or her care and control;
- the authorised officer may transport the person from place to place;
- the authorised officer may restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances;
- the authorised officer may restrain the person by means of the administration of a drug when that is reasonably required in the circumstances (and authorised under the *Controlled Substances Act 1984*);

- the authorised officer may enter and remain in a place where the authorised officer reasonably suspects the person may be found;
- the authorised officer may search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to himself or herself or others or property.

The clause sets out that an officer who takes a person into his or her care and control must, as soon as practicable—

- in the case of a patient in respect of whom a patient transport request has been issued—transport the person, or arrange for the person to be transported by some other authorised officer or by a police officer, in accordance with the patient transport request; or
- in the case of a patient at large—transport the person, or arrange for the person to be transported by some other authorised officer or by a police officer, to a treatment centre; or
- in the case of a person requiring medical examination—transport the person, or arrange for the person to be transported by some other authorised officer or by a police officer, to a treatment centre or other place for medical examination.

52—Powers of police officers relating to persons who have or appear to have mental illness

This clause sets out the powers of a police officer if—

- a police officer believes on reasonable grounds that the person is a patient in respect of whom a patient transport request has been issued; or
- a police officer believes on reasonable grounds that the person is a patient at large; or
- it appears to a police officer that—
  - the person has a mental illness; and
  - the person has caused, or there is a significant risk of the person causing, harm to himself or herself or others or property; and
  - the person requires medical examination.

The clause provides police officers with similar powers to authorised officers, although the powers do not apply to a patient in respect of whom a patient transport request has been issued unless the person has subsequently become a patient at large. An additional power is provided to use reasonable force to break into a place when that is reasonably required in order to take the person into care and control.

The clause also provides that if a police officer has arrested or apprehended a person, the person may, despite any other law, be released from police custody for medical examination or treatment under the measure.

53—Officers may assist each other

This clause spells out that authorised officers and police officers may assist each other in the exercise of powers under the measure.

54—Roles of various officers

This clause contemplates a memorandum of understanding between relevant agencies about the respective roles of authorised officers and police officers.

55—Offence to hinder etc officer

This clause makes it an offence to hinder or obstruct an authorised officer or police officer in the exercise of powers under the measure.

Part 10—Arrangements between South Australia and other jurisdictions

Division 1—Preliminary

56—Interpretation

This clause contains definitions for the purposes of this Part.

57—Ministerial agreements

This clause contemplates intergovernmental agreements relating to the administration of this Part and corresponding laws of other jurisdictions.

58—Requests or approvals relating to actions involving other jurisdictions

The purpose of this clause is to ensure that action is only taken if it is contemplated by the relevant intergovernmental agreement and requested or approved by the relevant interstate officer.

59—Powers of South Australian officers under corresponding laws or Ministerial agreement

This is a formal provision accepting any conferral of jurisdiction on South Australian officers by a corresponding law.

60—Regulations may modify operation of Part

Flexibility is provided to enable the regulations to adjust the arrangements as necessary to fit in with the law of a particular jurisdiction.

Division 2—Community treatment orders

61—South Australian community treatment orders and treatment in other jurisdictions

This clause enables a South Australian patient to receive treatment under a South Australian community treatment order at an interstate treatment centre.

62—Powers of interstate officers

For the purposes of ensuring compliance with an interstate community treatment order, interstate officers are authorised to exercise powers in South Australia (except any power of forcible entry).

63—Interstate community treatment orders and treatment in South Australia

This clause covers the situation where an interstate community treatment order requires the person to receive treatment in South Australia. The interstate order is to be complied with as if it were a South Australian order on the same terms.

64—Making of South Australian community treatment orders when interstate orders apply

The Chief Psychiatrist is able, under this clause, to make a South Australian community treatment order mirroring an interstate community treatment order for a person who is now in South Australia without the need for a separate medical examination. Such an order is to be regarded as if it were a level 1 community treatment order.

Division 3—Transfer to or from South Australian treatment centres

65—Transfer from South Australian treatment centres

This clause deals with the transfer to an interstate treatment centre of a patient detained in or at large from a South Australian treatment centre at the direction of the director of the South Australian treatment centre.

66—Transfer to South Australian treatment centres

This clause deals with the acceptance in a South Australian treatment centre of a patient detained in or at large from an interstate treatment centre. The patient is to be regarded as subject to a level 1 detention and treatment order.

67—Patient transport requests

This clause provides for the issuing of patient transport requests where there has been patient transfer under the Division.

68—Powers when patient transport request issued

This clause ensures that authorised officers have appropriate powers in relation to a patient for whom a patient transport request has been issued.

Division 4—Transport to other jurisdictions

69—Transport to other jurisdictions when South Australian detention and treatment orders apply

This clause deals with the situation where a South Australian detention and treatment order has been issued but the person is to be admitted to an interstate treatment centre.

70—Transport to other jurisdictions of persons with apparent mental illness

This clause provides for the situation where a South Australian officer has taken into his or her care and control a person who appears to have a mental illness and to require medical examination but the person is to be assessed interstate.

71—Transport to other jurisdictions when interstate detention and treatment orders apply

This clause covers the situation where a South Australian officer believes on reasonable grounds that a person in South Australia is an interstate patient at large. The person—

- may be taken into the care and control of a South Australian authorised officer;
- may be transported to an interstate treatment centre by a South Australian authorised officer;
- may be delivered by a South Australian authorised officer into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre;
- may be taken to a South Australian treatment centre by a South Australian authorised officer and detained there pending the person's transport to an interstate treatment centre;
- may be given treatment for his or her mental illness or any other illness in South Australia, without any requirement for the person's consent, as authorised by a medical practitioner who has examined the patient.

The clause also gives interstate officers powers to deal with the person if found in South Australia.

Division 5—Transport to South Australia

72—Transport to South Australia when South Australian detention and treatment orders apply

This clause provides for the transport of a patient back to South Australia if the patient is at large from a South Australian treatment centre and found interstate.

73—Transport to South Australia of persons with apparent mental illness

This clause covers the situation where a person to be assessed for mental illness has been taken into care and control outside the State but the person is to be assessed in South Australia.

Part 11—Reviews and appeals

Division 1—Reviews

74—Reviews

The Board may conduct a review of an order or treatment as it considers appropriate and is required to conduct the following reviews:

- a review of the circumstances involved in the making and revocation of a level 1 community treatment order if the order was not reviewed by the Board before its revocation (which review must be conducted as soon as practicable after the revocation of the order);
- a review of a level 2 community treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months);
- a review of the circumstances involved in the making of a level 1 detention and treatment order if the order has been made within 7 days after the expiry or revocation of a previous detention and treatment order applying to the same person (which review must be conducted as soon as practicable after the making of the level 1 detention and treatment order);
- a review of a level 3 detention and treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months);
- any review that is required under the regulations.

75—Decisions and reports on reviews

The Board is required to revoke an order if not satisfied that there are proper grounds for it to remain in operation and may otherwise affirm, vary or revoke an order or make an order for review of a treatment and care plan. The Board is authorised to draw particular matters to the attention of the Minister.

Division 2—Appeals

76—Appeals to Board against orders (other than Board orders)

The following persons may appeal against an order to the Board:

- the person to whom the order applies;
- the Public Advocate;
- a guardian, medical agent, relative, carer or friend of the person to whom the order applies;
- any other person who satisfies the Board that he or she has a proper interest in the matter.

77—Operation of orders pending appeal

The Board may suspend or vary the operation of an order pending an appeal.

78—Representation on appeals to Board

This clause provides for entitlement to legal representation and for the provision of legal representation.

79—Appeals to District Court and Supreme Court

The *Guardianship and Administration Act 1993* provides for appeal from Board decisions.

Part 12—Administration

Division 1—Minister and Chief Executive

80—Minister's functions

This clause provides that the Minister is to have the following functions for the purposes of the measure:

- to encourage and facilitate the involvement of persons who currently have, or have previously had, a mental illness, their carers and the community in the development of mental health policies and services;
- to develop or promote a strong and viable system of treatment and care, and a full range of services and facilities, for persons with mental illness;

- to develop or promote ongoing programmes for optimising the mental health of children and young persons who are or have been under the guardianship or in the custody of the Minister pursuant to the *Children's Protection Act 1993*;
- to develop or promote services that aim to prevent mental illness and intervene early when mental illness is evident;
- to ensure that information about mental health and mental illness is made available to the community and to promote public awareness about mental health and mental illness;
- to develop or promote appropriate education and training programmes, and effective systems of accountability, for persons delivering mental health services;
- to promote services in the non-government sector that are designed to assist persons with mental illness;
- to develop or promote programmes to reduce the adverse impact of mental illness on family and community life;
- any other functions assigned to the Minister by the measure.

81—Delegation by Minister

This clause provides for delegation of Ministerial functions and powers.

82—Delegation by Chief Executive

This clause provides for delegation of the Chief Executive's functions and powers.

Division 2—Chief Psychiatrist

83—Chief Psychiatrist

The Governor is to appoint a senior psychiatrist as Chief Psychiatrist.

84—Chief Psychiatrist's functions

The Chief Psychiatrist is to have the following functions:

- to promote continuous improvement in the organisation and delivery of mental health services in South Australia;
- to monitor the treatment of voluntary patients and patients to whom detention and treatment orders apply, and the use of mechanical body restraints and seclusion in relation to such patients;
- to monitor the administration of the measure and the standard of psychiatric care provided in South Australia;
- to advise the Minister on issues relating to psychiatry and to report to the Minister any matters of concern relating to the care or treatment of patients;
- any other functions assigned to the Chief Psychiatrist by the measure or any other Act or by the Minister.

The Chief Psychiatrist may, with the approval of the Minister, issue standards that are to be observed in the care or treatment of patients.

85—Delegation by Chief Psychiatrist

This clause provides for delegation of the Chief Psychiatrist's functions and powers.

Division 3—Authorised medical practitioners

86—Authorised medical practitioners

This clause provides for the Minister to make determinations as to the persons who will be authorised medical practitioners for the purposes of the measure.

Division 4—Authorised health professionals

87—Authorised health professionals

This clause provides for the Minister to make determinations as to the persons who will be authorised health professionals for the purposes of the measure.

Division 5—Treatment centres

88—Approved treatment centres

This clause provides for the Minister to make determinations as to the places that will be approved treatment centres for the purposes of the measure.

89—Limited treatment centres

This clause provides for the Minister to make determinations as to the places that will be limited treatment centres for the purposes of the measure.

90—Register of patients

The director of a treatment centre is required to keep certain records about patients.

91—Particulars relating to admission of patients to treatment centres

This clause is designed to ensure that any person who has a proper interest in the matter can determine whether a particular person has been or is detained in a treatment centre. The clause also requires information to be provided to the person detained.

92—Delegation by directors of treatment centres

This clause provides for delegation of the functions and powers of a director of a treatment centre.

Part 13—Miscellaneous

93—Errors in orders etc

This clause is designed to ensure that non-substantive defects in orders, notices and instruments do not render them invalid.

94—Offences relating to authorisations and orders

This clause establishes offences for medical practitioners, authorised health professionals and others in relation to the giving of authorisations or the making of orders.

95—Medical practitioners or health professionals not to act in respect of relatives

Medical practitioners and authorised health professionals are not able to act in respect of any of their relatives.

96—Removing patients from treatment centres

This clause makes it an offence to remove a patient who is being detained in a treatment centre from the centre, or to aid such a patient to leave the centre.

97—Confidentiality and disclosure of information

Personal information obtained by a person in the administration of the measure is not to be disclosed except as authorised or required by the Chief Executive or in the circumstances set out in subclause (2).

Under subclause (2) information may be disclosed—

- as required by law, or as required for the administration of this measure or a law of another State or a Territory of the Commonwealth; or
- at the request, or with the consent, of the person to whom the information relates or a guardian or medical agent of the person; or
- to a relative, carer or friend of the person to whom the information relates if—
  - the disclosure is reasonably required for the treatment, care or rehabilitation of the person; and
  - there is no reason to believe that the disclosure would be contrary to the person's best interests; or
- subject to the regulations (if any)—
  - to a health or other service provider if the disclosure is reasonably required for the treatment, care or rehabilitation of the person to whom the information relates; or
  - by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information in or between persons or bodies involved in the provision of health services; or
  - to such extent as is reasonably required in connection with the management or administration of a hospital or SA Ambulance Service Inc (including for the purposes of charging for a service); or
- if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health or safety; or
- for medical or social research purposes if the research methodology has been approved by an ethics committee and there is no reason to believe that the disclosure would be contrary to the person's best interests; or
- in accordance with the regulations.

98—Prohibition of publication of reports of proceedings

This clause makes it an offence to publish a report on proceedings under the measure except as authorised by the Board.

99—Requirements for notice to Board or Chief Psychiatrist

This clause makes it an offence for a medical practitioner to fail to send or give a notice to the Board or the Chief Psychiatrist as required.

100—Evidentiary provisions

This clause provides evidentiary aids for the purposes of legal proceedings.

101—Regulations

This clause provides general regulation making power.

Schedule 1—Certain conduct may not indicate mental illness

This clause sets out certain conduct that is not to be regarded on its own as being indicative of mental illness. It is based on the United Nations principles for the protection of persons with mental illness and for the improvement of mental health care and similar provisions appear in the corresponding New South Wales legislation.

Schedule 2—Repeal and transitional provisions

1—Repeal of *Mental Health Act 1993*

The *Mental Health Act 1993* is repealed.

2—Transitional provisions

This clause includes appropriate transitional provisions relating to orders, authorisations, consents and proceedings under the current legislation.

Debate adjourned on motion of Hon. J.M.A. Lensink.

WORKCOVER CORPORATION (GOVERNANCE REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 April 2008. Page 2481.)

The Hon. R.D. LAWSON (16:52): This bill, which I will refer to as the governance bill, is the second element of the government's solution to the WorkCover crisis, a crisis of the government's own making. I will refer to the other bill as the scheme bill. The essential features of this governance bill are: first, to impose upon the WorkCover Corporation some of the provisions of the Public Corporations Act; and, secondly, to require the Auditor-General to audit WorkCover's accounts.

This bill illustrates even more starkly than the scheme bill the incompetence and dilatoriness of this government in relation to workers compensation. The incompetence of the minister who introduced this bill in another place and the incompetence of the government are truly shameful.

Minister Wright introduced a bill with a similar name and in virtually the same terms as early as May 2003; five years ago. That bill was never progressed. The same bill has been introduced again on several other occasions. It was never opposed—indeed, there was bipartisan support for it. The fact is that this government elected not to push ahead with a series of governance bills, all in largely the same terms, for political reasons. The government's dilatoriness on this issue is truly staggering, and I have not previously experienced such an incident. The tragedy is that it is injured workers who will pay the price for this government's dilatoriness.

The WorkCover governance saga began in 2002, within a couple of months of the Rann-Lewis government's coming into office. It is important that details of this saga be placed on the public record. I hasten to add that this is not merely a recital of dates upon which the Liberal opposition and others raised the issue of the skyrocketing liabilities of WorkCover. That has been done in another place more than once in relation to the scheme bill. The material that I am about to recite relates to the governance issues that are the subject of this bill.

In June 2002, the government asked the Department of Treasury and Finance to produce a report on WorkCover. The first section of that report dealt with financial risks and government arrangements and was dated November 2002. The second part was finished in February 2003, and it dealt specifically with governance arrangements.

The February 2003 report of Treasury and Finance identified the weaknesses in the governance arrangements, which are only now being addressed. The report specifically identified as key reform options the application to WorkCover of all or part of the provisions of the Public Corporations Act. Treasury noted that the Public Corporations Act applied to other South Australian state corporations such as SA Water, specifically in relation to directions of the minister (that is, the power of the minister to give directions to the corporation), a charter of performance and also audit by the Auditor-General.

On 24 March 2003, minister Wright made a ministerial statement in another place. He said that he wished to advise the house of a matter of great concern, and he stated, 'Last Friday, the levy rate rose to 3 per cent, and an unfunded liability of $350 million as at December 2002.' He

described it as 'an appalling state of affairs'. He said, 'The Labor government will fix it' by, amongst other things, 'changing the culture of WorkCover management and improvements in the governance structure of WorkCover Corporation'. So, here we are in March 2003 with minister Wright describing an appalling state of affairs and saying that the government is about to fix it.

In the ensuing weeks, as a result of the revelations about the financial state of WorkCover, the minister was under some political pressure and, in order to forestall questions, he made a ministerial statement on 12 May. He made a number of fatuous remarks about the previous government and blamed it—wrongly—for the situation, but he gave notice that on the following day he would introduce the governance bill. He said, 'The Bill will change the governance of the...Corporation, making it more accountable...and [ensure] that its financial arrangements are more vigorously scrutinised...' He made the claim, fatuous once again, 'This government is getting on with the job...' How hollow that claim now sounds. The government did not get on with the job. It was five years before it did anything about the governance of WorkCover.

Following that ministerial statement, the minister introduced the Statutes Amendment (WorkCover Governance Reform) Bill. In his second reading explanation on that day, the minister made yet another hollow claim: 'The Rann Labor government is getting on with the job of fixing the problems left by the previous Liberal government.'

This bill that the minister introduced on that day applied some of the provisions of the Public Corporations Act to the WorkCover Corporation, as does the bill that we are today debating. The bill at that time had some other incidental provisions, such as the appointment of specialist advisers to advise the corporation on occupational health, safety and rehabilitation, and it also provided that the chief executive officer would be appointed by the government rather than the board. At that same time some amendments were made to the scheme act relating to the establishment of a WorkCover average levy rate committee. However, the essential governance provisions of that bill, introduced on 13 May 2003, were the same as in this bill.

In July 2003 the parliament was prorogued and, as a consequence, the bill that the minister had introduced lapsed. In August of that year, the government referred the bill to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation. So, the bill had lapsed but it had been referred to the occupational health and safety committee. The new session of parliament began on 15 September 2003, and the bill was subsequently reintroduced in identical terms.

By way of an aside from the actual strict legislative chronology relating to governance, it ought to be mentioned that on 19 September 2003 minister Wright wrote to the occ health and safety parliamentary committee. I think it is worth quoting this letter because I am not sure that it has been quoted elsewhere. Once again, it demonstrates the reasons why the government has acted, or not acted, in relation to WorkCover. The letter states:

> The WorkCover Corporation was originally treated as an uncontrolled entity. As such, WorkCover had no effect on the government's accounts or balance sheets. However, this treatment was not endorsed by the Auditor-General or the Australian Bureau of Statistics. Accordingly, in the 2003-04 budget WorkCover was classified as a public financial corporation controlled by the government and requiring its net assets or liabilities to be recorded as part of general government net assets. This resulted in the general government balance sheet recognising the value of its holdings in WorkCover in terms of its net asset position. WorkCover presently has a negative asset position as a result of unfunded liabilities.

The letter from the minister to the committee continued:

> The recognition of WorkCover's liabilities in the general government balance sheet ensures that the proper accounting treatment is applied under both the Australian Accounting Standard 31 [that is AAS31] and the government finance statistics standards.

That letter was subsequently quoted in the sixth report of the occ health and safety parliamentary committee. It confirms the assertion made by myself and others that the real reason that has motivated the Rann government's insistence that the scheme and the governance bill now be passed is not to achieve a fairer system for workers or employers; it is designed to preserve the state's AAA credit rating, irrespective of the rights of injured workers.

The minister let the cat out of the bag. The government's concern is not about injured workers; the government's concern—and I suspect it is principally the Treasurer's concern—is to preserve the AAA rating that he claims he achieved although, as everybody in South Australia knows, it was achieved before he came into office.

I will continue now with the chronology, after that aside. On 22 October 2003, the governance bill was introduced in another place. In November, the occ health and safety committee tabled an interim report. It contained quite a lot of evidence that it had already obtained

in relation to the governance bill and the cognate bill. That report (as I will come to later) was supportive of the immediate passage of the governance bill. It should be remembered that this was in October 2003.

Shortly afterwards, in November, minister Wright made a ministerial statement which I think ought to be put on the record. He said, as follows:

> Both the actuary and the new board determined to adopt significantly more accounting practices than were used in the past. These practices will provide far greater certainty that appropriate provision is made for future liabilities.

He went on, in another quote, to state:

> The new board has put more prudent practices in place and that has affected the headline number. At the very first opportunity allowable under the legislation the government has put an entirely new and first-class board in place. The new board has demonstrated that it can make the hard decisions and it has the government's complete support.

In another quote, he stated:

> The board has said that it does not expect that levy rates will have to be increased. The board has also said that there is no need for a bailout. The board has said that WorkCover has more than adequate cash flow to meet its obligations.

Finally, he said:

> We have bills before the parliament to improve workplace safety and WorkCover's transparency and accountability. The government will work to fix the Liberal mess.

What a lot of nonsense. Here we see a transparently political speech in which the minister was talking about the new board. 'The new board is going to do this.' He did not actually criticise the old board, in direct terms, but the implication was clear: here is this governance; the new broom has swept through; the problems have been solved—this was in November 2003; and the bills are before parliament to improve workplace safety, transparency and accountability. However, nothing was done.

In May 2004, the occ health and safety committee tabled its sixth report. It unanimously recommended that the Public Corporations Act should be applied to WorkCover. This was a comprehensive 77-page report, after the committee had heard evidence from minister Wright and a large number of other witnesses.

