Legislative Council

Wednesday, 4 November 1981

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 4.30 p.m., and read prayers.

LEGISLATIVE COUNCIL

Photographs, and 150th Anniversary: Statement by the President

THE PRESIDENT (the Hon. Clive Griffiths): I have received a request from people who are preparing a brochure for the Department of Industrial Development and Commerce for permission to take a photograph of this Chamber whilst we are in session so that the photograph may be included in the publication. It has not been the usual practice to permit the taking of photographs whilst the House is in session. However, unless somebody speaks to me during the tea suspension and recommends that I continue to follow that practice, it is my intention tomorrow to contact the people and, at a pre-arranged time—so that members can make any personal arrangements they may want to make—I will permit the photographer to come in and take a photograph for inclusion in that document.

I also take the opportunity to advise members—as they are no doubt aware—that a committee has been formed for the purpose of arranging some celebrations for the 150th anniversary of the Legislative Council, and that it is intended to take a photograph of all members of this Chamber and the officers of this Chamber for inclusion in one of the publications we are preparing.

It has not finally been decided whether we will use that photograph, or use the photographs situated near the entrance to this Chamber. The point I am making is that if we do decide to take a photograph of members and officers, it will be desirable that the photograph be taken at a time when we are all present. I am not sure how we can determine that; however, I mention it to members so that they can bear it in mind if they happen to receive a note from me.

LEGAL PRACTITIONER: PRESS ARTICLE

Use of Name: Personal Explanation

THE HON. H. W. OLNEY (South Metropolitan) [4.44 p.m.]: I seek leave to make a personal explanation concerning a news report.

Leave granted.

The Hon. H. W. OLNEY: Both prior to and since my election to Parliament I have, as members will know, practiced the profession of a barrister and since July 1980 I have done so as one of Her Majesty's Counsel.

At the time of my appointment as a Queen's Counsel my assurance was sought, and freely given, that I would continue to practise my profession and not use that appointment merely as a matter of personal aggrandisement or to obtain political advantage. I believe that I have at all times honoured that undertaking according to my perception of the best traditions and high ethical standards of my profession.

It is my belief that it is the inalienable right of any person to be represented by any counsel in whom he has confidence and of counsel to act on behalf of any person, and this is so, irrespective of the religious or political views of counsel or the economic or social status of the client. To attempt to deny this right would be a gross interference with the process of justice. A resolution substantially in those terms was adopted by the national executive of the Australian Labor Party as long ago as 25 February 1970.

In recent times I have been subject to certain personal criticism in relation to matters in which I have appeared in my role as counsel. These criticisms, which I do not propose to canvass in detail, have arisen from a misconception as to the true relationship between counsel and client and a failure to recognise the fundamental importance in the administration of justice of the principle that I have just stated.

It is also one of the time-honoured traditions of my profession that counsel should not seek to initiate, nor indeed to condone, personal publicity in the practice of his profession.

On 3 November 1981 my name was used in an article on page one of *The West Australian* newspaper in connection with certain projected court proceedings in which it was indicated that I and another person would, and I quote, "handle" the case for the proposed plaintiff. The proceedings in question are of a highly sensitive political nature and have yet to be instituted. It is not normal practice for a litigant to announce in advance the name of the person or persons he proposes should represent him, nor should any counsel condone the use of his name in such circumstances, especially before a brief has been delivered and a firm commitment entered into.

I have been personally embarrassed by the publication referrred to which, although made in good faith, was done without my specific knowledge that my name would be used in the

manner it was. Had I been consulted I would have requested that my name not be used. It has been drawn to my attention that the article in question creates the impression that political advantage was being sought by the association of my name with the proposed proceedings. I acknowledge that such a conclusion is one reasonably capable of being drawn from the article and for this reason I wish to publicly dissociate myself from its publication.

ROAD TRAFFIC AMENDMENT BILL (No. 3)

Introduction and First Reading

Bill introduced, on motion by the Hon. N. E. Baxter, and read a first time.

Second Reading

THE HON. N. E. BAXTER (Central) [4.47 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to amend section 66 of the Road Traffic Act 1974-1981 to give motor vehicle drivers, when stopped for any reason by a Road Traffic Authority patrolman or a policeman and required to take a preliminary breath test on the spot, the option of either complying with that request or accompanying the officer to an office of the authority, police station, or some other place for the purpose of providing for analysis either a breath sample or a blood sample.