Committee members from this council included the Hon. John Gazzola, the Hon. Ian Gilfillan and the Hon, Angus Redford. It was chaired by the member for Colton, Mr Paul Caica, and also included the member for Mitchell, Mr Kris Hanna, and the member for Heysen, Isobel Redmond. There was unanimity on many points. There were some differences but not on major issues. For example, the committee did not support the provision in the bill that the WorkCover Chief Executive Officer be appointed by the minister. However, it did unanimously support the proposition that the Public Corporations Act should apply to the WorkCover Corporation. The government responded, later in September 2004, to that report and it noted that the principal recommendation in the report—namely, the Public Corporations Act—was consistent with the bill it had already introduced. What happened? Nothing.

We have to go forward 13 months before there is another landmark in this unhappy catalogue of inactivity. In October 2005, the Auditor-General released his report for the year ended 30 June 2005, and in that report he referred to 'contingent liabilities of government arising under the implied government guarantee'. He said:

> WorkCover is a statutory authority. Further, notwithstanding the fact that there is no formal government guarantee, on the basis of governmental involvement in the operations of WorkCover, as illustrated in the Under Treasurer's letter and on the basis of views expressed by the former solicitor-general Brad Selway QC, there is an 'implied guarantee' that would necessitate governmental action to arise.

The Auditor-General continued:

> This could be achieved by way of premium increases, benefit reductions or injection of funds from the Consolidated Account. The inclusion of the WorkCover liabilities in the whole-of-government accounts clearly indicates that the government accepts this position.

He went on ominously:

> Having regard to the experience of the State Bank, it is, in my opinion, imperative, notwithstanding the different nature and immediacy of the liabilities of WorkCover and the State Bank, that WorkCover be subject to the same standard of audit assurance as are public authorities.

It was an alarming report to be received by the government. It was not actually alarming to the government because it knew this already. The government knew this, as minister Wright clearly indicated in his letter of September 2003 to the Occupational Health and Safety Committee, but it was sitting on its hands. Once again, it did nothing. The governance bill was sitting on the *Notice Paper* ready to be debated. It had been supported by bipartisan committees. In the meantime—and you will remember this well, Mr President—the Statutory Authorities Review Committee, under your chairmanship, was conducting an inquiry into WorkCover. The committee tabled a 160-page report in November 2005, in which it made a large number of recommendations.

As the presiding member, Mr President, you referred to a 'long and arduous' inquiry in your foreword. The body of the report actually contained 25 recommendations, but only one of those recommendations was mentioned in your foreword; namely, that 'the committee recommends that WorkCover be subject to the Public Corporations Act'. This was hardly rocket science. The minister said that he was going to be doing this in 2003. Committee reports had recommended it, and the government acknowledged it. He had a bill on the table, yet he did not bring it forward.

We have to go forward yet another year or more to November 2006, to a function organised by the Motor Accident Commission where Treasurer Foley (the minister responsible for that particular body) referred to WorkCover in disparaging terms when compared to the Motor Accident Commission. The Hon. Nick Xenophon referred to those comments publicly and introduced the WorkCover Corporation (Auditor-General) Amendment Bill to address the very issue to which the Auditor-General and Treasurer Foley had been referring, namely, that the government had notice of this matter and a bill was on the record to have the Auditor-General audit the books of WorkCover, but it had never brought it forward.

The Hon. Nick Xenophon's bill gave specific power to the Auditor-General to audit the books of the WorkCover Corporation. He said quite correctly that the passage of the bill was a matter of 'considerable urgency'. At about the same time, the Hon. Rob Lucas in this council moved a motion calling on the Treasurer to request the Auditor-General to report on WorkCover under section 32 of the Public Finance and Audit Act. The opposition was pursuing a slightly different avenue, but one entirely consistent with what the government had proposed in its bill but had never done, namely, to allow the Auditor-General to have access to the books of WorkCover.

My colleague the Hon. Mr Lucas quite wisely made the point that really the problem with WorkCover was not the audit or the accounts. There was nothing wrong with the accounts; they did not need another audit. What was wrong was what those accounts revealed and the shocking state of WorkCover's financial position.

In February 2007, the government, using the voice of the Hon. Ian Hunter, told this council that the Hon. Mr Xenophon's bill was opposed. I should indicate that the Liberal opposition's point of view was that, notwithstanding that a section 32 order may have been appropriate, we were supporting the second reading of that bill. At that stage, the Hon. Mr Xenophon said that he was 'absolutely gobsmacked' by the government's refusal to support the bill. Here is this government always proposing that the Auditor-General have an involvement in the governance of WorkCover, yet it had not progressed its bill at all. I think it is appropriate to quote the Hon. Nick Xenophon's words on 21 February 2007, as follows:

> The fact that the government is opposing this legislation begs a number of serious questions. We have not seen the end of this WorkCover saga yet, and I fear that those who will suffer the most will be the injured workers in this state.

He went on:

> The government needs to explain to the people of this state why it no longer wants the Auditor-General to have these powers. What does it have to hide?

It is clear that all along the government was hiding. It knew the serious state in which WorkCover was and it knew that there would be a political price to pay. It started by adopting a tactic of blaming the previous government entirely falsely. When that would not wear, it went on delaying month after month, bringing forward the opportunity for some independent examination of WorkCover. It feared that the truth would get out and that the public would know that this government was sitting on its hands whilst a time bomb developed.

It was not until February 2008 that finally the WorkCover governance bill was introduced by the government. Even this year the government has been slow to bring it forward, then all of a rush with 30 June coming up—new accounts for WorkCover soon to be prepared and presented—the government decided it must act. As I said at the outset of these remarks, this is a shameful

catalogue of incompetence. This is a government that is more interested in protecting its political skin than providing appropriate compensation for workers.

I deal now specifically with a couple of the provisions of the bill which are worthy of mention. The bill will introduce a new section 14A which will make the WorkCover Corporation subject to the control and direction of the minister. The government has lifted section 6 of the Public Corporations Act almost in its entirety, excepting that it has a special provision, and I ask the minister to note this and in his response provide a reason why this provision is inserted in lieu of that which appears in the Public Corporations Act.

Proposed section 14A(5)(d) provides that a direction given by the minister to the WorkCover board does not have to be published if it:

> might detrimentally affect the performance of a statutory function,

If it might detrimentally affect the performance of a statutory corporation—that is new to WorkCover. That does not apply in relation to general public corporations like SA Water. There is no out for tabling and making public a direction of the minister, and I ask the minister to indicate why it was felt appropriate to insert this provision.

Just as the Public Corporations Act provides for a charter and performance statement so too does this governance bill; in fact, it picks up in proposed section 17A the provisions of section 12 of the Public Corporations Act almost word for word but with one significant difference. Once again, I ask the minister to explain either in his response or during the committee stage of this bill why this appears.

The proposed section 17A provides that a charter must be prepared for the corporation by the minister after consultation with the corporation. It contains a number of provisions about the charter and it provides that the minister must, after consultation with the corporation, review the charter at the end of each financial year. The minister, after consultation with the corporation, may amend the charter.

The Public Corporations Act contains a slightly different provision. It provides that, in relation to every other public corporation, the minister and the Treasurer must review the charter at the end of each financial year. You would have thought that it is an important issue for any public corporation: that not only the minister but also the Treasurer ought be involved in the review or amendment of the charter.

Similarly, in section 17B dealing with performance statements, it provides in relation to all public corporations that the minister and the Treasurer when preparing a charter for the corporation must prepare this performance statement which is to be reviewed, etc. once again by the minister and the Treasurer. Here again, there is an exception for the WorkCover Corporation. Here the Treasurer appears to be washing his hands of the WorkCover Corporation by removing any involvement in the performance statement. I ask the minister to indicate why it is that every other public corporation has both ministerial and treasury involvement in these matters but for WorkCover it is not deemed appropriate. The opposition will be supporting the passage of this bill. What we lament is the appalling delay in its being brought forward.

Debate adjourned on motion of Hon. J.M. Gazzola.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 3073.)

Clause 14.

The Hon. M. PARNELL: Clause 14 is an amendment to section 34, which relates to compensation for property damage, that is, compensation that can be claimed by workers. The previous clause we dealt with (clause 13) related to transportation for initial treatment, which is a form of compensation that can be claimed by employers. The point I want to explore in relation to those two sections is that an employer's right to recover costs arising from work accidents under section 33 are not capped, as we discussed when we debated that clause, but workers' rights to recover costs under section 34 are capped.

One exclusion that the clause provides for relates to cars, which are altogether excluded. The provision, as it currently exists in the act, is that an entitlement to compensation does not extend to compensation for damage to a motor vehicle. I offer the following scenario: if a worker is driving their car for work (let us say they are a pizza delivery worker or courier), and there is an

accident where they are injured and their car is damaged, they cannot be compensated under section 34 for damage to their car.

This is supposed to be a no-fault scheme, but this important loss that the worker has suffered, involving their car, is not compensable. If we take, for example, a courier who was on their employer's premises, perhaps in a warehouse, and their employer's unroadworthy and unregistered forklift truck ran into their car, injured the worker and damaged the car, the worker cannot sue anyone for the damage done to their car, even if it was as a result of the reckless failure of their employer to maintain the forklift in a proper condition. I cannot see that that is a fair relationship.

Another example might be a policewoman who, in a scuffle with an offender, has her hand slammed in a car door and it breaks bones and smashes her wedding ring to pieces. The wedding ring, apart from whatever sentimental value it might have, could be worth far more than the cap under this legislation, a cap of $1,500 indexed. How does that compensate for a replacement of what might be a $10,000 wedding ring that her husband scrimped and saved for years to buy her? So, the cap under this system is most unfair, especially when we consider that there is no cap in the previous section.

My question of the minister is: what analysis has the government done in relation to claims under section 34 involving property damage? How many of these types of claims are made and what type of costs are involved?

The Hon. P. HOLLOWAY: My advice is that we do not have any information on either the number or quantum of claims. We can endeavour to see what information there is and perhaps get back to you, but at the moment we do not have that information.

The Hon. M. PARNELL: It is very difficult to proceed with much further analysis of this provision if we have no idea of the extent to which the provision is relied on. Perhaps the best I can do is to leave with members the inherent unfairness of a system which has a relatively low limit: it is capped and it is not difficult to envisage very unremarkable scenarios where a person's loss is far in excess of the capped amount.

The Hon. Sandra Kanck: And no common law.

The Hon. M. PARNELL: As the Hon. Sandra Kanck says, there is no common law right to recover that. I do not know what the take-home message is: don't wear expensive clothes, don't wear expensive jewellery, don't drive a car for your work, make sure it is someone else's car that you are driving, because if you are in an accident, even if you are on work time, there is no compensation outside whatever insurance you might have.

I look forward to the answer coming back. If an answer does come back before we conclude the debate, I would like to know what analysis might have been done in relation to the impact on the unfunded liability. My guess would be that the claims are probably relatively low, and removing the cap is probably not going to make a great deal of difference to the unfunded liability, but I will await the minister's response to that.

The Hon. P. HOLLOWAY: What I can say in relation to the latter point is that my advice is that we would probably agree that it will not have a significant impact. Just for the record, it is important to say that the amendment to clause 14 contained in the government's bill is to provide, if the regulations so provide, indexation of the annual adjustments according to changes in CPI. So, what the bill is actually doing is to take at least some consideration of the point raised by the honourable member about the value of personal effects.

We take account of the fact that this figure can be indexed, because it is not completely clear whether section 34, as it now exists, precisely allows such a mechanism. The word 'limitations' in the regulations may only allow fixed sums to be regulated rather than an indexation formula. The mechanism for indexing the prescribed compensation limit for clothes and personal effects is in the regulations rather than the primary legislation. This technical amendment adds the new subsection to section 34 stating that a prescribed amount may be indexed under the regulations, based on changes in the CPI. I would have thought that the honourable member would welcome the amendment to section 34 that the government has put up in this bill.

The Hon. M. PARNELL: I do welcome the amendment. My point is that there is an inherent unfairness the government has not remedied. I have not, either, although I can always have more amendments drafted to deal with these issues. However, I will let it go through to the wicketkeeper for now. I just wanted to make those comments and ask those questions on the clause.

Clause passed.

Clause 15.

The Hon. M. PARNELL: Before I move my amendment, I will make some general comments and ask some general questions in relation to this clause. At the outset, I say for the benefit of all members that we are now at the action level of the bill. This is the clause: this is the one that everyone has been talking about for the past three months, and this is the clause that cuts the entitlement of injured workers.

There are a large number of amendments to this clause, and they are all very significant. That is not to say that the amendments we have considered to date are not, because they are all important, but I want to impress on members the absolute importance of getting clause 15 right. In a way, this is the money clause. We will get to its financial implications later, but I have heard it estimated that possibly $400 million is at stake, so we will need to be thorough with clause 15, and I make no apology for that.

First, I want to ask a question in relation to the designated weekly earnings arrangements in proposed new section 35A. Essentially, the designated weekly earnings arrangements are primarily about cutting the worker's weekly payments before the 130-week mark. I think it is important that we put on the record what Mr Clayton had to say about this provision because, as I have said, this is the water cooler one, this is the barbecue stopper, and this is what everyone has been talking about. Mr Clayton states:

> One of the major goals of the workers' compensation system is to optimise the potentialities of return to work. This should be the pre-eminent goal for the scheme agent in the South Australian scheme for workers whose injuries or illnesses have removed them from employment. Return to work has well demonstrated social benefits and, of course, obvious economic benefits. The economic benefits derive from the savings in benefit costs, either totally through a full return to work to pre-injury employment or the diminution of benefit costs through the payment of partial incapacity as against total incapacity benefits in the case of partial return to work or return to work in alternative duties. However, similar economic benefits can be gained by benefit discontinuance or diminution by other means such as the application of deeming provisions.
>
> There is a potential incentive for an insurer, or the scheme agent in the case of South Australia, particularly where there may be strong incentives in the agent contract connected to liability savings, to use deeming provisions to achieve benefit discontinuance or diminution as an alternative or a parallel path to active return to work management. On the other hand, there is a case for having the ability to apply deeming provisions in exceptional circumstances. This is, in fact, the current Victorian situation, and indeed the situation that has existed in Victoria for over a decade, as the result of a Ministerial directive that the resort to deeming should only be regarded in the nature of a 'reserve power'.

The final sentence—and this is the important bit—states:

> Alternatively, to be sure that there is no abuse of such a power in the compensating authority, it could be provided that this power is only able to be utilised after a stipulated period of receipt of weekly payments is reached. In the opinion of the Review such a period should be 130 weeks. This second approach is probably the preferable way of proceeding.

The government has said that what it is doing in this bill is following the Clayton report. My question is: why has the government rejected what Mr Clayton recommended on this issue and introduced a far harsher proposal that will hurt injured workers and their families?

The Hon. P. HOLLOWAY: My advice is that the government really has picked up the recommendations of the Clayton review to the extent that the use of powers is as a reserve power. During the debate, my colleague in another place, the Minister for Industrial Relations, stated:

> I intend to direct WorkCover as in Victoria not to use this provision, unless there are exceptional circumstances. That is exactly in line with what Clayton recommended; that is, it should be a reserve power.

The Hon. M. PARNELL: I thank the minister for that answer; I am not satisfied with it, but I will move on. I next want to ask the minister in relation to proposed section 35C(2), which provides:

> The corporation may determine that the worker's entitlement to weekly payments under this division does not cease as contemplated by subsection (1) if the corporation is satisfied that the worker is in employment and that, because of the compensable disability, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings.

The particular word in that section that concerns me is 'may'; it says that the corporation 'may' decide that the worker's payments do not cease if the relevant requirements are met. As members would appreciate, the use of the word 'may' in legislation—as opposed to the words 'shall' or 'must', for example—generally means that there is some discretion for the decision-maker to use their own judgment if the relevant criteria are met. In proposed section 38B the language is that the

entitlement ceases unless the relevant conditions are met. That does not suggest that there is any discretion.

My question is: why does WorkCover have a discretion not to continue payments to partially incapacitated workers under proposed section 35C even if the relevant requirements are met? In what circumstances is it intended that WorkCover can deny payments to injured workers even though the relevant requirements are met?

The Hon. P. HOLLOWAY: My advice is that under this section, if a worker is working to their full capacity, the top-up weekly payments can continue. So if a worker has a capacity of, say, 20 hours a week and is working to that level—in other words, is performing 20 hours of work a week—those top-up weekly payments can continue.

The Hon. M. PARNELL: I did not fully understand the minister's answer. Is the question that there is no discretion if the relevant requirements are met? Or is there a discretion in WorkCover?

The Hon. P. HOLLOWAY: The advice we have from parliamentary counsel is that there is no discretion.

The Hon. M. PARNELL: I now invite the minister to put on the record, and I am sure the minister will have these figures available, the numbers in relation to the people who are on benefits. In particular, I am interested in the length of the tail, and how many people are being added to the tail. That is fairly critical to this whole debate because, when we are talking about reducing entitlements and cutting people off the system, we need to know how real a problem it is.

I will preface my questions in this area by referring to some documents and analysis that were provided to me by Phil Moir, a person who is known to many people with his engagement. He obtained, under freedom of information, a range of statistics, and I need the government to tell me whether the information I have been provided with is correct. Mr Moir's argument is that the government's claim that fewer injured workers are returning to work is a complete distortion of the truth. That is how he described it.

The figures he has provided to me (and he says he got these through freedom of information) are that in 1997 (11 years ago) there were 2,141 injured workers on benefits for 12 months or less, and in 2006 there were exactly the same number: 2,141 workers on benefits for 12 months or less. So, that proportion of shorter-term injured workers on the scheme had not changed over that period of time. When it comes to people on the scheme for under 24 months (the two year figure), in 1997 he says there were 2,640 workers on benefits and in 2006 there were 2,788. In other words, there were only 148 extra workers still on the scheme 10 years later, and they are workers for 24 months or less.

So, the question then is: how is it possible for WorkCover to state that there are fewer workers who are returning to work, because on the basis of those figures they do not look to have changed a great deal, and they would suggest that there is not a deterioration in return to work rates as suggested by WorkCover? That is my first question on this topic. Are those figures correct, and is that analysis correct?

The Hon. P. HOLLOWAY: If one looks at the WorkCover annual report for 2006-07, there is a table of graphs beginning in June 1997. We do not have the exact figures, but if one looks at that graph it is quite clear that between June 1997 and June 2007 there has been a significant upward trend in relation to the active income maintenance claims. If one looks at those who have been on for three-plus years, the number in June 2007 is just a little over 4,000 up to more than 7,000. So it must be approaching 3,000 active income maintenance claims, just trying to read the graph, because we do not have the actual figures.

Certainly that graph makes clear that it was getting on towards 3,000 for more than three years in June 2007. Back in June 1997 it went from just under 4,000 to around 5,000, so there were about 1,200 projecting from the graph. That is what really tells the story, and that graph makes it quite clear that there is a very obvious upward trend in the number of active income maintenance claims over that decade. Clearly, the fastest rising section of that is those for more than three-plus years. Even though they may not be a significant number of the overall claims that WorkCover deals with, clearly in terms of its costs they are extremely significant.

The Hon. M. PARNELL: The point to come out here is that there is no doubt that the length of the tail is an issue for South Australia, certainly in terms of comparison with other states. Unless I have misunderstood this, it seems that it is incorrect to say that it is a failure to return to work and a failure that has been exacerbated over time that is the result of the tail. There are also

issues of population growth, more workers and a range of other things, but it seems that the figures I quoted before indicate that there are factors at work other than the conclusion that many people have come to, namely, that people are not returning to work.

Other figures I have seen indicate that something like 35,000 WorkCover claims are made each year, and that the vast majority—something like 80 per cent, I understand—are resolved within two weeks. Only something like two in 10 are still receiving benefits after two weeks and even fewer as time goes on. That is not to say that the tail is not a problem, but it seems that the system in relation to the vast majority of people is not suffering from a problem returning to work, especially in that short time. I now move:

Page 17, lines 30 to 40, page 18, lines 1 to 6—Delete paragraphs (a, (b) and (c).

This is a test amendment for my amendments 11 and 12, and I will deal with them together. This amendment deletes three paragraphs in subsection (8) of the new section 35, and those three paragraphs are the definitions of the first, second and third entitlement periods, the periods which relate to the step down in payments. This amendment is aimed directly at removing the arbitrary and unfair step-downs that are the keystone of this bill. Under the bill, after an injured worker has first lost their superannuation contributions (as they do now—that is not new), they will then lose 10 per cent of their pay after 13 weeks and 20 per cent after 26 weeks. It is not exactly that because it goes to 90 per cent and 80 per cent, which does not equate exactly with a 10 per cent and 20 per cent loss, but the figures are close enough.

According to the 2006 census, the median Adelaide weekly income for individuals was $447, so under this plan a person on Adelaide's median weekly income is down to $402 to live on after 13 weeks on WorkCover. Under this government's plan a person is then down to $357 a week to live on after 26 weeks—a loss of $90. I do not know how many members of parliament would go trying to survive on $357 a week at the same time that they are trying to cope with an injury.

Paying rent, a mortgage, food, petrol and electricity on $357 a week is just not fair. I will not revisit the issue of the flaw—in other words, trying to enshrine the minimum weekly wage (because we have dealt with that already)—but I make the point that these cuts are not fair for people on median wages.

It is an even grimmer picture for South Australians who are fortunate enough to live in the Premier's electorate of Ramsay. According to the 2006 census, in the electorate of Wakefield the median family income is $985 a week. In Premier Rann's own electorate working families on the median income will have to live on almost $100 a week less 13 weeks after an injury. Perhaps someone who has fallen off a construction site would be looking to the Premier in despair at these changes.