When studying this Bill I ask members to note that the amendments substitute "request" for "require", and "requested" for "required", and delete the words "a preliminary or for", which will provide the option referred to in the first paragraph of this submission.

The section of the Act as it stands at present gives a patrolman or police officer the right to require a person stopped by such officer to provide a sample of his breath for a preliminary test, which test is not acceptable in court and is only a guide as to whether that person is over the 0.08 limit prescribed.

Should a person refuse to provide a sample of his breath as required, the officer can arrest such person for the purpose of charging him under section 67 of the Act with not complying with a requirement of the officer. The officer can take him to a designated place, fingerprint him, make him hand over all possessions he has on his person, except his clothing and handkerchief—possibly that as well—physically search him, require him to provide a breath or blood sample for analysis, detain him until such time as he can arrange bail and, if he cannot arrange it, lock him up in a cell until such time as he can be arraigned before a court and tried for the offence.

All this takes place only because of a person's failing to comply with a requirement of a patrolman that he provide a preliminary breath sample. The penalty for the offence is a fine of not less than $100 or more than $500, and mandatory disqualification from holding a driver's licence for a period of not less than three months or more than 12 months.

In 1974 when, on behalf of the Government, I introduced the principal Act in this Chamber, I did not realise that the right of a person to refuse a sample of his breath for a preliminary test would not exist and any such person could be subjected to treatment normally meted out to a common criminal or someone charged with a criminal offence.

I believe the rights of an individual would be protected if the Act is worded in such a way that it provides an option which could be used.

Imagine the situation of a prominent person, well-known to a large number of people of the State, being stopped by an officer on some pretext and required to provide a sample of breath for a preliminary test. One such person could even be the Premier. How embarrassed would he or any other prominent person be standing in the street blowing into a bag in front of every passer-by and wondering what people were thinking?

The proposal I put before members is to substitute the power of an officer to require a person to provide a breath sample, with the right of an officer to request a person to provide a breath sample. If the person refuses, he can be required to accompany the officer to a designated place to provide a breath or blood sample for analysis; and only then, if he refuses such requirement, should he be arrested.

This Bill provides an option to the person involved, who could act according to circumstances at the time, either to take a preliminary breath test or to have a breath or blood analysis taken as provided in the Act, at a place designated by the officer concerned.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. Margaret McAleer.

MEMBERS OF PARLIAMENT: OFFICES OF PROFIT

Joint Select Committee: Membership

Message from the Assembly received and read notifying that the member for Welshpool (Mr C.

J. Jamieson) had been appointed as a member of the committee in place of the member for Swan (Mr J. Skidmore).

MRPA: WUNGONG GORGE AND ENVIRONS

Disallowance of Amendment: Motion

Order of the day read for the resumption of the debate from 27 October.

Debate adjourned, on motion by the Hon. R. J. L. Williams.

WORKERS' COMPENSATION AND ASSISTANCE BILL

In Committee

Resumed from 3 November. The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. G. E. Masters (Minister for Fisheries and Wildlife) in charge of the Bill.

Progress was reported after clause 42 had been agreed to.

Clause 43: Relevant earnings—

The Hon. H. W. OLNEY: I move an amendment—

> Page 33, lines 34 and 35—Delete the words "earnings of the worker under" and substitute the words "work performed by the worker in his employment with".

This clause is one taken almost in its entirety from the Act—the current law. At the time the provision was originally included in the Act it was correctly phrased because in those days compensation was related to earnings; that is, the average weekly earnings was a figure relevant for the assessment of the entitlement to compensation of the injured worker. Since 1975 this has not been the case.

In that year an amendment was made which related to a worker's entitlement to compensation at the award rate for the work he was doing at the time of the injury. Therefore, what he was earning was quite irrelevant. The work itself was the decisive factor.

Clauses 43 and 53 are correlative. Clause 43 concerns the assessment of compensation in circumstances where the disability has occurred after, or, as is usual, long after, the worker has been working in the relevant employment.

The third schedule refers to industrial diseases. As is often the case with industrial diseases, particularly with lung diseases, the disablement occurs many years after the worker has left the employment to which the disease is due. Therefore, it was always appropriate to provide that the amount of compensation should be calculated by reference to the previous earnings of the worker with the employer from whom, under the Act, compensation is recoverable. But the position now is that the weekly compensation is based, not on the earnings of the worker, but on the award rate for the work he was doing. It is a subtle difference, but a significant one.

I suggest that the phraseology of my amendment is more appropriate than that presently appearing.

The Hon. G. E. MASTERS: I ask members to oppose this amendment. Although I understand the member's intention, "earnings of the worker" is defined in the Bill. If the member refers to schedule 1, clause 11(5) he will find the matter is defined as follows—

> ...and where the work performed by the worker in the employment in which the disability occurs is such that neither subclause (1) or (2) applies, the weekly earnings of the worker means—
>
> (5) the normal wage, salary, or other remuneration calculated on a weekly basis payable to the worker under his contract of employment exclusive of payment for overtime or for the items referred to in subclause (4).

If we refer to subclauses (1) and (2) we will note that the first deals with the industrial award and the second is based on piecework and work other than the normal procedures. "Earnings of the worker" is clearly defined; therefore, I do not think it is necessary to make this amendment. I agree it would have been necessary in the past, but with this Bill and the arrangements we have it is not necessary.

The Hon. H. W. OLNEY: I cannot accept the Minister's explanation and justification for the validity of what is in the Bill. Either what I have moved is correct or else it should read "weekly earnings of the worker" and the Minister can then rely upon the definition of "weekly earnings" in schedule 1, clause 11. However, earnings means earnings; it is an undefined term and I still maintain that the Bill is incorrect in the way it is phrased.

The Hon. G. E. MASTERS: From my reading of the legislation—and I would not dream of saying that I have a greater knowledge than Mr Olney—it seems there is reference to "weekly earnings". The board operates on that system and where we have referred to "earnings" it simply means "weekly earnings".

Amendment put and negatived.

Clause put and passed.

Clauses 44 and 45 put and passed.

Clause 46: Additions to Schedule 3—

The Hon. H. W. OLNEY: This clause was referred to by Mrs Piesse last night. The corresponding provision in the existing law is section 8(10). It is in virtually identical terms; so, ever since the third schedule was incorporated in the Act in 1924, there has been the power for the Minister to add diseases to the third schedule. Hopefully it is a power he will exercise from time to time. I think the last occasion on which it was exercised was in 1957, but I am not certain which diseases were then added.

Clause put and passed.

Clause 47: Compensation limited to prescribed amount—

The Hon. H. W. OLNEY: I do not propose to deal with the amendment on the notice paper because it is designed to tidy up the draftsmanship and I have had an indication that the Government will not accept it.

The Hon. G. E. MASTERS: I move an amendment—

> Page 35—Delete lines 17 to 34 and substitute the following—
>
> in respect of pneumoconiosis or that disease in combination with any other disease, and who is subsequently employed in any process entailing exposure to mineral dusts harmful to the lungs, shall not in any circumstances be entitled to further compensation or benefit for any period of incapacity due to pneumoconiosis, or to that disease in combination with any other disease.

This is to clarify the situation of a worker who, having received compensation for pneumoconiosis in combination with another disease, returns to work in a situation where he is further exposed to mineral dust. It makes it clear that he will have no further entitlement if such a situation should arise.

Amendment put and passed.

The Hon. H. W. OLNEY: I move an amendment—

> Page 35—Add the following new subclause to stand as subclause (3)—
>
> (3) A supplementary amount paid under Schedule 5, Clause 3 is not compensation for the purpose of this section.

Clause 47(1) provides that a worker can receive only one amount of compensation for pneumoconiosis once he has had the prescribed amount for that disease. This amendment is to ensure the new subsequent amount paid under schedule 5 to pneumoconiosis sufferers will be payable when the worker has received the full amount by way of weekly payments, combined with the supplementary amount. This is consistent with the policy which is displayed by schedule 5, clause 3, and is consistent with the amendment agreed to last night.

The Hon. G. E. MASTERS: The Government supports this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 48: Certain workers not to benefit—

The Hon. G. E. MASTERS: I move an amendment—

> Page 36, line 23—Delete the words "or practitioner".

This clause states—

> ... when the provisional certificate was issued to him, and such medical officer or practitioner so certifies in writing, ...

That is not necessary because the position is clearly defined in clause 5. I do not think there is any need for that term to be inserted again because the term "medical officer" will cover both points.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 49 and 50 put and passed.