In the Premier's own electorate, working families would be almost $200 a week worse off after 26 weeks of injury. If superannuation contributions are taken into account, a family on a median income in the Premier's own electorate would lose $11,011.50 in the first year for being injured at work, even if it is due to the gross negligence of their employer. They would be $6,402.50 worse off in their first year than they would have been under Liberal premiers Kerin or Olsen. Some $6,402 worse off in the first year after a devastating life-changing injury might not seem much for the Premier or a well-paid member of parliament, but for a working family living in Ramsay trying to get by on—

The CHAIRMAN: Order! I remind the honourable member that this is sounding like a second reading contribution.

The Hon. M. PARNELL: Thank you, Mr Chairman. Members would recall that I did remove all this material from my second reading contribution and said that I would deal with it in a briefer form when we got to the committee stage; so I will abbreviate what I have got. I appreciate that perhaps we should have taken the opportunity to go a little longer last time so I could have got that material on the record—but we did not—so I would like to get some of it on the record now.

The Clayton report—and, therefore, this government which has adopted some of the recommendations—appears primarily to choose 13 weeks as the first step-down based on the Victorian act, which reduces payments to 75 per cent after 13 weeks. I cannot see any rationale for designating 13 weeks rather than 12 months, other than a very generalised assertion that most fractures, I am told, heal within six weeks; most other injuries heal within a 13-week time frame. It is certainly not clear what the Clayton report refers to as 'other injuries'.

Also, there happens to be an assumption that in reducing payments at this time workers would have a greater incentive to return to work, rather than reducing payments after 12 months.

The issue here is in relation to starving (as it has been referred to) workers back to work. I have not seen any evidence—it has not been presented—which shows why it would be a greater incentive than waiting for injuries to heal properly.

The Hon. Bernard Finnigan is a member of the Shop Distributive and Allied Employees Association, and that union, together with the Australian Manufacturing Workers Union, the Finance Sector Union and the Electrical Trades Union had this to say about the government's original proposal which, members would recall, was a reduction to 80 per cent after 13 weeks. The union said:

> The proposal to reduce income maintenance to 80 per cent of earnings after 13 weeks is arbitrary and would cost a worker on average weekly earnings approximately $222 per week.

The Hon. Sandra Kanck: When did he say that?

The Hon. M. PARNELL: No, the Hon. Bernard Finnigan did not say it: his union said it. No doubt, the honourable member fully supports what his union does.

The Hon. B.V. Finnigan: I have not resigned.

The Hon. M. PARNELL: He is a card-carrying member of the union. The union also said:

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

In relation to the first point, the purely economic evidence used to support this position is far from compelling, and that is a point that is conceded by Clayton. It must also be recognised that injured workers overwhelmingly want to return to work but are often frustrated by a lack of assistance from WorkCover and its claims agents. In relation to the second point, most injuries are not all injuries; therefore, seriously injured workers who are unable to work would have their payments reduced if the proposal goes ahead. That is the quote from the unions.

The government's change, which was subsequently introduced in relation to step-downs to go from 80 per cent to 90 per cent at 13 weeks, does nothing to address the core attacks on this scheme delivered by the unions. There is much economic opinion that the percentage of income assigned to spending (and often fixed spending) is consistent over high and low incomes. What that means is that cutting injured workers' pay will affect the ability of both lower and higher paid workers to meet their commitments, such as mortgages, petrol, school fees, and so on.

However, the lower paid workers will suffer badly under these step-downs. With respect to average incomes (and I mentioned Ramsay before; they are not the highest in the state), mortgages, grocery bills, petrol, and so on, still have to come out of that. If you try to do without $10 in every $100 that you have to spend, your budget is absolutely blown.

WorkCover's rationale for its proposal is that putting workers under financial strain will increase the motivation to return to work. As the Clayton report states, the vast majority of injured workers are highly motivated to return to work, irrespective of the financial structure of workers compensation schemes. The government's proposals do nothing to address the major barriers to return to work, which include (and we will get to this in a later clause) the employer's reluctance to employ injured workers. The letter continues:

> WorkCover claimed savings of $22 million in reduced claims payment per year plus an additional saving of $12 million per year due to the changes driving behavioural change; that is, workers will know that their pay is to be cut and decide to return to work. In our view, any claimed savings from behavioural change is not credible. These costings were based on the WorkCover proposals for 95 per cent immediately and 75 per cent at 13 weeks.

I think it is critical for all members to think about these changes, not just as statistics and numbers but also as cruel measures that impact on real people.

Progress reported; committee to sit again.

TORRENS TITLE

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:59): I lay on the table a copy of a ministerial statement relating to the 150th anniversary of Torrens Title made earlier today in another place by my colleague the Attorney-General.

[Sitting suspended from 18:00 to 19:45]

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 3134.)

Clause 15.

The Hon. M. PARNELL: I have moved my amendment No.10, and I have told the committee that it is a test clause. I will not be speaking separately to or dividing on my amendments Nos 11 and 12. I took the opportunity during the break to revise some of my material, which I had removed from my second reading speech. I have now removed a fair bit more of it for the purpose of advancing the debate on this clause. Having said that, there are a couple of—

The Hon. D.W. Ridgway interjecting:

The CHAIRMAN: Order! It is not the time for making speeches: it is the time for committee.

The Hon. M. PARNELL: I want to get straight back into the committee's important work. There are a couple of case studies to provide and a couple of comments to make, and then I want to test the will of the committee on this amendment. As I said, this is the amendment that everyone has been talking about. It is the step-down amendment. We are told that there is $400 million of savings. So, even at $5 million a minute, we are making rapid progress in dealing with this amendment.

The first case study that I want to put to the committee involves an injured police officer. Thirteen weeks after this police officer shatters his leg, when a joy-rider rams his police car, he gets his pay reduced to 90 per cent. A senior constable's base pay is about $1,257 per week, including super, before tax. This policeman has two preschool children. His wife works part time as a cleaner.

From the day after the joy-rider shatters the policeman's leg, the policeman loses money because of the injury. The government's plan starts with all workers losing their superannuation contributions. That is the existing system; we have not fixed that. That means 9 per cent goes to start with. That would cost the police officer about $103 a week, or $5,400 a year.

The policeman has major, permanent damage to his hip and knee. He faces a number of major operations and a long recovery. After 13 weeks his pay is cut another $115 a week so, under the government's plan, the family is already down $218—the super plus the pay. Even though the super is not to be collected in the short term (it is in the long term), I think it makes sense to regard it in this way. After 26 weeks the government takes another $115 a week from the policeman and that, in total, is $333 per week gone. South Australian working families, in my opinion and in the opinion of the hundreds of people who have written to me on this, do not deserve to lose $333 a week, 26 weeks after being hurt at work. That is $12,875 per year.

The second case study is that of a cleaner: the cleaner is lifting a big bin, the catch breaks and it falls on the cleaner resulting in a severe injury. The issue of the safety of the bins might have been raised for some time but nothing was done about it. Let us look at such a worker. The state minimum wage for a full-time worker is $522.15 before tax. That is not much to get by on and to support a family, to start with. So, if they lose their 9 per cent super, that is $50 a week or $2,443 each year. At 13 weeks it is down to 90 per cent, so that is another $52 a week which leaves them with $472 per week to pay the mortgage, feed and clothe the kids and pay power bills. At 26 weeks it is down to 80 per cent and the pay is cut by another $52—a total cut of $104 a week, or $154 if you include the superannuation. That leaves just $448 a week, because you were injured at work. In the case study I have given the employer was negligent in that it failed to deal with the issue that ultimately gave rise to the injury.

The question that raises for us, in dealing with this bill, is that when people like the policeman with the shattered leg ask whether this is fair the answer, very clearly, is that it is not. You would expect that, in putting a proposition like this forward, the government has given serious and careful consideration to the impact on injured workers and their families. I doubt that that has happened. However, I will ask the minister what studies have been done either by the government or by WorkCover on the impact of this plan to cut worker entitlements and, in particular, what is the impact of taking $5,693 in the first year away from a minimum wage earner? What effect will that have on a family's ability to keep their heads above water, pay their mortgage and pay the rent? Have any such studies been done?

I have some further brief comments to make but I will first put that question to see whether the minister has an answer about what economic studies have been done in relation to the impact on low-paid workers, in particular.

The Hon. P. HOLLOWAY: There have been no studies in relation to the sort of information the honourable member is talking about. However, he would know what other workers compensation schemes in this country pay, and he would also be well aware that there has been a lot of information that relates to return to work and how that is impacted upon by the compensability of injuries. He would also be aware, I am sure, of the work that has been done into the impact on those workers who have soft tissue injuries but who do not get back to work within the 13 weeks or so and become, in a sense, long-term victims of the system.

I think that is the other side of the coin that has to be looked at. It appears to me that that is the one thing in this whole debate that people overlook. Clearly, in our state there are a lot more people in this tail who are still on workers compensation after two years than would be the case in other schemes. It is clear that those workers are badly affected by the system, and that is not good for those workers. We do have that evidence. What we are trying to do here is reach a balance. Of course, if you do reduce benefits, that will have an impact on those workers. But, clearly, if we do not do anything about the return-to-work rates, likewise that will have a very severe impact on a number of workers who do not get back to work. That much we also know.

The Hon. M. PARNELL: There are two positions that have been put in relation to cutting injured workers' entitlements. The WorkCover position is that the financial hardship that results from reducing workers' income compensation would give workers a bigger incentive to return to work. That appears to be the WorkCover position. On the other hand, the Clayton position totally rejected that analysis. The Clayton report said, at page 97:

> Most workers return to work as soon as their injuries have healed, irrespective of economic incentive articulated through the benefit system.

It seems to me that, when it suits the government, it says that it accepts Mr Clayton's report; that is the impression the government gives. However, it is clear that Mr Clayton does not accept the idea that workers need to suffer financial hardship to have an incentive to return to work.

The final point I will make on this amendment is to remind members that in some cases the person is not going back to work. The person might be in a coma. First of all, we cut their super, then we cut their pay to 90 per cent and then to 80 per cent. Maybe they will stay on the system as part of a long tail, but how do you motivate a person in a coma to go back to work? Clearly, that is not going to happen. I think it would have been far better for us to listen to that part of Mr Clayton's report that says that we do not need to starve people back to work.

I make the point again that this clause is at the heart of this system. This is the clause that everyone has been talking about, and I will divide on it. This is the clause in terms of which, if you do not support my amendment, you support these step-downs, you support the hypocrisy of the government, and you support letting the Premier get away with what he said 13 years ago and his completely backtracking now. Thirteen years ago, the Premier was going to fight tooth and nail; every Labor member was going to vote against every clause of this bill. This is the heart of it now. I urge all members to support this amendment.

The Hon. P. HOLLOWAY: First, let me say that this was not the bill that was before the parliament 13 years ago. Secondly, Mr Clayton, in fact, recommended step-downs that are more severe than those that are in this bill. He suggested an 80 per cent step-down after 13 weeks; this bill contains a 90 per cent step-down after 13 weeks, followed by an 80 per cent step-down after 26 weeks. So, in fact, it is not correct to suggest that Mr Clayton did not recommend step-downs.

The Hon. SANDRA KANCK: This is the line in the sand for me. When I made my second reading speech, I said that I thought there were some good things in the bill, and I said that whether or not I supported the bill at the third reading would be dependent on what amendments got up. This is the crucial amendment for me. As the bill stands, clause 15 (the replacement section 35 in the act) is the clause that begins to take away workers' entitlements.

If the Hon. Mark Parnell's test amendment is not supported, I will not be able to support the bill. I was surprised to find out that the Clayton Walsh report, for instance, suggested that people who had fractures as part of their work injuries would basically be healed within six weeks and easily able to be back at work at 13 weeks. I would really like to know—and perhaps the minister can tell me about this—what the medical evidence of this is.

I am going to talk about my own personal experience having had a fall at the beginning of December in which I sprained both ankles. In the case of the left ankle, I had an avulsion fracture. An avulsion fracture is a very small piece of bone that breaks on the tip of a bone which occurred when the foot bends over and the tendons and ligaments are put under stress. Remember this was not a work injury, but it is a good example of how wrong I think the Clayton Walsh got it on this issue. I had a week at home in which I could barely walk and, when I came back to work the following week, I started seeing a physio every second day. The rate at which I could walk, by the way, was in crossing North Terrace, for example, I could get halfway across before the pedestrian lights started flashing. It took me three months of going to the physio to have my feet in any sort of working order and even then I was still not walking at the normal pace of other people.

I thought to myself, what if it had been a work injury and what if I had been in a job that required me to stand all day or to be walking or even running in some cases? What possible good would it have done me to be forced back to work? It is described within the Clayton Walsh report or by the government as an incentive; if anything, it probably would have damaged my ankles further if I had been put in that situation of having to go back to work. The logic is not there. I would like the minister to provide information about the medical source of the information that says that people with fractures of their limbs will have them cured and ready to go back to work in six weeks. As I said, this amendment is my line in the sand and, if the amendment is not accepted, I will be voting against the bill at the third reading.

The Hon. P. HOLLOWAY: The step down does not occur until after 13 weeks, so the argument about six weeks is irrelevant as far as the first step down point is concerned. What we do know is that the evidence suggests that most of those soft tissue injuries—

The Hon. Sandra Kanck: No, they were fractures.

The Hon. P. HOLLOWAY: In relation to fractures—certainly, as to the majority of injuries that people incur that are compensable, we know that about 80 per cent of those people are back at work by 13 weeks, and that is—

The Hon. Sandra Kanck: So, why do you need something that penalises it?

The Hon. P. HOLLOWAY: The thing is there is no penalty up until 13 weeks, even though in some states like Victoria there are immediate step downs, but we are not proposing that here.

The Hon. D.G.E. HOOD: I rise briefly to make some comments on this amendment. I said at some stage yesterday early on in the debate that I would only make a few contributions during the committee stage and this will be one of those, and it will be brief at that.

I just want to state on the record Family First's support for the amendment and opposition to the proposed step-down. I think the stories have been outlined well, and the case studies have been given. The truth is that people do not get hurt at work through choice. They get hurt at work through unfortunate circumstances whether it be the employer's fault or whether it be their own fault. Whoever's fault it is, the bottom line is that people do not choose to get hurt.

Therefore, they should not suffer as a result by having their income slowly eroded. We will certainly support the amendment. We take issue with the step-down. We think that the unfortunate thing is that the workers are bearing the brunt of all of the negative aspects of this bill, and the management of WorkCover Corporation really gets off scot-free. That is the real problem. As I said, we will certainly support the amendment, and we really have no sympathy for the step-downs in the bill.

The Hon. J.A. DARLEY: I will certainly support this amendment for the reasons that have already been outlined by others.

The committee divided on the amendment:

AYES (3)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Evans, A.L.	Schaefer, C.V.
Kanck, S.M.	Gago, G.E.

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 18, lines 13 to 15—Delete paragraph (e)

The issue at stake here relates to weekly payments and, in particular, prescribed allowances. My amendment proposes to remove the paragraph that states:

A reference to weekly earnings, or current weekly earnings, is a reference to weekly earnings exclusive of prescribed allowances.

The WorkCover proposal, which the government appears to have adopted, was that we should try to make the calculation of average weekly earnings simpler and that that would reduce disputes. I said, and I have said it before in other contexts, that the simplest and fairest way of doing that is to average all earnings and not to have exclusions. By deleting the ability to specify allowances that can be excluded, the calculation system becomes simpler and fairer and there will be fewer disputes.

What the government is doing here—and I think that this is an important point—is that this is direct discrimination against blue collar workers, in particular. The reason for that is that more white collar and non-union members are on salaries, or they may have traded away their allowances for a flat rate. So, the government plan to continue to exclude allowances—in other words, just pretend that they are not there—will, I believe, hit blue collar workers and union members harder than other workers.

There is no proposal to deal with white collar workers in the same way, not that I am suggesting the government should, but I think we need to be clear that this particular measure does distinguish between the different salary and remuneration packages that attach to union and blue collar workers predominantly, compared to white collar workers. If you have traded away your allowances in some enterprise bargaining agreement then you are not caught by this provision in the legislation.

In urging members to support this amendment, I say that, if you want to do the right thing by unions, by union members and by blue collar workers who have fought to keep their rights and have not traded them away, this amendment should be supported.

The Hon. P. HOLLOWAY: The government believes that the Hon. Mr Parnell seems to have misunderstood the connection between clause 35 and section 4, average weekly earnings.

The bill rewrites and reorganises section 35 into four new sections (sections 35 to 35C), but the text of the original section 35(7)(c) is retained in new section 35(8)(e). Mr Parnell's amendment would delete proposed new section 35(8)(e) from the bill. In other words, weekly earnings would not be specifically defined to exclude prescribed allowances. The upshot of this is that prescribed allowances would not be excluded from weekly earnings that are subtracted from notional weekly earnings in the calculation of weekly payments.

The government opposes this amendment, as removing the exclusion of prescribed allowances from weekly earnings is flawed, misguided and inconsistent with related parts of the Workers Rehabilitation and Compensation Act on allowances. It would mean that, despite prescribed allowances being excluded from a worker's notional weekly earnings under sections 3 and 4 of the act, a partially incapacitated worker's prescribed allowances would be included in the actual or deemed weekly earnings subtracted from notional weekly earnings to calculate the final reduced weekly payments. This is fundamentally unfair and inconsistent for injured workers and surely not what Mr Parnell would intend.

Amendment negatived.

The Hon. M. PARNELL: Amendments Nos 11 and 12 are consequential, and I will not move them. I move:

Page 19, line 16—After 'despite the disability' insert:

> and that the Corporation can demonstrate is reasonably available to the worker in his or her particular circumstances

The subject matter of this part of clause 15 is in relation to designated weekly payments, and I seek to address fictional work. Although it is in a different context from before, it is the same issue. The amendment aims to bring this legislation closer to reality and out of the fictional arrangements the government seeks to create. Under the government's bill, a worker's pay can be cut based on what earnings WorkCover designates they earn.

Under the government's proposal, there does not seem to be any need for the work to be actually available for a worker. Once again, if a worker could, in theory, do a job but no employer will give them a go because of their work injury, their wages are cut, and that is not fair. This amendment requires that WorkCover establish that a job it says the worker could be doing will be reasonably available. I do not think that is too much to ask before a person's livelihood is cut or taken away altogether. Because the subject matter is similar to issues we have raised before, I want to hear the government's response, but I do not intend to divide on this amendment.

The Hon. P. HOLLOWAY: This amendment would tighten the definition of designated weekly earnings. This would not only reintroduce the state of the labour market test to the assessment of suitable employment but would go further than the current provisions. Currently, the requirement to show that a worker has a reasonable prospect of obtaining suitable employment applies only to workers incapacitated for more than a year. There is a range of other similar references that apply only to workers incapacitated for more than two years.

The government opposes this amendment. It 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, rather than stay on the system. We effectively had this debate in another context last night.

The Hon. R.P. WORTLEY: Is the minister aware of the concerns of many union stakeholders—in particular, the state secretary of the Australian Manufacturing Workers Union, Mr John Camillo—that workers will be subjected to the work capacity review without having access to the appropriate rehabilitation? Is the minister confident that this will not occur?

The Hon. P. HOLLOWAY: I thank the Hon. Mr Wortley for his question. I think we are all aware of the concerns raised by many members of the community—including, obviously, union officials—about the work capacity review and the need to ensure that workers have received appropriate rehabilitation. The work capacity review is an important part of the government's proposed reforms; however, I am confident that injured workers will not be treated unfairly in these reviews and that the reviews will not lead to cessation of payment should the worker not receive rehabilitation if rehabilitation should have reasonably been provided.

Members may not be aware of a decision of the Victorian Supreme Court on essentially the same provisions in the case of Woolworths v Jeffreys & Ors in 2007. I believe this is a useful decision which may be instructive to the courts in South Australia. In that case the medical panel found the worker had no current work capacity from a physical and vocational perspective, and I quote:

> The panel considers that it is possible that the plaintiff's condition could improve with appropriate rehabilitation, and that with retraining, he could acquire further vocational skills to allow employment in positions where he would be able to work and cope with his restricted left hand function. However, as there is no current rehabilitation plan in place, the panel considers that the plaintiff's condition is unlikely to improve in the foreseeable future, and the panel therefore concluded that he is likely to continue indefinitely to have no current work capacity.

The case in the Supreme Court arose from action taken by Woolworths to set aside the medical panel's decision as to the worker's future work capacity and to challenge whether the medical panel could make such a finding at all. The Supreme Court found, and again I quote:

> In my view, the panel's reference to the absence of a 'rehabilitation plan' in the last sentence of the last paragraph of the panel's reasons (set out at [5] above) should not be taken as being confined to Jeffreys' physical injuries. When read as a whole, it is apparent that the panel was adverting to the fact that there was no rehabilitation plan in the wider sense, by which Jeffreys was to be rehabilitated and retrained so as to re-enter the workforce. Similarly, when the panel said Jeffreys' 'condition' was unlikely to improve, it was referring to his general predicament, namely that he was injured and had no current work capacity as a result...Rather, in all of the circumstances of the case, bearing in mind the time elapsed since the injury, the lack of rehabilitation and retraining in that time, and the lack of evidence as to any actual rehabilitation and training to be undertaken by Jeffreys in the future, the panel concluded that Jeffreys was likely to continue indefinitely to have no current work capacity. In my view this conclusion was well open to the panel.

I trust that will allay the honourable member's concerns.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 20, lines 6 to 43, page 21, lines 1 to 43 and page 22, lines 1 to 11—Delete sections 35B and 35C

This amendment again in relation to weekly payments is on the topic of abolishing work capacity reviews. As I have said before, the regime provided for by clause 15 is probably the single biggest attack on injured workers' rights. It will reduce the pay and stop the pay of probably thousands of injured workers. My understanding is that WorkCover has said that, by themselves, these provisions will deliver a $55 million annual cash transfer from injured workers and their families to business, and in terms of long-term liabilities, up to about a $400 million transfer from injured workers and their families to business. This is an extreme attack on workers' rights.