Clause 51: Ascertainment of percentage of hearing loss—

The Hon. H. W. OLNEY: This clause deals with the calculation of loss of hearing for the purposes of compensating the worker for noise-induced hearing loss. In 1973 a provision was inserted into the Act which sought to make provision for compensation for a worker who had suffered noise-induced hearing loss, which is sometimes known as "boilermakers' deafness". There have since been difficulties because of the way the Act was drafted and because of decisions made in other places, particularly in courts in New South Wales and in the High Courts on similar legislation. The net result of the provision placed in our Act in 1973 is that a worker cannot recover compensation for a percentage loss of hearing due to noise induction unless he can show that he had suffered also a reduced capacity to earn. In those circumstances he would also be entitled to weekly payments for that reduced earning capacity. If this were not the case he would be unable to make a claim because the

noise-induced hearing loss did not result in a reduced earning capacity.

A boilermaker or person who works in a foundry or other noisy establishment and suffers from this condition is not reduced in his earning capacity by the reduction of his capacity to hear, so the provision has never operated in a way which is likely to be effective. I know the Government has indicated its willingness to look at this situation and I hope it will do so quickly.

Last year in this Parliament we passed an amendment to the Noise Abatement Act which provided for new regulations for noise in industry. At that time the Government indicated a willingness to ensure that workers are protected from the effects of noise. I suggest that if the Government is so anxious to protect the worker and others in industry from the effects of noise it ought to do something sensible under this legislation to compensate those who suffer the effects of such injury.

There is an exception to everything and, as I recall, there has been one case before the board since 1973 where a person was able to say she had a loss of earning capacity due to reduced hearing. She was a ballet dancer who took part in a rock ballet. When she was waiting on stage she had to stand near enormous amplifiers which affected her hearing. She was affected to the extent that she could not hear some of her cues because she was deaf at a certain level. In fact, that young lady ultimately was compensated.

We have more boilermakers than ballet dancers in our society. I suggest the Government ought to consider this as a matter of urgency.

The Hon. G. E. MASTERS: The honourable member would understand that the Government will do something about this problem. It has been discussed, but it has not been resolved to the satisfaction of all concerned. An undertaking has been given, and the TLC has already nominated its members of a committee.

I am not sure that the discussions will cover rock ballet dancers; but as my hearing is affected at 200 yards, I am not surprised that this music affects someone closer.

I am not sure how many boilermakers are ballet dancers, so perhaps I should leave it at that.

Clause put and passed.

Clause 52 put and passed.

Clause 53: How compensation calculated—

The Hon. H. W. OLNEY: I do not propose to move the amendment standing in my name. It is virtually identical to the amendment I moved to clause 43, but the Government did not accept that.

Clause put and passed.

Clause 54: Employer to whom notice given—

The Hon. G. E. MASTERS: I move an amendment—

> Page 39, line 17—Insert after the figures "52" the subsection designation "(1)".

If another employer is involved under clause 52 it is necessary to identify specifically the fact that the last employer is the one who is liable.

This is a straightforward amendment, and I ask for the support of the Committee.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 55 to 58 put and passed.

Clause 59: Commencement of weekly payments—

The Hon. H. W. OLNEY: I move an amendment—

> Page 41, line 11—Delete the passage "Subject to section 76, an", with a view to substituting the word "An".

The Hon. G. E. MASTERS: I ask the Committee to oppose this amendment. Clause 76 is an important provision which ensures, subject to clause 74, that the worker is protected in a dispute between employers as to liability. Clause 59(2) enables the employer, when he disputes liability, to have the discussions relating to the payment of compensation suspended. Clearly this is not the intention when the dispute is between two employers.

The Hon. H. W. OLNEY: I am grateful to the Minister for letting me know the answer before I have asked the question.

The reason I have moved this amendment is that we propose later to move a deletion to clause 76. To understand the reason for the present amendment, one has to go to division 6, which relates to disputes between employers. A useful provision is proposed in that division, although it is in a less than satisfactory form. It provides that when a dispute arises between two or more employers as to which is liable, the last employer is to be made liable for compensation, and he has to compensate the worker. There is provision for the employers, between themselves, to have the matter litigated and a proper determination made. If it is found that the one who has had to pay really ought not to be paying, there is provision for an indemnity in favour of that employer.