There are some fundamental absurdities in proposed sections 35B and 35C. In particular, in relation to partially incapacitated workers, it tries to sweep under the carpet the fact that for many, and perhaps even for most partially incapacitated workers, the biggest barrier to obtaining a job is not the injury itself, it is the fact of having a work injury. I will not refer again to the case of WorkCover Corporation and Warren, as I have read abstracts from it before when that issue was raised. I think that this does highlight the unfairness of this legislation.

Under the current laws, if you have lost earning capacity, you can continue to receive payments for that, even if they are deemed to have been able to do some job which they cannot get because of discrimination against injured workers. However, under these provisions (sections 35B and 35C), if no employer will give a partially incapacitated worker a go because they have had a work injury, then the partially incapacitated worker can have their payments stopped altogether. Because injured workers are discriminated against, they have their income stopped. For the life of me, I cannot see how that is fair.

Another element of sections 35B and 35C that is particularly problematic is the requirement to continue to get income compensation. Not only do you have to be incapacitated at the time but a guess has to be made about how you will be in the future. I say that decisions about workers' income should be based on facts and not guesses—no matter how educated—about what will happen in the future. I will have more to say about that when moving my next amendment. Whilst I do want to hear the minister's response, I will not be dividing on this amendment.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell's amendment would delete proposed sections 35B and 35C entirely from the bill. If this was combined with his other amendments, although we have already negated some of them, it would remove all references to entitlement periods in the bill and therefore dismantle the intended step-down structure. The amendment would also remove all provisions determining how weekly payments are calculated and reviewed after the third entitlement period, namely, 130 weeks of incapacity; in other words, work capacity reviews would be abolished.

The Hon. Mr Parnell does not propose to replace any of those deleted provisions. Under his amendments, as I am sure he is well aware, workers would always receive weekly payments of 100 per cent of notional weekly earnings with no step downs and never be subject to work capacity reviews after 130 weeks of incapacity. I can understand why he is moving those changes to parts of the bill, but obviously this is a key part of the bill. We have already debated the issue about why we are doing that and that is why we oppose the amendment.

The Hon. SANDRA KANCK: I indicate support for the amendment. What the minister has said is completely right. The clear intention of the amendment is to ensure that the step-down provisions are not able to be put into operation, and that is the reason why I will be supporting the amendment.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 20—

Lines 14 and 15—Delete paragraph (b)

Lines 33 and 34—Delete paragraph (b)

These are the amendments to which I alluded at the end of my discussion on my previous amendment. They relate to weekly payments but, in particular, abolishing the future element of the total incapacity test. I move both the amendments because they relate to the same thing, pretty well. For example, in new section 35B, which is headed 'weekly payments after expiry of

designated periods—no work capacity', basically the exemption from cutting payments is that two tests must be met. The first test is that the person has no current work capacity; and, secondly, they are likely to continue indefinitely to have no current work capacity.

Leaving aside the grammar there (that is, that we are talking about a current capacity into the future), it is that second element that my amendments seek to remove. In essence, the provisions about totally incapacitated workers provide that, for workers to receive weekly payments of income maintenance after 130 weeks, they must establish that they have no current work capacity and are likely to continue indefinitely to have no current work capacity. The effect of that is that not only does a worker have to be totally incapacitated at the time but also they have to be likely to continue indefinitely to have no current work capacity.

This means that the incomes of injured workers' families are stopped based on a guess, even though it may be an educated guess. I would expect that, in some cases, the consideration will be that a worker has a particular condition, that that condition usually resolves itself in a certain way and therefore it is likely that they will get better in the future. Of course, what happens in an ordinary or an average case is not what happens in every case, and I think that is where that goes to the heart of the unfairness. Why should injured workers who are in fact totally incapacitated for the long term lose all income compensation because of a wrong guess about how their injury will develop in the future?

There are other situations, though, that expose the gross unfairness of this provision. With many serious injuries (back, knee and shoulder injuries), it is not uncommon that many years after the initial injury surgery even further surgery can be required, which, of course, can mean that the worker is totally incapacitated while they are in hospital, often for a period of recovery. However, where that person expects to have a partial capacity for work when they recover from the surgery, they will have no entitlement for compensation for the time they are flat on their back in hospital having surgery for their work injury, and that is just grossly unfair.

For a worker to go through the pain and dislocation to their lives of surgery and hospital stays and because they are likely to improve following the surgery there is no income compensation, and that is just shameful. With a compensation system based on weekly payments of income maintenance, not a lump sum system based on the assessment of future loss, I think it is absurd to cut off payments for someone who is at the time totally incapacitated based on a guess that they will get better in the future. It is very different from lump sum compensation cases in courts where that assessment is made and incorporated into the payment.

If the worker does get better, appropriate action can be taken at the time. There is simply no justification that I can see for this attack on injured workers. I urge all members who are keen to see fairness put back into this legislation to support this amendment.

The Hon. P. HOLLOWAY: New section 35B of the bill states that a worker's entitlement to weekly payments ceases at the end of the third entitlement period, unless the worker is assessed as:

(a) having no current work capacity; and

(b) likely to continue indefinitely to have no current work capacity.

Mr Parnell's two amendments would delete the use of paragraph (b) in section 35B. In other words, a worker need not be assessed as being likely to continue indefinitely to have no current work capacity to have their entitlements continue.

With the series of amendments that Mr Parnell is moving, really he is seeking to basically reverse the fundamental decision of step-downs. This is just another way of doing it. The government obviously opposes the amendment as it would significantly weaken work capacity reviews under new sections 35B and 35C, and fundamentally undercut the objectives of the bill, which is strongly focused on getting injured workers back into the workforce. The amendments would render much of the actuarial underpinning of the bill useless and, therefore, imperil the intended cost savings to the scheme, which are critical.

The fundamental problem with the current provisions is that they do not create enough incentive for injured workers to return to work. The work capacity test will create a robust way to determine who has an ongoing entitlement to compensation beyond 130 weeks and will do this on the basis of capacity for work. The proposed provisions are consistent with equivalent provisions interstate and they, of course, were endorsed in the Clayton report.

The committee divided on the amendments:

AYES (3)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Evans, A.L.	Schaefer, C.V.
Darley, J.A.	Gago, G.E.

Majority of 9 for the noes.

Amendments thus negatived.

The Hon. M. PARNELL: If it is convenient for the committee, I will move amendments 3, 4 and 5. They are all to clause 15. I move:

Page 21—

Lines 16 to 22—Delete subsection (2) and substitute:

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

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

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

(c) that the employer from whose employment the disability arose is in breach of section 58B on account of not providing suitable employment for the worker under the requirements of that section (unless that section does not apply (or has ceased to apply) in the particular case); or

(d) that the worker has participated to a reasonable extent in any rehabilitation programs provided by the Corporation for the purposes of this Act and that further rehabilitation under this Act is reasonably likely to increase the worker's level of work capacity.

Lines 30 and 31—Delete 'subsection (2) on the ground that the Corporation is not satisfied under the requirements of that subsection' and substitute:

Paragraph (a) of subsection (2) on the ground that the Corporation is not satisfied under the requirements of that paragraph

Page 22, lines 7 and 8—Delete 'matters specified in' and substitute:

Ground or grounds on which the entitlement arose under

The purpose of these amendments is to provide for a fairer, partial incapacity test. The amendments are similar in some ways to the amendments that I have moved to other sections, in particular, section 35B. One of the major elements of unfairness in the government's proposal is this requirement that it be likely that a worker will continue indefinitely to be incapable of undertaking further or additional work which increases the worker's current weekly earnings.

It is in relation to partial incapacity, so the test is in relation to further or additional work which increases the worker's currently weekly earnings rather than any work at all. Again, I say there is no justification for stopping workers' income based on guesses about what they might be able to do in the future. But also under the government's proposed section 35C, if the injured worker has not been able to get a job, even if it is due to discrimination against injured workers, their weekly payments are stopped altogether.

Under the amendments I propose, if the injured worker is able to meet the government's proposed requirements (which will still be extremely difficult, to say the least), they will continue to be entitled to weekly payments. In the amendments I have moved there are other situations in

which a partially incapacitated worker will be able to continue to receive weekly payments. The first addition I have moved would allow for partially incapacitated workers to continue to receive weekly payments if the injured worker can establish that they are in employment and that the worker is taking reasonable steps to secure further or additional employment or work up to his or her level of work capacity.

So that means that the injured worker has actually managed to get a job, which can be difficult, and that they are doing what they reasonably can to get more work. So perhaps the major difference between my approach and the government's approach is that under the government's proposal it does not matter how hard the injured worker tries to get a better job or more hours, it does not matter what they do to try to get a better job or more hours, if they cannot get that better job or more hours, they lose their weekly payments, and I think that is fundamentally unfair.

The next way that a partially incapacitated injured worker can establish an entitlement is if the employer, where they were hurt in the first place, is legally obliged to provide them with work and has not done so. Section 58B of the act places obligations on employers, with various exceptions, to provide work to injured workers. The feedback I have received is that this provision is widely flouted. Only WorkCover has the right to enforce that obligation, and by and large it does not enforce it. I understand that there has never been a prosecution by WorkCover of an employer for breaching that obligation.

So my amendment essentially is for—as the former Howard government used to refer to it in social security terms—a bit of mutual obligation. If the employer breaks the law and does not provide work to the injured worker, then the injured worker should not have their payment stopped for not having a job. It is a basic amendment. The employer is legally obliged to provide work, but they do not, so the injured worker should not lose their income for not being able to get a job. The final basis for a worker's payments continuing that is added by my amendment is where there is more useful rehabilitation that should take place.

This will not be of any assistance to workers who themselves do not try to participate in rehabilitation: it will only assist injured workers who have tried to be rehabilitated but regarding whom there is still more to do. When injured workers continuing the rehabilitation process is likely to increase their ability to work, their income support should continue while they are still in the rehabilitation process. This is particularly important, given the shocking track record of WorkCover in failing to provide decent rehabilitation in a timely way. If we genuinely want to rehabilitate injured workers, they must continue to receive income support while that is going on, and that is what the last element of my amendment is all about.

Permanently partially incapacitated workers are probably the single biggest financial losers in this bill, and this amendment is about approaching and dealing with the huge hurdles they have to getting back to work and making sure they receive the income support they deserve in a decent and realistic way. I urge all members to support this amendment, which I will divide on. It is a test for amendments 4 and 5 also.

The Hon. P. HOLLOWAY: The government opposes these three amendments. It is important to make the point that a worker with work capacity and working at that capacity will continue to have an entitlement beyond 130 weeks. I will read out what the Clayton review says on this subject, as follows:

> The position taken by the review involves two book-end propositions: the first is that the South Australian scheme needs to be very strongly focused upon the attainment of early and durable return to work. The second is that there does need to be a clear understanding of the boundary point of the system in terms of the weekly payments of compensation to workers who have a current work capacity. This point in the review's recommendation is that 130 weeks of benefits duration—not only should this point be clear but the process for determining ongoing benefit entitlement should also be so characterised.

The government opposes this amendment as it would make it much harder for WorkCover to cease or reduce weekly payments after 130 weeks' incapacity where a worker has some level of work capacity. This would strike at the very heart of the culture shift the government is trying to achieve through this bill, namely, fostering a greater focus on rehabilitation, return to work among all stakeholders and encouraging injured workers to pursue these opportunities rather than stay on long-term compensation to their detriment. This series of amendments would basically render useless the entire work capacity review process. It could not work effectively if WorkCover was so constricted in its decision-making powers.

The Hon. SANDRA KANCK: I indicate Democrat support for this amendment. As currently worded in the bill, it seems that a worker who has a disability will be treated as if somehow they are to blame. I know from correspondence I have had from people—emails and

letters—about this bill there is a recurring theme in many of them about people who have disabilities as a result of their work injuries finding it very difficult to get another job.

As soon as they let on that they are carrying an injury they are no longer considered for the position they are trying to obtain. I think that the amendment that the Hon. Mark Parnell has moved will make it a little more reasonable, I suppose, for workers in that situation. It is for that reason that I support the amendment. I think it is just a much more humane approach to injured workers.

The committee divided on the amendments:

AYES (2)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Evans, A.L.	Schaefer, C.V.
Darley, J.A.	Gago, G.E.

Majority of 10 for the noes.

Amendments thus negatived; clause passed.

Clause 16.

The Hon. M. PARNELL: The deed has been done in relation to clause 15, but there is still some damage to be repaired, and clause 16 provides the committee with a further opportunity to redeem itself. This clause relates to the discontinuance of weekly payments. I have a couple of very brief comments before I move my amendment. Again, there is a trifecta of amendments, but I will get to that in a second. My comments (and then ultimately a question of the minister) relate to clause 16(2). This deals with section 36 of the act, which is about the discontinuance or reduction of weekly payments, and the existing legislation provides for weekly payments to be discontinued if there is a breach of mutuality. Section 36(1a) of the existing act sets out a non-exhaustive list of things that are considered to be breaches of the obligation of mutuality. Included in that list are things such as:

> ...the Corporation has, by written notice to the worker, required the worker to submit to an examination by a recognised medical expert nominated by the Corporation and the worker fails to comply with the requirement within the time allowed in the notice or obstructs the examination;

Another thing in the list is:

> ...the worker refuses or fails to participate in a rehabilitation program under this act or participates in a way that frustrates the objectives of the program;

A third element in the list is:

> ...the worker fails to comply with an obligation under a rehabilitation and return-to-work plan under this act.

And a fourth is:

> ...the worker does anything else that is, apart from this subsection, recognised as a breach of the obligation of mutuality.

The proposal in the government's clause 16(2) is to add the following to that list:

> ...the worker refuses or fails to participate in assessments of the worker's capacity, rehabilitation progress or future employment prospects (including by failing to attend);

It seems to me that there is a fairly broad list of items in terms of the proposals in clause 16(2), and that what is referred to in that clause can be well and truly covered by the existing sections. As I understand it, rehabilitation programs and rehabilitation and return-to-work plans almost without exception require the worker to attend all appointments made for them. That seems to make proposed clause 16(2) redundant. Can the minister advise of any specific case, preferably an

actual decision of the Workers Compensation Tribunal, that establishes that there is a need for clause 16(2)?

The Hon. CARMEL ZOLLO: I am advised that there is no case because the circumstances are not covered by the current act, so there is nothing to test.

The Hon. M. PARNELL: I would like the minister to further clarify that. My point was that, yes, there is a new provision, but aren't the types of situations that could be caught by the new provision already covered by the old provision? Why do we need the new provision?

The Hon. CARMEL ZOLLO: My advice is that they are not the same.

The Hon. M. PARNELL: I am not trying to push this point too far, but it seems that they are the same. Can the minister get some advice as to how they are different? Why am I wrong? Why aren't the circumstances covered by the addition already covered by the existing provisions?

The Hon. CARMEL ZOLLO: I am advised that, if there is no plan or program in place, there is no mandatory requirement to attend an appointment other than with a doctor.

The Hon. M. PARNELL: I foreshadowed that I would be moving these three amendments. I have been reminded that amendments Nos 15, 16 and 17 are, in fact, consequential and relate to the issue of step-downs. I will not be moving them, so we can perhaps proceed to my next amendments under clause 16.

The Hon. M. PARNELL: I move:

Page 22, after line 25—insert:

(2a) Section 36(1b)–after paragraph (b) insert:

or

(c) by virtue only of resigning from employment to undertake study or other employment or work.

This relates to the discontinuance of weekly payments. The issue that I am seeking to address here is that, in relation to a person who is undertaking study or taking another job, it is not in breach of their obligation of mutuality. At present, if an injured worker resigns from their job to try to better themselves through study or to take up other job opportunities, they are likely to be deemed to have breached mutuality and, therefore, their payments can be stopped.

Having a work injury should not lock people into a situation where some of the most important decisions about their lives are subject to a tick off from WorkCover on threat of having their income cut. It might be that a worker is in a dead-in job, with no chance of advancement and they want to take another job that has more opportunities for advancement. My question is: why should they be penalised for doing that? If a worker wants to undertake study to improve their skills, to take up jobs where there are skill shortages, for example, why should they be punished for doing that?

The amendment that I have moved inserts a new paragraph (2a) which refers to those two circumstances; in other words, a person resigning from employment to undertake study or other employment or work. This is an important amendment and I urge all members to support it.

The Hon. CARMEL ZOLLO: My advice is that we are opposing this amendment as it effectively means that a worker could quit their current job and begin studying without having that included in the rehabilitation and return-to-work plan or affecting their workers compensation entitlements. Retraining can already be funded by WorkCover under particular guidelines. It is not appropriate to legislate to allow workers to independently decide to quit their jobs to study and expect that not to breach the obligation of mutuality.

Amendment negatived.

The CHAIRMAN: The next indicated amendment is No. 18, Parnell 2.

The Hon. M. PARNELL: This is the critical amendment for me in clause 16. I will move amendments 18 and 19 together, if I may. They both relate to this clause. I am trying to think whether these amendments are identical or very close, at least, to the Hon. Ann Bressington's amendments 11 and 12, so perhaps we can deal with them together.

The CHAIRMAN: Order! Those in the name of the Hon. Ms Bressington are not identical; they are in between.

The Hon. M. PARNELL: I will just move the first one and regard it as a test for the second one, but I will speak to them both now. I move:

Page 23, lines 19 to 36, page 24, lines 1 to 25—Delete subclause (8) and substitute:

(8) Section 36(4)(b)—delete ', arbitration'

(8a) Section 36(4a)—delete subsection (4a)

My amendments seek to remove one of the very worst elements of this bill. They remove one of the elements about which I have received a great deal of communication and about which there has been a great deal of outrage in the community.

The government's proposals, as we have discussed before in committee, are about starving injured workers into submission when WorkCover makes wrong decisions to cut their income. I think there can be no mistake about this. The government's provision that I am seeking to amend is all about increasing the power of WorkCover and exempt employers to bully workers and to stop them getting access to their legal rights.

Sadly, the government's proposal takes workers compensation in this state back to a situation that Shakespeare recognised as a problem all those centuries ago, where he said, 'A poor man's right in the law is like a fish in a net; it will not out.'

The government's proposal is, in reality, to savagely reduce access to justice, and I will explain why I believe it is so serious. At present, under section 36(4) of the act, if WorkCover or an exempt employer makes a decision that stops or cuts injured workers' weekly payments, if it is disputed within 21 days it is automatically suspended (in other words, payments continue), and when the matter comes before the Workers Compensation Tribunal, the tribunal then exercises a discretion about whether payments continue until the dispute is resolved. If the worker loses the dispute, WorkCover or the exempt employer can recover the payments from the injured worker. Section 36(4)(b) of the current act provides:

The tribunal may further suspend the operation of the decision (from time to time) to allow a reasonable opportunity for resolution of the dispute by conciliation, arbitration or judicial determination (as the case requires) without prejudice to the worker's financial position in the meanwhile.

Those last words 'without prejudice to the worker's financial position in the meanwhile' are the crucial words. The government's clause is designed to prejudice workers' financial position in the meanwhile: that is exactly what it does, and that is what it is about. Under the existing arrangements, WorkCover or the exempt employer cannot end up out of pocket because, if they were right in the first place, they get their money back. So, it is a fine position for them to be in: they cannot lose.

As I understand it, WorkCover has argued for this provision as being necessary to pull into line injured workers who are doing the wrong thing. If that is what it is really about, it should be applied only to situations where it is alleged that the worker has done something wrong.

The government's amendments moved in the other place to this clause, which now form part of the clause as it reached us, are nothing more than a thinly veiled attempt to appear to soften what the government is doing. However, the clause still remains an extremely unfair and inappropriate attack on workers' rights. Following the government amendments in the other place, the clause now includes a provision that says:

...on the application for review, it appears to the WorkCover Ombudsman that it was not reasonably open to the corporation to decide to discontinue the payments, having regard to the circumstances of the case.

Usually when workers' payments are stopped or reduced, that is based on one view of the facts or one view of the medical opinion when there will often be different views. WorkCover will simply say that it preferred one opinion to another, and workers' payments, in practice, will not be restored in the vast majority of cases by the WorkCover Ombudsman, and that is exactly how WorkCover wants it. WorkCover wants to put injured workers in a situation where they cannot afford to stand up for their legal rights because their payments have been stopped.

It is common, I understand, for exempt employers and for WorkCover to stop workers' payments based on the opinion of a doctor who is well known to give opinions adverse to workers and whose opinions are routinely rejected by courts and tribunals. Those workers and their families will suffer when their income is stopped completely, based on a questionable medical opinion. Many injured workers will feel that they have no option but to give in and walk away.

That is what the government's proposal is all about and that is what this amendment is designed to stop. It is a terrible affront to injured workers to use the weapon of cutting payments

during a dispute to prevent disputes. I think that is an appalling way for this system to operate, and that is why I say that this, for me, is a very important amendment. It is an amendment on which many unions and individuals have written to me and urged me to try to reform this clause, and that is why I urge all honourable members to support the amendment.

The Hon. CARMEL ZOLLO: My advice is that the government opposes this amendment because it undermines one of the key objectives of our amendments: providing incentives for workers to return to work. The current act allows a worker to dispute the cessation of their income maintenance and have it immediately reinstated until the dispute is settled. This situation is repeated nowhere else in Australia. This effectively encourages the worker to prolong the dispute as long as possible to continue the payments and it reduces their will to work towards a settlement and refocuses their energies on rehabilitation and return to work.

The expert advice of the Clayton review is that the existing provisions are a major disincentive to effective rehabilitation, early dispute resolution and return to work. To protect injured workers from poor decision-making, we have also provided a safety net by giving the WorkCover Ombudsman the power, in certain circumstances, to reinstate weekly earnings.

The Hon. SANDRA KANCK: I indicate that the Hon. Ann Bressington has an amendment on file that is very similar to the Hon. Mark Parnell's, except that I think the Hon Mark Parnell's amendment goes one step further. According to the information that the Hon. Ann Bressington's office has given to me, she is aiming to prevent the corporation from starving an injured worker who disputes the decision by a claims manager or executive of WorkCover, so I think it is appropriate to indicate support for the Hon. Mark Parnell's amendment on behalf of the Hon. Ann Bressington, and also for myself, but I think it is important that the—

The CHAIRMAN: The government might accept that out of the goodness of its heart. It is not up to me.

The Hon. SANDRA KANCK: I think it is important even though she is not here that her intention should be recorded for posterity that she was also trying to deal with this particular issue. I also speak for myself in indicating support for the Hon Mark Parnell's amendment.

The CHAIRMAN: I think the similarity between the two amendments makes it quite clear that the Hon. Ms Bressington was going along the same lines.

The committee divided on the amendment:

AYES (3)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Darley, J.A.	Schaefer, C.V.
Evans, A.L.	Gago, G.E.

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: My amendment No.19 is consequential, so I will not speak to it and I will not vote on it, but I would like *Hansard* to record it, so I move:

Page 24, lines 36 to 42, page 25 lines 1 to 29—Delete subsections (15), (16) and (17)

Amendment negatived; clause passed.

Clause 17.

The Hon. M. PARNELL: I have three amendments to clause 17 but, before I move them, I will ask some questions of the minister. This clause inserts a new section 37, which relates to the calculation of the average weekly earnings of a worker for the purpose of making an adjustment

due to the change in a component of the worker's remuneration used to determine average weekly earnings, or a change in the equipment or facilities provided or made available to the worker.

As I understand it, this particular clause was not recommended by the Clayton report. My questions of the minister are: what problems is the clause designed to address, and can the minister provide some examples?

The ACTING CHAIRMAN (Hon. R.P. Wortley): Your amendments Nos 15, 16 and 17 are very similar; are you moving them all together?

The Hon. M. PARNELL: I want to ask some questions of the minister on clause 17 first, but I will move them.

The Hon. CARMEL ZOLLO: My advice is that it is anticipated that this proposal will improve the efficiency and effectiveness of claims administration by reducing the number of adjustment related disputes relating to the calculation of AWE, thus ensuring that injured workers are compensated appropriately in a timely manner. The inclusion of this clause gives WorkCover the authority to redetermine AWE, which it does not currently have the power to do.

Other than section 39, there is no other existing provision within the WRCA that allows WorkCover to redetermine average weekly earnings (AWE). Anecdotal experience suggests that non-cash benefits associated with remuneration packages, such as cars, phones and/or laptops, are not typically included in the initial calculation of workers' average weekly earnings. For workers to have these non-cash benefits included within their average weekly earnings, experience has shown that they generally need to lodge a notice of dispute with the South Australian Workers Compensation Tribunal to have their average weekly earnings redetermined.

Further, I am advised that, in situations where workers are likely to be incapacitated for work for a significant period of time, employers will typically ask for such non-cash benefits to be returned to them until such time as the worker is fit to recommence employment. Approximately 20 per cent of disputes in the scheme relate to the calculation of average weekly earnings and weekly payments, this includes AWE definition, calculation of weekly payments, questions of capacity and adjustments.

The Hon. M. PARNELL: I thank the minister for her answer. I now ask the minister whether she can explain to me the difference between the proposal in the bill and the existing act. This relates to proposed new section 37(1), which includes the following:

> The corporation may, on its own initiative or at the request of the worker, review the calculation of the average weekly earnings of a worker...

Existing section 38 provides:

> ...the Corporation may on its own initiative and shall if requested by a worker or an employer review the amount of the weekly payments made to a worker who has suffered a compensable disability.

Can the minister explain why, in proposed new section 37, there is no mention of any ability of an employer to request that a review takes place under that section?

The Hon. CARMEL ZOLLO: I am advised that at the moment there is no equivalent provision. This amendment allows us to redetermine average weekly earnings for non-cash benefits.

The Hon. M. PARNELL: I thank the minister for that answer, although it is not how I had read it, but I will accept her answer. Before I move my amendments, my final question relates to proposed new section 37(5), which provides:

> An adjustment under this section—
>
> (a) will take effect as an adjustment to the worker's notional weekly earnings (and may therefore increase or reduce weekly payments under this Division); and
>
> (b) operates from a date determined by the Corporation (which may be an antecedent date but not a date that is before the date of the change on which the adjustment is based and not so as to result in a retrospective reduction in weekly payments).

It is complicated wording, but I want the minister to explain how such an adjustment can operate from an antecedent date without being a retrospective reduction in weekly payments. Can the minister give an example of where that could occur?

The Hon. CARMEL ZOLLO: I am advised that it would not work to the worker's detriment in any shape or form. If the compensating authority has been slow in determining the matter, the worker can get benefits in arrears.

The Hon. M. PARNELL: I thank the minister for her answer. Those are my questions on the clause. I have three amendments (Nos. 15, 16 and 17). Effectively, they are all the same issue and relate to parliamentary oversight. It is an issue we have canvassed a number of times, so I move the amendments but will not discuss them further or divide on them. I move:

Page 26—

Lines 1 and 2—Delete 'a designated manner and a designated form' and substitute 'the prescribed manner and form'

Line 4—Delete 'a designated form' and substitute 'the prescribed form'

Lines 28 and 29—Delete 'a designated form' and substitute 'the prescribed form'

Amendments negatived; clause passed.

Clause 18.

The Hon. M. PARNELL: Before moving my amendment I have a couple of questions on the clause, which relates to the two-year review. My understanding was that, in recommending the work capacity review provisions in clause 15 of the bill, the Clayton report intended that they replace existing two-year review provisions in section 38. However, in this bill the government is keeping the two-year review provisions and just adding on the 130-week work capacity review provisions. Can the minister explain, by reference to the Clayton report or elsewhere, why this approach has been taken?

The Hon. CARMEL ZOLLO: My advice is that these provisions need to be retained in order to transition to the new arrangements in clause 15.

The Hon. M. PARNELL: Does that mean that after some transitional period it will be removed?

The Hon. CARMEL ZOLLO: My advice is that it will be redundant.

The Hon. M. PARNELL: Section 38(1a) of the existing act, which is retained under this bill, provides:

If a period of incapacity continues for more than one year, the corporation must conduct a review under this section in the second year of incapacity and in each subsequent year of the incapacity.

That appears to me to mean that the compensating authorities would be obliged to have a review like this at the two-year point as well as the work capacity review at 130 weeks. Is that correct; and if it is, is it an unnecessary duplication?

The Hon. CARMEL ZOLLO: My advice is that that is correct; it can be one and the same process. This is just another matter of transitioning to the new provisions.

The Hon. M. PARNELL: I understand the minister's answer: it can be one and the same process. My question is: will it be one and the same process; and will the minister assure the committee that there will not be two such reviews very close together, as I anticipated in my question?

The Hon. CARMEL ZOLLO: My advice is that it would not be necessary.

The Hon. M. PARNELL: As I understand it, the case law that exists in relation to this legislation has defined the term 'incapacity' as being a reduction in a worker's ability to sell their labour on the open market and, as such, even a fairly minor ongoing injury can be an incapacity. That appears to me to mean that, even if a worker is not receiving weekly payments because of the very harsh 130 week review in clause 15 but they still have some ongoing symptoms and therefore have an ongoing incapacity, compensating authorities will still be obliged to conduct a section 38 review each year, in any event. Will the minister advise whether that is the correct interpretation?

The Hon. CARMEL ZOLLO: My advice is that again this is about transitioning to new provisions and the reviews would apply as set out in clause 15.

The Hon. M. PARNELL: The two amendments I have in relation to this clause (amendments Nos 18 and 19 in the set Parnell 1) relate to the issue of parliamentary oversight of delegated legislation. It is an issue that we have agitated already, so I will not be moving those amendments.

Clause passed.

Clause 19.

The Hon. M. PARNELL: This clause relates to discontinuance due to the passage of time. As I understand it, the government is proposing to delete existing section 38A, as it has essentially shifted the relevant powers into section 36 of the act through an earlier clause. Will the minister confirm whether that is the case and, if it is not the case, why is section 38A being deleted?

The Hon. CARMEL ZOLLO: My advice is that this section of the Workers Rehabilitation Compensation Act becomes obsolete because clause 16 of the Workers Rehabilitation and Compensation (Scheme Review) Amendment Bill 2008 proposes to include this circumstance in a revised section 36 of the WRCA.

Clause passed.

Clause 20.

The Hon. M. PARNELL: I advise the committee that I will not be moving amendment Nos 21 and 22 in 'Parnell-1', but I will move amendment No. 20 in 'Parnell-2'. I therefore move:

Page 27, after line 7—Insert:

(ab) providing advice as to the changes in rates of remuneration that are relevant to the operation of subsection (2)(a)(i); and

This clause relates to economic adjustments to weekly payments, and my amendment relates to providing better information for workers to assist them in making decisions. Subclause (3) of this clause is one of the few positive changes for injured workers in this bill, although it is a relatively minor change. Under existing arrangements, when workers' weekly payments are reviewed after each year of incapacity they are increased, either by reference to an Australian Bureau of Statistics figure or, if the worker so elects, by reference to award or enterprise agreement increases at the workplace where they were injured.

Many workers have felt it an injustice that, just because they are injured, they do not receive the same pay rise as their workmates until many months later. The government has largely addressed this issue, and that is a good thing. My amendment, however, is about ensuring that when workers come to making a decision about whether the ABS figure should be applied or whether an award or enterprise figure should be applied they have the information they need to make an informed decision. WorkCover's practice to date in dealing with these adjustments has been to advise injured workers what the relevant ABS figure is at a given time so that they can take that into account, and it is proper and desirable that that happen.

What my amendment would do is require compensating authorities to advise the injured worker what the relevant award or enterprise agreement figure would be. Now, particularly in the case of severely injured workers, it is likely that, if they are unable to work, they have lost contact with their workplace. There may be a poor relationship between the injured worker and the former employer, with the injured worker being aggrieved having been injured at work and the employer resenting the cost implications of the work injury. For many workers it is no easy thing to establish what the relevant award or enterprise agreement figure would be. For compensating authorities it should be a very easy task.

Exempt employers must know what the figure is as they have to pay it to their own employees. In terms of WorkCover, they need to maintain periodic contact with the employer in managing the claim, and they can easily obtain the information that way. This is a very simple amendment, but it could have serious consequences for injured workers. No doubt in most cases they would want to elect to have their weekly payments adjusted in a way that provides them with the best rise they can get, whether that is ABS or through changes to an industrial award.

My amendment says, 'Let us give them access to this information'; because for many of them it would be very difficult unless they are computer literate, they know the numbers to ring and they know the questions to ask the person who answers an industrial relation-type helpline. Why not make it a requirement that the compensating authority provide that information to them? This is an important amendment. I think it does have implications for injured workers and I urge members to support it.

The Hon. CARMEL ZOLLO: I am advised that this amendment is opposed on the ground that section 39 already requires that adjustments to weekly payments must be based on pay increases that the worker may have been entitled to during that year of incapacity due to any changes to an award or enterprise agreement. We believe it would be unreasonable to put the

onus on WorkCover to identify what awards people are covered by, what adjustments have been made to those awards and, ultimately, we believe that the responsibility rests with the worker. Also, there may be a liability attached to WorkCover if WorkCover gets it wrong.

The Hon. M. PARNELL: I thank the minister for her answer, but I disagree with her assessment of it. It seems to me that it is far easier for WorkCover to get it right than it is for a worker to discover what their former colleagues, of perhaps several years earlier, are now getting. It seems to me to be a very simple provision. It does not, in my view, create so much additional red tape to be an onerous burden. We are asking for the people who have this information at their fingertips to simply advise the injured workers of the two sets of numbers that they have to choose between and, thereby, give the injured worker the best chance of getting the best payment.

We must remember that we are not talking about them getting the full entitlement in terms of what they would have received had they not been injured. It is a step-down entitlement and even a few extra dollars can make a big difference. Therefore I maintain that this amendment should be supported.

The committee divided on the amendment:

AYES (3)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Evans, A.L.	Schaefer, C.V.
Darley, J.A.	Gago, G.E.

Majority of 9 for the noes.

Amendment thus negatived; clause passed.

New clause 20A.

The Hon. M. PARNELL: I move:

Page 27, after line 22—Insert:

20A—Insertion of section 40A

After section 40 insert:

40A—Superannuation

(1) for each payment of compensation under this Division, there will be taken to be a liability to pay an amount into a superannuation fund as if the compensation constituted a payment of wages to the worker.

(2) In connection with the operation of subsection (1)—

(a) the liability under that subsection must be satisfied by—

(i) if the worker is in employment—the worker's employer or, if the worker has 2 or more employers, the worker's employers in proportions determined by agreement between them or, in default of agreement, by the Corporation; and

(ii) if the worker is not in employment—the Corporation; and

(b) the amount of the liability, and the superannuation fund into which the amount must be paid, will be determined in accordance with the regulations.

(3) A superannuation fund under subsection (2)(b) must provide a reasonable level of superannuation after taking into account prevailing community standards.

The Hon. R.D. Lawson: You already lost this.

The Hon. M. PARNELL: No. I have referred to the question of superannuation, but I said earlier that I had not moved it and I am now moving it in relation to superannuation. I think one of

the greatest achievements of the Hawke-Keating federal Labor government was the introduction of compulsory superannuation contributions, and that has played a major role in lifting Australia's retirement savings and our nation's overall level of savings, and there have been very positive economic effects.

In considering this new clause, which is to provide for superannuation payments to be made to injured workers, it is important to remember some of the history around the introduction of compulsory superannuation contributions. During the Hawke-Keating government a series of agreements with the Australian Council of Trade Unions delivered benefits to workers through the Social Security system, the taxation system and compulsory superannuation in exchange for reduced wage outcomes. These benefits, including compulsory superannuation, were negotiated with the government instead of higher wages. So, in essence, compulsory superannuation contributions are part of a worker's wages. They are earnings in exchange for their work, but they are paid in a different form and they are paid at the end of a worker's working life. By taking away their compulsory superannuation contributions, injured workers suffer a real pay cut. They lose the superannuation they received in exchange for moderating their wage demands, and that is not fair.

Consider the position of an apprentice who is catastrophically injured and can never return to work. What sort of retirement income can they expect? The answer is: just the pension, and that is if it still exists by the time they get to age 65, and I do think that that is fair. As I understand it, no other state has a provision like the one I am seeking to incorporate, and I have no difficulty with that. I think if it is a fair provision and, if we are the only state that does it, good for us.

Under real Labor governments, such as the Dunstan government, doing things better and differently and leading the way was a badge of honour, yet so much of the debate we have seen from this government and in relation to this bill is about not leading but following, and taking the worst of what other states have to offer rather than the best. It will not be a surprise if the government claims that this amendment is not feasible because it does not fit with current Australian Taxation Office policy, or some other similar excuse, because that is all it will be: an excuse. We can make this work if we want it to. If the government actually wants to do the right thing by injured workers to make sure they have a decent standard of living in their later years, then I believe the state government can make this happen.

The amendment is not overly prescriptive. It leaves the details of the relevant arrangements to be set by the government by regulation. Many injured workers are shocked when they find that their chance for income security in retirement has been ripped away from them just because they have had a work injury. This is another area that highlights the injustice of the government's position to make South Australian workers second-class citizens compared with workers in every other state by denying them common law rights because, under common law, loss of superannuation contributions is something that is taken into account.

I understand that employers are also aggrieved about the current situation, which they see as an injustice, because their payments of levy to WorkCover are based on their payroll, including superannuation, so employers pay levies to WorkCover based on wages and superannuation, but WorkCover excludes superannuation from what it has to pay injured workers. If members want to see some true progressive reform in relation to workers compensation, they will support this amendment that provides that injured workers can still get superannuation. The amendment is not prescriptive. The amount of the superannuation liability, the fund it is to be paid into, will all be determined by regulations. This is an enabling amendment that allows injured workers to get effective employer contributions for their retirement.

The Hon. P. HOLLOWAY: The government opposes this amendment, as employers' general obligation to pay superannuation is a commonwealth matter covered by the Superannuation Guarantee Administration Act of 1992. Superannuation is calculated as a percentage of an employee's ordinary time earnings, which is defined in section 6(1) of that act. While that definition does not mention workers compensation payments, subsequent Australian Tax Office rulings, the most current being SGR94/4, have clearly indicated that workers compensation payments are not to be included in ordinary time earnings as they are not payments for work actually performed. The ATO superannuation rulings do not distinguish workers compensation payments paid by the employer instead of a compensating authority. The worker is not actually working for the money they are receiving and it is not included in the earnings base.

I point out that the current arrangements are consistent with the equivalent interstate provisions. If we were to adopt this amendment moved by the Hon. Mark Parnell, it would result in significant new costs for employers not applicable in other Australian jurisdictions and would therefore impact upon the competitiveness of South Australian employers. Recently in its budget

Victoria reduced the rate of the WorkCover levy employers pay down to just a little less than 1.4 per cent and we are at 3 per cent. The differential between the two states—Victoria and South Australia, the two manufacturing states—five years ago was around .7 per cent and it is now 1.6 per cent. If we are to have measures like this put in, and if all Mark Parnell's amendments in this bill got up, we would have to increase the levy rate for employers. Just this amendment alone would add 9 per cent to the pay-out in relation to our scheme relative to every other state's scheme, so the differential in levies would grow beyond the 1.6 per cent-plus difference that it is already with Victoria.

It is all very well for the Hon. Mark Parnell to talk about Dunstan being progressive and so on, but it would not be very progressive if we had totally uncompetitive costs for employing people in this state, particularly in the manufacturing industries, relative to our neighbouring states. We all know we have to be competitive in other tax rates, and if we allow the differential to grow too much it must mean that anyone who wants to be involved in the manufacturing industry would go to Victoria or other states with lower rates rather than come here. We have to remain competitive if we are to provide jobs, so it is not just a matter of looking after injured workers. We also have to provide jobs in our state and be competitive with other parts of Australia. It really is disingenuous of the Hon. Mark Parnell to just look at the whole issue in isolation, as if one can totally focus on it from the one perspective of what this bill might do to injured workers.

There is a far broader context in which governments have to consider measures such as this, and this amendment illustrates that better than most. It is not in the interests of the South Australian workforce to add a significant additional impact on the competitiveness of our employers. Already the differentials that we have in workers compensation rates are starting to have an impact on the attractiveness of South Australia as a destination for employment, particularly in some of the manufacturing sectors. If we were to take up these sorts of arrangements, combined with all the other amendments moved by the Hon. Mark Parnell, we would have much greater difficulty, indeed, in providing employment of that nature in our state. Really, this is why we must oppose the amendment.

The CHAIRMAN: Yesterday you moved an amendment in relation to 'any prescribed allowances' under new section 4, which provides:

> (14) 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.

As a result of your amendment being defeated and new section 4(14) remaining in the bill, how does it allow for an amendment such as you are seeking here?

The Hon. M. PARNELL: My understanding is that I would seek to have clause 6 recommitted if this amendment was successful. Perhaps I should have moved an amendment earlier. I can take advice now from parliamentary counsel, if that would assist.

The CHAIRMAN: Well, if this amendment gets defeated it solves the problem, of course. Otherwise, if this amendment is carried then we have a dog's breakfast.

The Hon. M. PARNELL: We will test it and the problem may evaporate shortly. I do need to respond to what the minister said. I have been mindful of issues such as the unfunded liability and the competitiveness of South Australian businesses. The point that was made during the second reading debate—and we do not need to go over it in great detail now—is that if South Australia is already the cheapest place to do business with WorkCover levies already higher than other states, then it is a bit rich to say that if injured—

The Hon. P. Holloway: We are losing that benefit because the gap is narrowing rapidly.

The CHAIRMAN: Order! We will not start a debate.

The Hon. M. PARNELL: My point is that the government seems concerned that whilst we might be the cheapest place to do business that might evaporate if we add too many imposts. The point is that the government is already cutting the levies of employers, and it does not need to do that. It is counterproductive to reducing the unfunded liability. In relation to businesses not wanting to come to South Australia because we have a socially progressive measure which provides that injured workers can continue to get their superannuation payment, I would think that when we talk about a place being attractive to business we are also talking about its being attractive to workers.

What better advertisement for South Australia than to say, 'Come to South Australia. If you are unfortunate enough to be injured, we have the best workers compensation scheme.'

The Hon. P. Holloway interjecting:

The Hon. M. PARNELL: I will test the will of the committee on this provision. I am not convinced that the impediments that the minister has put in place of this provision are not surmountable—I think they are—and I would be delighted to partake of the dog's breakfast and go back and recommit some clauses if we need to later on due to some oversight. But for now this is an important amendment, and I want to test the will of the committee.

The committee divided on the new clause:

AYES (3)

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

NOES (13)

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

PAIRS (2)

Bressington, A.	Dawkins, J.S.L.

Majority of10 for the noes.

New clause thus negatived.

Clause 21 passed.

Clause 22.

The Hon. M. PARNELL: I have some questions of the minister in relation to clause 22 which I would like to put before I deal with the amendments. Clause 22 relates to the redemption of liabilities. It appears to me, from reading this clause, that the ability to redeem entitlements to medical expenses will remain essentially as it is now. My question is: why has the government retained the existing arrangements for medical expenses but has made quite radical changes in relation to redemptions for weekly payments? Why is there a different treatment for the two types of payment?

The Hon. P. HOLLOWAY: The principal reason is that the use of medical redemptions is minimal now. This amendment focuses on the redemption of weekly payments. In his report, Mr Clayton, and a number of others, have talked about what they describe as a 'lump sum culture' that has developed, and the principal reason the government has moved this clause is essentially to address that.

The Hon. M. PARNELL: The issue of redemptions is probably the one on which I have received the most conflicting opinion and advice from different stakeholders. My understanding is that, whilst WorkCover's handling of redemptions is seen by the government and WorkCover itself to have created major problems, the exempt insurers, on the other hand, feel that they have been able to use redemptions very successfully as a liability management tool, and they point to the improved success of their schemes. My question to the government is: why has WorkCover failed so badly, whereas the exempt employers claim to have succeeded in relation to exemptions?

The Hon. P. HOLLOWAY: I would not say it is comparing apples and pears but, clearly, there are significant differences between exempt employers and WorkCover. One would really have to look at the individual circumstances of the particular exempt employers to try to answer that question. I do not think this is really productive. We could debate some of these issues all night but I do not think it is really going to help us in relation to this particular clause.

The Hon. M. PARNELL: My next question relates to proposed new section 42(2)(e)(iii), which provides:

The tribunal, constituted of a presidential member, has determined, on the basis of a joint application made to the tribunal by the worker and the corporation, in contemplation of an agreement being entered into under this

section, that the continuation of weekly payments is contrary to the best interests of the worker from a psychological and social perspective.

The question for me relates to the social perspective. Can the minister explain how he envisages the tribunal will approach the question of determining what is in the best interests of the worker from a social perspective and, in particular, indicate whether that refers to the perspective of society as a whole, or whether it is something narrower; and, if it is narrower, what is it?

The Hon. P. HOLLOWAY: I am advised that Mr Clayton, in his report, said that redemptions should be used in exceptional circumstances. I understand he gave an example of someone who had an aggressive terminal illness who may be in a position by way of a redemption to finalise their financial affairs before they pass on. So, I think it is in those exceptional circumstances that he suggested that that should occur, and I think that is really why the third part under section 42(2)(e) appears.

The Hon. M. PARNELL: As I understand it, WorkCover's approach to redemptions of income maintenance has been to say that, if a worker, based on their current income entitlements, is entitled to receive, for example, $100,000 through to retirement age, WorkCover would pay only a percentage by way of redemption. If that is the case, is there a particular actuarial model that WorkCover applies in that regard, and is there any such model or guideline that the minister can table, or any rules that WorkCover or EML apply when determining the maximum amount they will pay for a redemption in given circumstances?

The Hon. P. HOLLOWAY: I am informed that the answer is essentially no, there are not any guidelines, etc. My advice is that the act provides that redemptions are an agreement between WorkCover and the worker concerned.

The Hon. M. PARNELL: As I understand it (and I think the minister partly explained this in his answer to my first question), the major reason the government is moving to heavily restrict the use of redemptions is that it believes they are bad for return to work, and I think the minister referred to the lump sum culture in that regard. As I understand it, when references have been made to a lump sum culture, what that really means is that WorkCover alleges that injured workers are intentionally not returning to work when they could in order to try to get a redemption payment.

I have a number of questions to try to test whether that is really the case, and the first question is: is there any actual evidence to establish this claim that workers are choosing not to return to work in order to get a redemption?

The Hon. P. HOLLOWAY: That is obviously a leading question from the Hon. Mark Parnell. We can just go back to the basic statistics that characterise our WorkCover scheme as having the worst return-to-work record in Australia, and there are obviously a number of reasons why that is the case. There are two features of the WorkCover scheme in this state that stand out, and they are not unrelated. One, of course, is that it has the highest (and significantly higher) levy rates of any state scheme and, secondly, it has the poorest return-to-work record (and significantly poorer) of any state scheme.

Those basic statistics obviously demand answering by the government, and I guess that is what this bill is all about. It is a complex issue. A lot of factors are involved in the reasons why our scheme has those two features, but this is one that has obviously been put up by Mr Clayton as one of the contributing factors. I am also advised that there is the New South Wales experience. They moved away from lump sum settlements, and I am advised that their return-to-work rate got better as a consequence of that, or at least it was attributed to that.

The Hon. M. PARNELL: Following on from the minister's answer, as I understand it, the incentive arrangements for claims agents that were put in place by the former Liberal government meant that the insurance companies outsourced claims management to receive the same reward payment for getting a worker off the system via redemption as they did for getting an injured worker back to work and, as a result, because spending someone else's money is much easier than achieving a genuine return to work, by the time this government came to power in 2000, almost all the discontinuances of longer-term injured workers were happening via redemption.

I think what that means is that the claims managers had effectively been de-skilled and had lost the knowledge, skills and abilities required to get people back to work. My question of the minister is: what research has the government done to see whether this lump sum culture that they talk about is really a culture on the part of the claims managers rather than the injured workers because, if that is the case, it would seem to me that we could fix that without legislation, in terms of WorkCover case managers, by simply telling them what the rules are and that they are to apply

in considering redemptions. I acknowledge that the minister said there are no rules, but it seems that we could approach this problem from the perspective of dealing with the claims managers rather than just dealing with the workers.

The Hon. P. HOLLOWAY: In relation to the first point, I will not dispute what the honourable member said about the previous scheme. I understand that with the old agents it was observed that their remuneration was increasing but also the liability was increasing, and it was a consequence of that that WorkCover has an improved contract with EML to address what were demonstrated to be those original flaws.

The Hon. M. PARNELL: As I understand it, over the past few years WorkCover has attempted to break the lump sum culture, as it has been referred to, by putting out the message that there will be far fewer redemptions. For the first three-quarters of each financial year that has essentially been true, as I understand it, but in the last financial quarter of the past few financial years there has been a mad rush by WorkCover to do redemptions, and that has totally destroyed their efforts to send the message that there will be fewer redemptions. Can the minister advise whether that analysis is basically correct and whether the rush for exemptions is focused on the final quarter of each year? If the minister has any figures, I would be pleased to hear them.

The Hon. P. HOLLOWAY: I am advised that there was a spike in the June quarter of 2006 reflecting the arrangements as we moved to the single agent, EML, so there was a spike in that year that reflected those changes. I believe it was a one-off situation, and I am advised that we can table the redemption information. We do not have it now, but we can do that tomorrow in relation to other financial years. There was that spike in 2006 in the last quarter of the financial year reflecting those particular movements to a single agent.

The Hon. M. PARNELL: I thank the minister for his answer and for that commitment. My next question is in relation to the Self Insurers of South Australia and, in fact, whether that body or any self-insurers individually have made submissions to the government about clause 22 or redemptions generally. Can the minister advise the committee as to the thrust of that sector's view on redemptions?

The Hon. P. HOLLOWAY: I advise that the government is well aware that self-insurers do not like the changes that are being made. That is a fair reflection. However, the government believes that there are three factors which mitigate against that. First of all, there is a better return to work up front; secondly, there is a stronger work capacity test after 130 weeks; and, thirdly, because of the unique arrangements that apply to self-insurers, they have an advantage at managing their claims. When one puts those three together, we believe that that justifies the measures taken, even though the self-insurers obviously will not like the changes.

The Hon. M. PARNELL: I will shortly move an amendment that deals with that issue, because I think the minister is correct in saying that the self-insurers do not like it. One of the self-insurers is the state government, and I am interested to know what advice has been given to the state government by the public servants who run the state government's workers compensation about the proposal in clause 22.

The Hon. P. HOLLOWAY: I cannot enlighten the committee in relation to that. The minister may or may not have had any specific advice in relation to that, but I cannot enlighten the committee on it.

The Hon. M. PARNELL: It might be an opportune time for me now to move my amendments to clause 22. The amendments are numbered 22 and 23.

The CHAIRMAN: We just want 22.

The Hon. M. PARNELL: I will move the first one but I will regard it as a test for the second. I move:

Page 27, after line 26—Insert:

(a1) Section 42(1)—delete 'the worker and the corporation' and substitute:

an eligible worker and the relevant self-insured employer.

There are two main elements to this amendment. The first element deals with exempt employers, or self-insured employers, and that aspect of the amendment is based on the simple principle that 'if it ain't broke you don't fix it'. There are many strongly differing views, as I have said, on the pros and cons of redemptions in terms of the WorkCover Corporation, but all the opinion that I have heard about redemptions and exempt employers goes one way. They say that it is a good thing: workers want them and exempt employers see it as a good way to manage their liabilities.

Because of the vastly differing opinion about the merits of redemptions for claims managed by WorkCover, I am not opposing the government's amendments in respect of claims managed by WorkCover, but I think it is a totally different situation when it comes to the exempts (the self-insured). Just because WorkCover cannot competently use redemptions should not mean that the exempts lose the option as well.

The minister has more or less said that they do not want two sets of rules for the two types of employers. My view is that the approach taken by this parliament should be nuanced and we should take account of relevant differences where they exist. Very clearly, there is a major difference between the ability of WorkCover to manage using redemptions and the ability of the exempt employers.

The second element of my amendment—and I will speak to this now to save doing it later—relates to workers who have already been on the workers compensation scheme for a substantial period of time. That aspect of the amendment will ameliorate, to some extent, the harsh and unfair retrospective elements of this legislation and allow long-term injured workers to exit the scheme with some dignity and financial security.

This parliament, like most parliaments, has been loath to make retrospective changes to the law, but we are doing it here in this bill. Advocates for injured workers tell me that many injured workers have expressed shock and disbelief at the retrospective applications of these laws. I think that these workers do deserve the ability to exit the scheme with dignity and with financial security and so that is what the second part of my amendment seeks to do.

The Hon. P. HOLLOWAY: The government opposes the amendment on the grounds that it further restricts the availability of section 42 redemptions to workers whose entitlement to compensation arose from employment by a self-insured employer. The workers whose entitlement to compensation arose from employment by a registered employer would be excluded under the Hon. Mr Parnell's amendment, thereby making it inequitable and discriminatory in nature.

Under the government's amendment, all workers would be eligible for a redemption payment subject to the relevant eligibility criteria. There are no policy grounds on which to base the distinction between workers of a self-insured employer and a registered employer. I will point out for the benefit of the committee that I am advised that 62 per cent of injured workers are under the WorkCover scheme and 38 per cent, which would include public servants, are subject to self-insurance. So, the capacity is there for a significant inequity.

I should also point out for the benefit of the committee, that, under the government's proposal, for those workers who had been on the scheme for more than three years there would be an additional year's transitional provision for this measure to apply. Essentially, those arguments also apply for the next amendment, so I will not argue it again, either.

The committee divided on the amendment:

AYES (3)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Evans, A.L.	Schaefer, C.V.
Hood, D.G.E.	Gago, G.E.

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 27, lines 28 to 36 and page 28, lines 1 to 7—Delete subclause (2) and substitute:

(2) Section 42(2)(c)—Delete paragraph (c)

(3) Section 42(4)—Delete 'the Corporation notifies a worker' and substitute: a self-insured employer notifies an eligible worker

(4) Section 42(4)—Delete 'the Corporation' and substitute: the self-insured employer

(5) Section 42(5)—Delete 'the Corporation' and substitute: the self-insured employer

(6) Section 42—After subsection (9) insert:

(9a) In addition, a designated worker (being, if the worker is also an eligible worker, a worker who has not obtained a redemption under a preceding subsection) is entitled to a capital payment to redeem all liabilities referred to in subsection (1) if the worker has received competent professional advice about the consequences of redemption.

(9b) The amount paid on a redemption under subsection (9a) will be determined after taking into account and applying (as relevant)—

(a) discounting and other factors prescribed by the regulations; and

(b) if the Corporation thinks fit—the advice of an actuary nominated by the Corporation.

(7) Section 42-after subsection (11) insert:

(12) In this section—

designated worker means a worker (whether or not an eligible worker) who has been paid compensation under this Division on account of an incapacity for work arising in respect of a particular compensable disability for a period exceeding 130 weeks (whether consecutive or not);

eligible worker means a worker whose entitlement to compensation arose from employment by a self-insured employer.

Amendment negatived.

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

Page 27, lines 28 to 36, page 28, lines 1 to 7—Delete subclause (2) and substitute:

(2) Section 42—After subsection(11) insert:

(12) An agreement must not be entered into under this section if it is inconsistent with the redemption guidelines.

(13) The redemption guidelines will not apply to self-insured employers.

(14) In this section—

'redemption guidelines' means guidelines published by the minister from time to time in the *Gazette* for the purposes of this section.

This amendment relates to redemptions and aims to address concerns raised by the government and the WorkCover Corporation regarding individuals who are accused (I believe unfairly) of hanging on for lump sum payouts. Honourable members will note that it is only binding on the WorkCover Corporation and not on self-insured employers.

There is no doubt that there are many people who are not able to return to work, and these people should have their claims finalised and be compensated by way of redemption. The government's approach has been to make it even more difficult for individuals to be compensated for their injuries by way of redemption through introducing extra and (many would say) unreasonable criteria which would need to be addressed. In effect, the changes will amount to the abandoning of redemptions and consequently the removal of one effective tool available to workers and employers to reach a resolution where it is inappropriate for the employment relationship to continue—or even when it is simply more preferable for the relationship to be severed for the benefit of both parties.

Given the unlikelihood of the government's amendments being opposed by a majority of members, this amendment attempts to achieve some reasonable concessions, and I urge honourable members to support it. It would allow for flexibility and discretion when considering redemptions, whilst also providing for situations where it is inappropriate for the employment relationship to continue or when all parties agree that a redemption would be beneficial to both. It would still have the intended purpose of restricting redemptions and expose those who simply unreasonably hang on for a lump sum payout—thus alleviating any concerns regarding the apparent existence of a compensation culture.

I stress again that, when drafting this amendment (along with several others), the intention was to provide an alternative which was better than what is currently proposed but which was also likely to gain the support of other honourable members. Further, it should be reiterated that the purpose of the amendment is to ensure that the minister exercised discretion when determining what the guidelines will include so as to enable redemptions where they are beneficial to both parties. It is not intended to effectively ban redemptions in those situations. I ask honourable members to support the amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment. We have just had the argument, with the previous issue of redemptions, about having separate guidelines for self-insured employers as opposed to those covered by the WorkCover scheme; essentially we have already had the debate with the previous amendment. More generally, the government opposes the amendment because it has just proposed to significantly restrict redemptions, and it stands by that amendment. The redemptions are simply not sustainable for the scheme due to what we have called a lump sum culture, and we trust their minimisation will help restore the scheme to full funding and ultimately reduce its cost.

The Hon. M. PARNELL: I support the honourable member's amendment—again, for the reasons I gave when moving my own amendments.

The Hon. R.D. LAWSON: It is with some reluctance that I advise the opposition does not support the Hon. Mr Darley's amendment. The question of redemptions and the treatment given to redemptions in this legislation has caused considerable concern in the Liberal Party room, and there are many who consider that the availability of redemptions is an important aspect of a compensation scheme of this kind. We have been most impressed by the fact that the exempt employers appear to have used redemptions effectively over some considerable time.

However, one of a number of factors which led us to conclude that it is appropriate in a measure of this kind (devised by the government to get itself out of a hole of its own making on the backs of injured workers) was that the self-insurers, or the exempt employers through their association, indicated that they were prepared to forgo the capacity that they had enjoyed for a number of years to employer redemptions. They believed and strongly supported the measure introduced by the government and urged us to support it. That was one factor.

Another factor is—and this has been a major consideration for us throughout—that this is part of the government's package to ensure that WorkCover is a viable organisation and that South Australian workers have access to a viable compensation scheme into the future. It is for that reason that we, not without some reluctance, have agreed to go along with this and other aspects of the government's bill. I regret that we will not be able to support the well considered amendment of the Hon. Mr Darley.

Amendment negatived; clause passed.

[Sitting suspended from 22:57 to 23:25]

The Hon. P. HOLLOWAY: I want to clarify an answer I gave to an earlier question from the Hon. Mr Parnell on clause 22 which relates to redemptions. I indicated there were no guidelines concerning how to establish a redemption amount. However, I have been further advised there is a board policy on redemptions which sets criteria for those claims for which it would be appropriate to consider redemptions. WorkCover's Annual Report 2006-07 states:

Redemptions must be agreed by both WorkCover through Employers Mutual acting on our behalf and the injured worker. They are generally only made if they meet the following criteria:

- Section 43 entitlements lump sum compensation for permanent disability have been paid, determined or agreed;
- rehabilitation and return to work efforts have been exhausted, inclusive of any retraining being explored;
- the claim is generally not subject to dispute or disputes in the Workers Compensation tribunal;
- the injury is not serious, catastrophic, requiring ongoing compensation and significant medical treatment; and
- other relevant circumstances are taken into account.

Clause 23.

The Hon. M. PARNELL: I have no amendments to this clause but I do have some questions. This clause deletes Division 4B in relation to loss of earning capacity payments. My understanding is that WorkCover has generally not entered into new loss and earning capacity arrangements with workers for some years. Will the minister advise when WorkCover most recently used this provision?

The Hon. P. HOLLOWAY: The best advice I can come up with is around 1996-97, but we would like to get that advice confirmed. If it is any different we will correct the record.

The Hon. M. PARNELL: I thank the minister. It is my understanding that it has been some time, but if that can be clarified that is terrific. In terms of exempt employers, does the minister have any information about whether they have been using this provision in recent times?

The Hon. P. HOLLOWAY: My advice is that they have not been.

The Hon. M. PARNELL: The final question flowing from those answers is: why not? Rather than remove this section from the legislation, why not leave it there dormant, so that if there was a need to use it (whether it is WorkCover or an exempt or self-insured employer), that they could, in some circumstance, decide to use it later on? The question is: what is gained by removing it from the legislation? Why can't it just be left dormant for later use, if needed?

The Hon. P. HOLLOWAY: My advice is that the loss of earning capacity provisions were introduced in July 1993. The original intention of the loss of earning capacity was to convert the weekly payments of workers who were on weekly payments for a period of greater than two years to capital loss lump sum payments where they had no prospect of a return to work in the foreseeable future. Loss of earning capacity assessments and, therefore, loss of earning capacity payments were for periods of no less than one year and generally for two years, but not more.

WorkCover received legal advice that, as they were considered capital payments, they were not assessable for income tax purposes. One of the adverse consequences of applying the loss of earning capacity provisions is that workers are no longer subject to the provisions in section 36 of the Workers Rehabilitation and Compensation Act relating to discontinuance and reduction of weekly payments, as they are no longer in receipt of weekly payments. Loss of earning capacity payments have received criticism for being unfair as workers have tended to spend the money quickly and then were left with no income support.

Clause passed.

Clause 24.

The Hon. M. PARNELL: I move:

Page 28, line 22—Delete 'Schedule 3' and substitute:

Schedule 2A

In a move that I am sure will warm the cockles of the heart of many members here, I indicate that this is a test for my amendments Nos 24 (which I am moving), 26, 27, 28, 29, 30 and 31. I will deal with 25 separately. Clause 24 relates to section 43 of the act. Section 43 provides for lump sum compensation for a worker's non-economic loss and it substitutes a number of new provisions in a new section 43. My amendments are all aimed at ensuring that workers are no worse off under the government's proposals, with the exception of the threshold issue, which I will come to and deal with separately in my amendment No. 25. As I understand it, it is fairly uncontroversial that the area where WorkCover has concerns about its liabilities is in relation to income compensation, and that is what the concerns about the unfunded liabilities are largely about.

As I understand it, there are no particular concerns about non-economic loss payments increasing liabilities inappropriately. When that is the case, I say that there is simply no basis upon which injured workers should be left worse off; in other words, this is not part of the problem. One reason why (despite all the government's promotion of its increase in the prescribed sum for these purposes) there are still major concerns in this area is that the government has refused to release the regulations and guidelines that will dictate how workers' entitlements will be calculated.

If the government wanted to allay these concerns, it could simply release those guidelines and regulations. The fact that it has steadfastly refused to do so does not inspire confidence. When there is no problem in terms of the unfunded liability with these payments, the position that I take is to say: why not make sure that workers cannot be worse off? The government's so-called no disadvantage provision, even though I say it is not a real no disadvantage provision, is something of an attempt to deal with this issue, but it does not allow the injured worker to make an informed

decision, whereas my amendment does. I will not read out all of the amendments, but they do all relate to that issue of workers not being worse off, and I urge members to support them.

The Hon. P. HOLLOWAY: Clause 24 of the bill provides a new framework for determining permanent impairment. WorkCover will use the American Medical Association guidelines, which are widely used. The section will increase the lump sums available. This clause is not about reducing expenditure. I also indicate that the guidelines in relation to lump sum compensation will be developed with stakeholders and then gazetted. So I think they are the key messages of the clause.

The government opposes the amendment moved by the Hon. Mark Parnell because it is superfluous and unnecessary and merely replicates the government's original proposal. Many entitlements under section 43, I am advised, are made available to compensate comparatively minor disabilities, with the exception of the supplementary benefit available under section 43(7a) of the Workers Rehabilitation and Compensation Act. The current South Australian legislation does little to weight the expenditure on lump sums in favour of the most seriously injured. In South Australia the assessment of permanent disability is a significant contributor to the level of disputes.

I am advised that section 43 disputes in 2005-06 constituted 22.7 per cent of all non-exempt disputes, and they do little to further the management of the claim and the return to work process. With the exception of claims for noise-induced hearing loss, which has a threshold of 5 per cent, no thresholds currently apply in South Australia. The existence of thresholds is a key design feature which weights the payment of lump sums for non-economic loss to the most seriously injured.

The committee divided on the amendment:

AYES (3)

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

NOES (12)

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

PAIRS (6)

Bressington, A.	Dawkins, J.S.L.
Evans, A.L.	Schaefer, C.V.
Darley, J.A.	Gago, G.E.

Majority of 9 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 28, lines 25 to 28—Delete subsections (4) and (5).

This amendment deals with the issue of thresholds, and the minister started to talk about thresholds in his answer to my question previously. The amendment is to delete new subsections (4) and (5) in new section 43. Subsection (4) provides:

> An entitlement does not arise under this section if the worker's degree of permanent impairment is less than 5 per cent.

Subsection (5) states:

> An entitlement does not arise under this section in relation to a psychiatric impairment.

My amendment does two things in removing both those provisions: first, it deletes what I say is a very unfair and immoral rule that workers who end up with a permanent loss of function of less than 5 per cent of their whole body receive not one cent of compensation for their non-economic loss, and it also removes the ban on non-economic loss compensation for psychiatric injuries. I will speak first to the issue of the 5 per cent threshold.

Many members here have children who are now in the workforce, and many young kids often start out in hospitality, in pubs and so on. Let us consider the position of a young girl paying her way through university by working in a pub (I will call her Sophie for this example). One night at

work Sophie is picking up dirty glasses from tables in the pub towards the end of the night when drunken patrons take offence at her collecting the empty glasses. For whatever reason, they get into their adult heads that it is her fault; they push her, she slips and smashes her face into the corner of a table.

Sophie always took a lot of pride in her appearance but, as a result of these drunken louts, she now has a scar on her face. Some members might think that is not a big deal but to Sophie it is a very big deal. The scar is not seen to be a 5 per cent whole body disfigurement so Sophie receives no compensation at all for being scarred for life. That is the impact of the government's provision. Members should ask themselves, if that were their son or daughter, whether they would think that is fair.

I will give another example. David hurts his knee at work and he needs surgery. The first surgery does not go well and he suffers a lot of pain. He then has to have a second lot of surgery which goes much better and David gets a fair amount of improvement. Both lots of surgery involve pain, which continues through the process of rehabilitating the joint. Once the injury settles down, David's loss of function is 4.8 per cent; so David gets not 1¢ compensation for his pain or for the fact that his knee will never be quite the same again.

I will give a final example. Tim works in construction. Over the years, as is often the case in construction, Tim has a number of different injuries. He ends up with a 4 per cent whole body loss of function due to an injury to his right knee, a 4 per cent whole body loss of function to his left shoulder and a 4 per cent whole body loss of function to his right wrist. It is a 12 per cent whole body loss of function overall but, because of the threshold and the requirement that separate injuries cannot be added together, Tim gets not 1¢ compensation for permanent loss of function. I think this is grossly unfair. I think it is, in fact, immoral. I do not think it is justified by any liability problem in terms of non-economic loss.

In relation to the second part of my amendment, members should consider that some of the workers who suffer the most crippling permanent psychiatric injuries are those workers who put themselves in harm's way for the community; for example, police officers, firefighters and nurses who work in emergency departments. When in the course of looking after us they are exposed to horrendous situations that leave them permanently psychiatrically scarred, under this bill they get nothing. That is not what Clayton recommended and it is not what happens in Victoria (which is the model for much of the rest of this bill). Certainly, if we had common law claims that issue would be well and truly dealt with.

A number of us here have studied law. I can remember quite well one of the first things we studied in tort law was the concept of nervous shock—the sort of psychiatric illness to which our emergency services officers would be potentially subjected every day. These are important amendments. Dealing both with the 5 per cent threshold and with psychiatric illnesses, these are a key amendment for me. I urge all members to support the amendment.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell's amendment deletes the 5 per cent impairment threshold for section 43 lump sum compensation, and also deletes the subsection which specifies that there is lump sum entitlement for psychiatric impairment. The government opposes this amendment.

The existence of an impairment threshold is a key design feature that will allow compensation to be directed towards the most seriously injured. The government intends that the changes to section 43 will not lead to a reduction in expenditure on lump sum compensation. This is about weighting the system towards those with more serious injuries.

The impairment threshold of 5 per cent will remove claims for relatively small payments, which can lead to disputes and which can remove the focus from return-to-work efforts. The impairment threshold of 5 per cent, I am advised, is still far less and, therefore, more advantageous to workers than the scheme which exists in Victoria, where it is 10 per cent.

We also oppose the amendment which seeks to remove the stipulation that an entitlement does not arise in the event of a psychiatric impairment. The inclusion of these entitlements for psychiatric impairment would add a significant cost to the scheme and is not in keeping with best practice management of mental health. The labelling of someone as having a permanent mental health condition works against recovery efforts, where it is vital that the individual believes that improvement is achievable.

The CHAIRMAN: The Hon. Mr Darley has an amendment. I will ask him to move that amendment now.

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

Page 28, lines 25 to 28—Delete subsections (4) and (5) and substitute:

(4) An entitlement does not arise under this section if—

(a) in any case of permanent impairment other than psychiatric impairment—the worker's degree of impairment is less than 5 per cent;

(b) in the case of permanent psychiatric impairment—the worker's degree of impairment is less than 10 per cent.

This amendment reintroduces provisions relating to lump sum payments for psychiatric impairment. Clause 24 of the government's bill provides that, if a worker suffers a compensable disability resulting in permanent impairment as assessed in accordance with section 43A, the worker is entitled to lump sum compensation. An entitlement only arises if the worker's degree of permanent impairment is more than 5 per cent.

However, an entitlement does not arise in relation to psychiatric impairment, as was first proposed under the original bill as introduced by the government. This amendment seeks to reintroduce those provisions as first proposed by the government and to provide an entitlement in relation to psychiatric impairment where the worker's degree of impairment is more than 10 per cent.

One of the issues that has gained a lot of momentum during this debate has been whether or not South Australian workers should have access to common law damages. The general consensus appears to be that access to common law should be reintroduced, and I will be supporting amendments in relation to this, as proposed by other honourable members.

One of the main reasons for the reintroduction of common law is that there is no good reason why an injured worker should be treated differently from, say, a person who has been injured as a result of a car accident when it comes to compensation. The same can be said for psychiatric impairments, particularly given that as a society we have become more aware and, indeed, accepting of the profound effects that psychiatric illnesses can have on an individual's life.

The slightly higher threshold of 10 per cent applicable to this amendment as compared to that regarding physical impairments is intended as a middle-of-the-road approach, taking into account concerns raised with me about psychiatric impairments sometimes being harder to establish than physical impairments. I urge all honourable members to support this amendment.

The Hon. P. HOLLOWAY: The arguments that I made against the Hon. Mr Parnell's amendments would also apply against this amendment. Obviously, Mr Darley's amendment does not deviate as far as the Hon. Mr Parnell's amendments do from the government clause, but the same arguments apply, and that is why we oppose both amendments.

The CHAIRMAN: The question before the chair is that subsections (4) and (5) as proposed to be struck out by the Hons Mr Darley and Mr Parnell stand as printed.

The committee divided on the question:

AYES (12)

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

NOES (3)

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

PAIRS (6)

Dawkins, J.S.L.	Bressington, A.
Schaefer, C.V.	Evans, A.L.
Gago, G.E.	Kanck, S.M.

Majority of 9 for the ayes.

Question thus carried.

Clause 25.

The CHAIRMAN: The next amendment is No. 24, Parnell 1.

The Hon. M. PARNELL: Before I move that amendment, I have a question for the minister. Clause 25 amends section 44, compensation payable on death, weekly payments. Will the minister explain what change of substance to income entitlements in relation to deaths are effected by this clause?

The Hon. P. HOLLOWAY: My advice is that this section deals only with the entitlement of a spouse, domestic partner or dependent child to weekly payments. This clause does not serve to change existing death entitlements but rather only proposes to move entitlements associated with lump sums, funeral benefits and counselling services to a different area within the Workers Rehabilitation and Compensation Act.

The Hon. M. PARNELL: I move:

Page 32, after line 19—insert:

(7a) For the purposes of this section, a person with a physical or mental disability under the care of the worker (and dependent, at least to some extent, on the worker) will be entitled to the same compensation under this section as the compensation payable to a dependent child (having regard to the extent of the person's dependency and on the basis that a reference in this section to a dependent child will be taken to include a reference to such a person).

My amendment proposes to insert a new subsection (7a) into section 44. This amendment is about a situation that I expect would rarely arise, although I am aware of at least one actual case. It is a basic question, for me, of looking after some of the most disadvantaged people in our community. This amendment is about making sure that, where a worker is killed at work and a physically or intellectually disabled person is dependent on the worker who was killed, they get proper income compensation.

I expect that WorkCover will have told the government to argue that this is unnecessary. If that is the argument, my response would be to say that, even if it thinks it is unnecessary, it does no more than make absolutely certain that disabled South Australians (who lose the person they had been dependent on to workplace death) get looked after. I do not think that is too much to ask.

I have had some personal experience in caring for the disabled and one feature that struck me was the fear often held by the parents of disabled children in particular of what would happen to their son or daughter if something were to happen to them. Many of them go to great lengths to try to establish their affairs in such a way that their disabled children will be looked after. However, it might not always be a child; it might be someone else who is dependent on them. I think this is an important amendment and, as I said, I hope it is not needed too often but, if it was only ever used once, I think it would be worth our efforts in having it inserted into the bill.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell's amendment has the effect of creating another category of claimant who may not be a spouse or domestic partner. The government is opposed to this as there is already comprehensive coverage under the Workers Rehabilitation and Compensation Act.

The Hon. M. PARNELL: I am not satisfied with the minister's answer but, given the hour, I will not be dividing on this amendment.

Amendment negatived; clause passed.

Clause 26.

The Hon. M. PARNELL: Can the minister explain the difference between this clause and the existing arrangements for lump sum payments in relation to workplace deaths, in particular, where there are multiple dependants who are entitled to lump sum payments?

The Hon. P. HOLLOWAY: This clause inserts a new section 45A that details the lump sum entitlement to which a dependent spouse, domestic partner or child is entitled on the death of a worker as a result of a work-related injury. Section 45A introduces new definitions of 'child', 'dependent child', 'dependent partner', and 'partially dependent partner' not previously defined under section 44.

This clause is a consequential amendment following the proposed introduction of Victorian provisions with respect to non-economic loss payments. It increases the quantum of lump sums payable upon the death of a worker to 100 per cent of the prescribed sum (that is, $400,000 up from the existing lump sum figure of $230,983). The proposal amends current provisions by apportioning the amount of lump sum payable to dependent or partially dependent partners so that

in situations where the deceased worker has more than one dependent spouse the lump sum payable is shared equally among dependent partners.

The proposal also apportions the amount of lump sum payable to dependent children. An orphan child within this context may still have a live parent but is classified as an orphan child if, at the time of the death of the worker, his or her parent or parents did not provide them with any economic support and such parent was not a dependent domestic partner of the worker.

Clause passed.

Clause 27.

The Hon. M. PARNELL: I have some questions in relation to this clause, and there is an amendment standing in my name. We had said that we would finish at midnight tonight, and I ask the minister whether that is still the government's intention.

The Hon. P. HOLLOWAY: We did have a significant break, so I would like to go on a little longer. We are nowhere near halfway through this bill yet and, given the time, I think we should go on for a while longer, otherwise there is absolutely no chance that we will finish this in the time we have. It is really a matter for the committee but, given the number of clauses we still have to consider, I am certainly happy to proceed for a while longer. If we are not here extra time tonight, we will be here extra time tomorrow night.

The Hon. M. PARNELL: In order to assist the committee in the management of its business, I can say that we have well and truly broken the back of this. I know the minister has more folders and that he is well prepared; he is anticipating the range of questions we will be asking, but I doubt very much that we will be here anything like this time tomorrow night.

The Hon. R.I. Lucas interjecting:

The Hon. M. PARNELL: I can just indicate how I see it going. My expectation was that we would finish close to midnight and I would like to do that. I am happy to come back tomorrow morning as we said we would but I think that, in terms of the proper functioning of the committee, that would be a sensible way to go. I am happy to proceed with clause 27, as I have been invited to, but I would then invite the committee to consider whether that might be a good time for us to break.

The Hon. R.I. Lucas: You've just wasted five minutes.

The Hon. M. PARNELL: I won't be baited by the Hon. Rob Lucas. Clause 27 relates to an amendment to clause 46 which is in relation to the incidence of liability. My first question of the minister is to do with subclause (4) of the clause, and that provides that a new subsection 8B be incorporated. Section 52(5) of the current act provides:

> Within 5 business days after receipt of a claim under this section, an employer (not being an exempt employer) shall forward to the Corporation—
>
> (a) a copy of the claim;
>
> (b) a statement in the prescribed form containing such information as may be prescribed.

There is a $1,000 penalty for non-compliance. So, the obligation under that section is to submit a claim received from a worker to WorkCover within five days, and it is an offence not to do so. WorkCover has been at some pains to say how important it is to submit claims quickly so that they can be dealt with even to the extent of spending, no doubt, large amounts of money on television advertising. As I understand it—and I ask the minister to confirm this—WorkCover has never prosecuted an employer for flouting this requirement. Is that correct?

The Hon. P. HOLLOWAY: Under new subsection 8B the corporation will undertake that liability of an employer in respect of a particular disability, if the corporation is satisfied that the employer has complied with its responsibilities under section 52(5) within two business days after receipt of the worker's claim. This clause, therefore, incentivises employers to lodge claims early by waiving their liability to pay the first two weeks of an injured worker's income maintenance. This proposal enhances return-to-work incentives for employers by transferring the liability to pay the first two weeks of an injured worker's income maintenance from employers to WorkCover. Over time, this is anticipated to contribute to the achievement of improved return to work outcomes and the financial sustainability of the scheme.

The proposal will also help to build a proactive injury management culture amongst employers and reinforce employers' obligation to ensure early claim reporting and facilitate the

claim process. Rebating employer excess where there is early reporting of claims is one strategy that will achieve this.

The Hon. M. PARNELL: I thank the minister for his answer, but, if we can contrast the position here with the position in Victoria, we can see that in Victoria they take this issue seriously. They enforce the law. Members can go to the Victorian WorkCover website to see that for themselves. If you look at this proposal from the government in a general law enforcement context, the government says here to employers, 'If you break the law, don't worry; we won't prosecute you, and if you comply with the law, you get a cash reward.'

It is similar in a way to saying to drivers, 'Don't worry; if you run a red light, we won't fine you, and if you do the right thing, if you don't run red lights, then we'll send you a cheque.' It seems to me to be a very odd way to be managing compliance with legal requirements. I think that this exposes some real double standards and hypocrisy in these measures. There is no action taken on lawbreaking by employers in the workers comp area, and there is a cash reward for employers who do not break the law.

My question of the minister is: why is the government handing out cash in order to get employers to follow the law rather than treating employers like any other citizens and prosecuting them when they break the law?

The Hon. P. HOLLOWAY: I really thought I answered that in the previous comment where I said that the clause gives an incentive to employers to lodge claims early by waiving their liability to pay the first two weeks of an injured worker's income maintenance. To continue what I said before, this proposal enhances return-to-work incentives for employers by transferring the liability for the first two weeks of injured workers' income maintenance from employers to WorkCover and, over time, it is anticipated that this will contribute to the achievement of improved return-to-work outcomes and the financial sustainability of the scheme.

The Hon. M. PARNELL: At this point, Mr Chairman, I will move my amendment, which you have already pointed out is identical to amendment No.14 in the name of Ann Bressington. I move:

Page 36, after line 10—Insert:

(2a) Section 46(3)(a)—delete 'two weeks' and substitute

4 weeks

(2b) Section 46(3)(b)—delete paragraph (b) and substitute:

(b) if the period of the incapacity is more than 4 weeks—for the first 4 weeks of the period of incapacity.

(2c) Section 46(4)—delete 'twice' and substitute:

4 times

The amendment that I propose inserts three new paragraphs into section 46. The government has claimed that this bill is driven by the need to reduce the unfunded liability. We have talked about that a fair bit. Anyone who understands how insurance works will appreciate that premiums and liabilities are very substantially affected by the level at which excesses are set.

This amendment moves the employer excess for lost time claims from the first two weeks of wages to the first four weeks of wages and in any event, as I understand it, employers can elect to buy out that excess by paying a higher premium. I think it would also be accepted that excesses can assist in focusing the mind of employers on making sure that they do their utmost to reduce work injuries.

In essence, what this amendment seeks to do, in one fell swoop, is deliver a reduction in liabilities, which would create the potential for a reduction in premiums and create far better incentives for employers to deliver safer workplaces, and all of those things, I think we would appreciate, are good things.

That is why I say that this amendment is deserving of support, but I just have one final question of the minister before we test the will of the committee: has the government obtained any actuarial advice on the savings to the scheme that the government's amendment would deliver?

The Hon. P. HOLLOWAY: In relation to that question, the Clayton review found that the proposal to introduce a rebate on the excess payable by employers for early reporting of a claim would increase the cost of the scheme by approximately $5 million per annum, on a conservative basis, or about a 0.02 per cent increase in the ongoing scheme cost. This is likely to be cost

beneficial in the long term. Better return to work outcomes can only be achieved if adequate incentives exist within the legislation. So, that is the answer I have been advised for that question.

In relation to the honourable member's amendment, the honourable member wishes to increase the employer excess so they would have to pay the first four weeks of an injured worker's income maintenance instead of the first two weeks, which is proposed in the bill. The government opposes the amendment as an unwarranted and direct cost shift to employers.

In addition, we proposed in the original amendment bill to give employers an incentive for the early reporting of injuries by waiving the employer excess. This amendment, rather than giving employers a reason for early reporting, punishes them for no good reason by doubling their excess.

The committee divided on the amendment:

AYES (3)

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

NOES (13)

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

PAIRS (2)

Bressington, A.	Dawkins, J.S.L.

Majority of 10 for the noes.

Amendment thus negatived; clause passed.

The Hon. M. PARNELL: I move:

That progress be reported.

In the debate we had yesterday in relation to how this was to proceed it was indicated that we would finish at midnight. We finished after 12.30 last night and it is now 12.30 again. I certainly did not support the government placing a time limit on the conclusion of the debate, but I have indicated that to the best of my knowledge, with the material I have and with the consequential amendments that arise, whilst not supporting the government's 6 o'clock deadline, I would be absolutely amazed if the debate goes beyond that. So, I think we are within the time frame the government was talking about and, given the hour, I believe it is appropriate for us to report progress. We have said that we will come back at 11am tomorrow.

The other point I would like to make is that, while people may say that this is all of my own making, it is very unusual for a committee stage to be so dominated by so few people; it is normally a load that is shared. In this case it is not, and I think it is an appropriate hour for us to adjourn and come back tomorrow morning to conclude this debate.

Motion negatived.

New clause 27A.

The Hon. M. PARNELL: I move:

New clause, page 36, after line 22—Insert:

27A—Amendment of section 47—Interest payable in consequence of delay

Section 47—After subsection (2) insert:

(3) The interest rate prescribed under subsection (1) will be doubled if it becomes apparent that the corporation has made a determination (including so as not to make a weekly payment) that was incapable of being reasonably justified in the circumstances.

This inserts a new clause 27A that amends section 47, which is in relation to interest payable due to unjustifiable delays. At present, workers receive interest on income compensation that is not paid on time, but the reality is that, when their income is denied due to totally unjustifiable decisions, more damage is often done than can be remedied by the ordinary level of interest.

Interest at the ordinary rate does not make up for workers defaulting on mortgage or car loan repayments because their income has been stopped with no proper basis. The stress involved in not being able to pay the bills can be extreme.

Where there is no proper basis for cutting off a worker's income, there needs to be penalty interest. That is to punish the decision maker for cutting off a worker's income unjustifiably and to try to set things right for the injured worker concerned. My amendment proposes a doubling of the prescribed rate of interest and I think that that is an appropriate response where the cutting of the worker's entitlements was unjustifiable. I would urge all members to support this amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment. The current section 47 of the act provides ample incentive for WorkCover to make weekly payments when they fall due. If the payments are delayed, WorkCover currently has to pay in excess of 10 per cent per annum interest on the back payment. The honourable member cannot be seriously suggesting that the penalty payment be increased to 20 per cent. I would argue that this is unnecessary and unwarranted. The suggested amendment will also cause unnecessary disputation while the parties argue about the reasonableness of the delay. It will lengthen disputes and take the focus away from rapid return to work, thus the government opposes the amendment.

The committee divided on the new clause:

AYES (4)

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

NOES (12)

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

Majority of 8 for the noes.

New clause thus negatived.

Clause 28.

The Hon. M. PARNELL: This clause amends section 50, which provides that the corporation is an insurer of last resort. The amendments the government is proposing are fairly straightforward and they are a consequence of the change in terminology from 'exempt employer' to 'self-insured employer'. In relation to the existing provisions of clause 51 and the changes proposed, will the minister explain what the differences are in practical terms between the existing provisions and this clause?

The Hon. P. HOLLOWAY: This amendment deletes the obsolete term 'exempt employer' and replaces this with the term 'self-insured employer'. This amendment is necessary as a consequence of the change in terminology from 'exempt employer' to 'self-insured employer'. The proposed amendment would bring the Workers Rehabilitation and Compensation Act up to date with the recent changes in terminology brought in by the government and WorkCover. The amendment would also make the Workers Rehabilitation and Compensation Act's terminology the same as in other states. The clause simply replaces the term 'exempt' with 'self-insured' in section 50(1) and (2), but does not materially alter the intent of the existing legislation.

Clause passed.

Clause 29.

The Hon. M. PARNELL: Before I move my amendments, I have some comments in relation to clause 29 generally. I have said once or twice before that there are very few positive changes in this bill, but this is one of them. It is a good change, and I congratulate the government on introducing it. However, I have already discussed the government's failure to consult properly on this bill, and the guidelines introduced under this section will clearly be the key to its operation. Can the minister give a commitment from the government that before finalising these guidelines they will be released to stakeholders and to the advisory committee?

The Hon. P. HOLLOWAY: My advice is that the government is committed to consulting on the guidelines through a forum; so that much of the guarantee I can give.

The Hon. M. PARNELL: I move:

Page 38, lines 1 and 2—Delete 'the employer or the Corporation may decide to' and substitute:

the Corporation may

I believe that this terminology is certainly more appropriate and more normal for legislative drafting than the words that I seek to strike out. Also, I believe that the decision here is really in the hands of the corporation rather than either the corporation or the employer. I would therefore urge all members to support this fairly sensible amendment.

The Hon. P. HOLLOWAY: The government opposes this amendment. It is removing the ability of the employer to cease weekly payments under the provisional payments arrangements. It is likely to lead to overpayments in those circumstances where entitlements should no longer be paid as outlined in the provisional payments guidelines. The consequences of overpayment in these circumstances can cause disputes and financial hardship to the worker when recovery of overpaid moneys is required.

The committee divided on the amendment:

AYES (2)

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

NOES (14)

Darley, J.A.	Finnigan, B.V.	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.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

Majority of 12 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: The approach that I was taking in relation to these amendments that go to the question of parliamentary oversight, the question of what should be put into regulations and what should be left to WorkCover to simply prepare itself without going through regulations without parliamentary oversight was to concertina them and not move them. But I have to say I am very disappointed that the government, having put to us a program for how it thought this would sit and having got its way in this council passing a resolution that we would finish the debate tomorrow, and my having indicated that I think we will finish fairly early tomorrow and having reached—

The CHAIRMAN: The government's position was amended, I understood.

The Hon. M. PARNELL: The government's position might have been amended, but the point was that the effect of it was achieved, that we were going to finish. I understand the minister's caution—he's got a lot of material left.

The Hon. Sandra Kanck interjecting:

The Hon. M. PARNELL: I have more material to go, but the point is—

The Hon. P. Holloway interjecting:

The Hon. M. PARNELL: We will spend a bit of time tomorrow morning talking about medical panels, which will take a little while, but I gave my indication that, whilst it is difficult to judge the length of a debate, we will not go late into the evening tomorrow night. I cannot move again that we report progress, but I am not happy with the way we are dealing with this. We can be sensible. Members would have seen in my behaviour that, when we have a break, whether during the second reading or otherwise, I have tended to make every effort to identify where duplication existed, to identify where consequential amendments existed and tried to concertina my contribution. But I am disinclined to do that when we find no cooperation at all.

This is certainly a difficult debate. The government would rather we not be having it and all members would rather be home in bed. To the credit of this place, it has been conducted in a fairly civilised manner. We know people get tetchy when it is late. I am usually a fairly controlled person, but I am tetchy as the government has not stuck by the program it agreed to.

The Hon. P. Holloway: What guarantee can you give us that you will complete the debate at a reasonable time tomorrow?

The Hon. Sandra Kanck: He has already said it once; in fact, he has said it twice.

The Hon. P. Holloway: I would love to be satisfied that that will happen.

The Hon. R.I. Lucas: He is a politician and a lawyer: he has given you his word—what more do you want?

The Hon. M. PARNELL: This debate will be finished by six o'clock tomorrow.

The Hon. T.J. Stephens: That is Friday night.

The Hon. M. PARNELL: Six o'clock today.

The CHAIRMAN: Order! The honourable member might still be talking about why the debate is not finishing tonight.

The Hon. M. PARNELL: The time spent now is far less useful than time spent tomorrow.

The CHAIRMAN: Order! It has nothing to do with the clause. Do I understand that you are withdrawing these amendments?

The Hon. M. PARNELL: No. I am saying that if we cannot finish at a sensible time, I will move and divide on them.

The Hon. P. HOLLOWAY: If the committee will support me, at six o'clock tomorrow if we are still going, to truncate the rest of the debate and put them all together, I would be only too happy to move the adjournment now. If we are still going at six I will be happy to pull up stumps straightaway. We have that guarantee.

The CHAIRMAN: On the basis that the bill goes through.

The Hon. P. HOLLOWAY: If they are happy to do that: they have given their word and it is on the record. Is he happy to give that undertaking on the record? If so, I will move that progress be reported.

The Hon. R.D. LAWSON: The problem is that other members have amendments. The Hon. Mr Darley, for example, has amendments, so that undertaking from the Hon. Mr Parnell would not be satisfactory because other members have their right to speak.

The CHAIRMAN: So far we have wasted 10 minutes when we could have got to clause 31 at least.

The Hon. Sandra Kanck: I seconded the procedural motion.

The CHAIRMAN: Anybody is entitled to move that the committee adjourn—it cannot be debated.

The Hon. P. Holloway interjecting:

The Hon. M. PARNELL: The main difficulty I have with what the minister is asking for is precisely the difficulty the Hon. Rob Lawson identified. What I am saying is that the material that I have to put on the record will be finished by 6 o'clock tomorrow. I have no doubt about that. Where I have nervousness—and we said this yesterday in the debate—is setting absolute limits a long time in advance about when debate will finish. Now that we are a substantial way through the debate, I can indicate that with the material I have got I will not be speaking beyond 6 o'clock.

I think if we break now and I recompile my amendments—look at those that are consequential—then we will be finished. I cannot speak for the Hon. Mr Darley or the Hon. Ms Bressington who might come back from her sick bed. I can only speak for myself. The way in which the debate has gone, most of the amendments on which we have divided have been mine. I think we will have fewer divisions if we have a chance to collect our thoughts.

The Hon. D.W. RIDGWAY: The Hon. Ms Bressington is not here. No-one knows her plans in relation to her amendments. I know that the Hon. John Darley has some amendments. We are all here. I understand that people are tired but, frankly, another hour tonight would make it easier tomorrow. I have been here for only six years, but time slips away at the end of the evening, so that would be a favourable position.

The CHAIRMAN: So far we have wasted 12 minutes talking about it. We could have got to clause 31 in those 12 minutes, I am sure, and the minister might have thought that was sufficient

progress. Now we have wasted 12 minutes debating when we should finish. A motion moved by the government was amended to allow the committee to sit past 12 o'clock.

The Hon. P. HOLLOWAY: With the will of the committee, I think we can go on. I undertake that we will adjourn by 2 o'clock at the latest. An extra hour tonight should mean an hour less tomorrow, but if we need to sit until 6 o'clock or beyond, so be it.

The Hon. M. PARNELL: The minister is wrong and I invite him to reconsider. I will be in a better position tomorrow to save time for the committee. What we will get otherwise is an hour of dividing on every amendment and every clause as it is put—and we will not make any progress at all. It is not an ultimatum or a threat. I did say that the debate has been relatively civilised until now. Notwithstanding the difficulties identified in relation to other members, I would be amazed if it is even close to 6 o'clock; it is likely to be earlier. The undertaking for which the minister asked is impossible to give for one member. If we want an hour of wasted time between one and two this morning, I do not think that is the best use of our time. I invite the minister to reconsider his position.

The Hon. P. HOLLOWAY: I think it is time we got on with the clause. The views of the committee are well known. I suggest that we get on with the debate. If we waste an hour tonight, so be it. We have divided on just about every clause so I do not see that it will make a lot of difference.

The Hon. SANDRA KANCK: I move:

That progress be reported.

The committee divided on the motion:

AYES (2)

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

NOES (14)

Darley, J.A.	Finnigan, B.V.	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.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

Majority of 12 for the noes.

Motion thus negatived.

The Hon. M. PARNELL: I move:

Page 38, line 13—Delete 'designated' and substitute:

prescribed

This amendment refers to the important issue of those matters that should be the subject of regulation. This amendment, by substituting 'prescribed' for 'designated', provides the mechanism for allowing parliamentary scrutiny.

The Hon. P. HOLLOWAY: The government opposes this amendment. We have had this debate on several previous occasions. The regulation of forms requires ministerial endorsement, parliamentary approval and proclamation by the Governor in Executive Council and, as I have argued on previous occasions, this is an administratively inefficient process that severely limits opportunities to amend the forms so that they remain up to date with changes to contemporary business practice.

The Hon. SANDRA KANCK: The Democrats believe very much in parliamentary scrutiny and, as a consequence, we will be supporting this amendment.

The committee divided on the amendment:

AYES (2)

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

NOES (13)

Darley, J.A.	Finnigan, B.V.	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.	Stephens, T.J.	Wortley, R.P.
Zollo, C.		

Majority of 11 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 38, line 23—Delete 'a designated' and substitute:

the prescribed

This amendment relates to the important issue of parliamentary scrutiny. Whilst we have discussed it before, I think it is worth discussing again. If we do not have forms, documents, codes or guidelines prescribed in regulations then they do not come to the parliament in the form of delegated legislation and we do not have the ability to disallow them.

I urge all members to support this amendment. I would add in the process that we are giving great credence to the words of the former opposition leader, Mike Rann, on the steps of Parliament House 13 years ago when he declared on behalf of the Australian Labor Party that every single member of the Labor Party would vote against every clause of the WorkCover bill. I did not think that we would need to go down that path, but it appears that we do; so I will be dividing on this amendment as well.

The Hon. P. HOLLOWAY: This is the 1994 bill, to my memory. I have already given the reasons when speaking to the previous amendment why we oppose it.

The Hon. SANDRA KANCK: Again I repeat what I have said on numerous occasions: it is really important to have that parliamentary scrutiny. The Democrats will support this amendment for that reason.

The committee divided on the amendment:

AYES (2)

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

NOES (14)

Darley, J.A.	Finnigan, B.V.	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.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

Majority of 12 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: I move:

Page 30, line 30—Delete 'a designated' and substitute:

the prescribed

One important reason that we have omitted to discuss in relation to the prescribing of documents in a regulation is that the Hon. John Gazzola's Legislative Review Committee would miss out on the opportunity of being able to scrutinise these documents—to cast its scrutineering eye over it—and (as it does on occasion) report back to the parliament about inappropriate subordinate legislation. I think that is another very good reason why we should support the amendment. I urge all honourable members to support it.

The Hon. SANDRA KANCK: The Democrats most certainly will be supporting this as part of our long and proud tradition of ensuring absolute accountability, and bringing these things before parliament is the best way to do that.

The committee divided on the amendment:

AYES (2)

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

NOES (14)

Darley, J.A.	Finnigan, B.V.	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.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

Majority of 12 for the noes.

Amendment thus negatived.

The committee divided on the clause:

AYES (14)

Darley, J.A.	Finnigan, B.V.	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.	Stephens, T.J.	Wade, S.G.
Wortley, R.P.	Zollo, C.	

NOES (2)

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

Majority of 12 for the ayes.

Clause thus passed.

Clause 30.

The Hon. M. PARNELL: My question of the minister is: did the self-insurers specifically request this clause?

The Hon. CARMEL ZOLLO: I am advised that the representative association is called the Self Insurers of South Australia, so we are aligning with what it calls itself. In recent times the state government and WorkCover have stopped using the term 'exempt employer' in their official publications and communications, instead using 'self-insured employer'. The term 'exempt' can imply that the employer is somehow absolved of responsibility under the act or is otherwise outside the framework of the WRCA. This is not the case.

The term is also not frequently used interstate, but the act still retains the original language referring to exempt employers. This component of the proposal is also consistent with a recommendation by the Else/Clayton review that the term 'exempt employer' be discarded because of its overtones of separateness and privilege in favour of the more neutral and descriptive term of 'self-insurance', which is applied generally elsewhere in Australia. Section 51(6) still retains the original language and refers to an exempt employer.

Clause passed.

Clause 31.

The Hon. M. PARNELL: I move:

Page 39, lines 37 and 38—Delete subclause (1)

Before I determine my approach to this amendment, because we have had what might be regarded as a little bit of unseemly division in proving a point, but we can progress with this bill a little further: is it still the minister's intention that we adjourn at 2 o'clock?

The Hon. P. HOLLOWAY: Yes.

The Hon. M. PARNELL: I will not be dividing on the amendment.

The Hon. P. HOLLOWAY: We oppose the amendment.

Amendment negatived.

The Hon. M. PARNELL: I will not move amendment No.30. It is consequential.

Clause passed.

Clause 32.

The Hon. M. PARNELL: I move:

Page 40, after line 18—Insert:

(2) Section 53—after subsection (8) insert:

(9) if the claim of a worker is rejected, the worker is still entitled to the reimbursement of any costs reasonably incurred by the worker in providing a certificate under section 52(1)(c) or any other medical evidence required by the Corporation in connection with the claim unless the Corporation believes that the worker has acted dishonestly in making the claim or providing information for the purposes of this Division or any other provisions of this Act (and a liability to make a reimbursement under this subsection will be taken to be a liability to pay compensation for the purposes of the other provisions of this Act).

The reason why this amendment is an important one is that it is to protect injured workers who have acted in good faith and made a claim but for some reason, most probably some technical reason, they find that they are not ultimately entitled. In pursuing such a claim in good faith, having been required by a compensating authority to spend money obtaining medical information such as reports, they can be reimbursed for that. So, it is a protective measure that seeks not to disadvantage workers who might not ultimately be entitled but who have, nevertheless, incurred medical expenses.

The Hon. P. HOLLOWAY: The government is opposed to this amendment as the costs of preparing and lodging claims for compensation have not traditionally been borne by compensating authorities. There has been little evidence to suggest that these costs are problematic for workers; nevertheless, any problems suffered by injured workers in this area should be suitably rectified by clauses 12 and 29 of the bill which set up provisional payments of medical expenses and weekly payments.

It is not necessary for workers to make a claim in order to be eligible for provisional payments: notification of the disability is sufficient. The early focus on treatment and rehabilitation and payment for it, as opposed to a focus on claims determination, will address these issues and, therefore, this amendment is unnecessary.

Amendment negatived; clause passed.

Clause 33.

The Hon. M. PARNELL: I move:

Page 40, after line 23—Insert:

(3) Section 54—after subsection (7) insert:

(7aa) A right of recovery may only be exercised by a claimant under subsection (7) if the claimant has taken reasonable steps to take responsibility for the injured party's reasonable costs associated with exercising his or her rights against the wrongdoer.

This amendment seeks to insert a new subsection (7aa) in section 54, and it relates to third party claims. This relates to the situation most commonly seen in relation to labour hire companies, but in other circumstances as well. Under existing law, if a worker is negligently injured at work and the negligence is on the part of someone other than their employer, then they can pursue that third party for negligence.

The situation might be—and I mentioned labour hire companies—that someone is employed by a labour hire company but they are working at a site where other parties are involved. If it is the negligence of those other parties that causes the injury, then the common law rights exist.

However, if the worker takes that common-law action then WorkCover gets back any money that it has spent or will spend on the worker's claim. The worker only receives the additional benefits that common law delivers, which are generally in excess of workers compensation benefits. Sometimes WorkCover will agree to fund such an action by an injured worker and indemnify the worker against adverse cost orders. The reason it does so is that it is clearly in WorkCover's interests for the action to proceed, because it gets its money back.

However, I believe a situation where WorkCover is not willing to take the risk with the worker, if it says to the worker, 'No; you invest the money, you take the risk of an adverse cost order, but if you win we will still take most of the damage', is fundamentally unfair—and that is what this amendment is designed to address. If WorkCover is willing to participate properly in such an action against a third party, to fund and indemnify, that is all well and good, but it should not receive the benefits of investments and risks taken by workers when it refuses to make the same investments or take the same risks itself.

It is very much a case of what is good for the goose is good for the gander. If WorkCover is standing in line to take the money it should also stand in line to take the risks. This is an important amendment and I seek the support of honourable members.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell seeks to restrict the right of a compensating authority—in this case WorkCover or a self-insurer—to recovery of the costs that the compensating authority has indemnified a worker for solicitor-client costs, if a worker elects to pursue a wrongdoer for damages. The Hon. Mr Parnell's amendment is unnecessary and the government opposes it. As part of any legal proceedings against third-party wrongdoers, workers can and do negotiate reimbursement of their legal costs on a party to party basis. This reimbursement is quite separate from any damages recovered. Section 54 already prevents WorkCover from recovering more from an injured worker than they receive in damages. The worker's legal costs are not damages and as such cannot be claimed by WorkCover.

The committee divided on the amendment:

AYES (4)

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

NOES (12)

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

Majority of 8 for the noes.

Amendment thus negatived; clause passed.

Clause 34 passed.

Clause 35.

The Hon. M. PARNELL: This clause relates to the employer's duty to provide work. I understand that the minister in the other place confirmed that WorkCover has never prosecuted an employer for a breach of its section 58B obligations, and if no-one is ever prosecuted, then it seems to me to be entirely irrelevant as to what the penalty is. Clause 35 proposes a maximum penalty of $25,000. Have any administrative steps been taken or any directions given to WorkCover so that it starts doing its job and enforces the law in terms of law breaking by employers?

The Hon. P. HOLLOWAY: First, I am advised that no formal directions have been issued by the minister. Secondly, under this package of reforms, the government will be establishing a return to work inspectorate and one of the functions of that inspectorate will be to enforce employers' obligations.

Clause passed.

Clause 36.

The Hon. M. PARNELL: In relation to this clause, which deals again with self-insured employers, certainly there is the standard change in terminology from 'exempt employer' to 'self-insured employer'. However, the clause also amends section 60 in relation to the registration of employers or groups of employers as self-insuring employers, and it makes other changes. This clause in a number of ways makes it easier for employers to become exempt and to stay exempt. The unions have strongly argued that the number of exempt employers in South Australia (which, as I understand on a proportionate basis, is more than in any other state) is bad for our workers compensation scheme.

There is serious cause for concern about WorkCover's regulation of exempt or self-insured employers, because, despite these employers being responsible for numerous industrial deaths and despite instances of seriously inappropriate claims management practices, WorkCover has never, as I understand it, revoked an exempt employer's licence for bad performance. I understand that there have been cases, including Mobil, where, due to the closing of Port Stanvac, the employer fell below the size requirement and was no longer exempt. That is an example of someone who lost their status but, as I understand it, there has never been a case of an exempt employer licence being revoked for poor performance.

Whilst there are some very poor performing exempt employers, in terms of safety and claims management, there are also some very good exempt employers. However, on balance, because of the concerns and the deputations made to me by the union movement and as a result of the abysmal track record of WorkCover in regulating exempt employers, I indicate that I oppose this clause.

The Hon. P. HOLLOWAY: Earlier in the debate the Hon. Mark Parnell—and I do not think I am doing him an injustice here—recognised that self-insurers have been better at getting workers back to work. That is generally acknowledged, so the honourable member really appears to be having it both ways in relation to that argument.

The Hon. M. PARNELL: I did acknowledge that some of their performance has been better, yet it seems that, when it comes to all exempt employers, it is not universal; and, when it comes to the regulation of exempt employers, that has been clearly lacking. That is why I oppose this clause and will be dividing on it.

The committee divided on the clause:

AYES (13)

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

NOES (3)

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

Majority of 10 for the ayes.

Clause thus passed.

Clause 37.

The Hon. M. PARNELL: I have no questions, no amendments and no objection to this clause.

Clause passed.

Clause 38.

The Hon. M. PARNELL: I have no objection and no questions.

Clause passed.

Clause 39.

The Hon. M. PARNELL: I do not want to go backwards. I did have an amendment, but it was a consequential one. I am assisting the committee racing toward our deadline. I have no questions on this clause.

Clause passed.

Clause 40.

The Hon. M. PARNELL: In the spirit of racing along, I have no questions on this clause.

Clause passed.

Clause 41.

The Hon. M. PARNELL: The amendment I have to this clause is consequential to an amendment that has been lost already; therefore, I will not be moving that amendment.

Clause passed.

Clause 42.

The Hon. M. PARNELL: I have no questions.

Clause passed.

Clause 43.

The Hon. M. PARNELL: This clause relates to levies of GST and proposes the insertion of two new subsections (5) and (6), in section 65. My question of the minister is: can he explain why this clause is necessary, and have any specific problems been encountered in relation to these commonwealth taxes?

The Hon. P. HOLLOWAY: The amendment relates to the WorkCover levy and making sure that it is GST exclusive. As the Minister for Industrial Relations pointed out in the debate in the House of Assembly, it is what happens in practice but putting it into the legislation removes any doubt.

Clause passed.

Progress reported; committee to sit again.

PREVENTION OF CRUELTY TO ANIMALS (ANIMAL WELFARE) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No.1 clause 12, page 8, lines 24 and 25—

Clause 12, inserted section 28(5), definition of 'qualified person'—delete 'the training prescribed in the regulations as relevant to their conditions of employment' and substitute:

training as prescribed by the regulations

No.2 clause 20, page 18, line 23—

Clause 20, inserted section 43A—delete 'the action' and substitute:

any action

ENVIRONMENT PROTECTION (BOARD OF AUTHORITY) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

At 01:58 the council adjourned until Thursday 5 June 2008 at 11:00.