Disputes between employers provide one of the biggest problems with which workers have to cope

in having their compensation paid promptly. One can imagine that if a worker had a back injury and claimed compensation when he had worked for two successive employers, he may have injured his back while working for employer A, and had another incident injuring his back while working for employer B. Employer B would say, "Your disability is not due to the incident that happened in my employment. It is due to the incident that happened while you worked for A". The employer is entitled to have the matter determined.

I have known of cases when a person has worked for eight different employers over a period of 10 years, and the worker has had to join all of those employers in proceedings to determine his entitlement to compensation. It is most unjust that that should happen, and the proposal in relation to clause 74 will overcome that situation.

The provisions of clause 59(2) will apply in the case of a dispute between employers; and the Bill deals with the commencement of weekly payments by the last employer so that the worker is compensated while the matter is sorted out. It seems, therefore, that the worker may be put in the position of not being able adequately to enforce his entitlement to an early payment of compensation, simply because two or more employers are in dispute as to liability.

The Minister has indicated the Government's opposition to this amendment. I regret that, but nevertheless I trust it will be given further consideration when the practical applications of the proposed Act are reviewed.

Amendment put and negatived.

The Hon. G. E. MASTERS: I move an amendment—

Page 42—Delete paragraph (a) and substitute the following—

(a) if it considers that the evidence is satisfactory for the purposes of subsection (1), may—

(i) order that weekly payments including arrears to the date of the hearing shall be paid out of the General Fund and shall order that the employer forthwith pay to the Commission for the General Fund the amount of such payments together with an additional 10% of such amount; or

(ii) make an order as to weekly payments by the employer to the worker on such terms as it thinks fit;

This amendment clarifies the recourse available to workers when an employer does not commence payments within the time required, while enabling an employer who disputes the worker's entitlement to have the application referred to the Workers' Compensation Board for a substantive hearing. I ask the Committee for its support.

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

Page 42, line 22—Delete the passage "fit." and substitute the following—

fit; or

(c) if it considers a genuine dispute exists concerning the liability of the employer to pay compensation under this Act, may order that the worker proceed by way of a substantive application.

This is quite straightforward. It follows the previous amendment, and makes the provision clear to everyone concerned. It will tidy up the clause. I ask for the support of the Committee.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 60 and 61 put and passed.

Clause 62: Unlawful discontinuance of weekly payments—

The Hon. G. E. MASTERS: I move an amendment—

Page 43, line 33—Insert after the subsection designation "(7)" the passage "and section 85".

This clause deals simply with the unlawful discontinuance of weekly payments. Subclause (7) sets out the conditions when discontinuance is lawful.

Clause 85 provides for the continued entitlement of the worker who resumes or attempts to resume work and is unable to continue due to his disability. In other words, a worker can commence work after receiving payment, suffer from the same problem or not recover fully, and therefore receive compensation once again. The amendment improves the mechanism to enable the resumption of workers' compensation to proceed.

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

Page 45, lines 10 and 11—Delete paragraph (c) and substitute the following—

(c) make an order as to weekly payments by the employer to the worker on such terms as it thinks fit.

The amendment is intended to clarify the ability of the Workers' Compensation Board to order an employer to make such weekly payments as it determines are necessary. This covers a situation in which a worker makes an application against the discontinuance of his payments by his employer.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 63 to 67 put and passed.

Clause 68: Lump sum in redemption of weekly payments—

The Hon. G. E. MASTERS: I move an amendment—

Page 46, line 35—Delete the words "weekly payment by a lump sum" and insert the words "liability for incapacity".

This amendment is one which will enable a worker to redeem his total entitlement by way of a lump sum. The use of the words "weekly payment by a lump sum" does not take into account a worker's medical and other expenses. The words are not sufficiently precise and it is the intention of the amendment to achieve that precision.

Amendment put and passed.

The Hon H. W. OLNEY: Like the curate's egg, this clause is not all bad. Subclauses (1) to (3) reflect the existing law and the position is that a worker has no right to claim a lump-sum payment by way of redemption, but rather, after he has been on compensation for six months, he can apply to the board for an order for redemption. This can be granted only if the board is of the view the worker has a special need and the special circumstances of the case commend themselves to the board.

It has always been very difficult to convince the board as to the existence of special circumstances and no criteria are laid down in the Act as to what a special circumstance or a special need may be.

Judge Dunn felt there ought to be a general discretion on the part of the board to allow redemption in the event of the board considering it is in the worker's interests to do so. I suggest that would be the most appropriate way to deal with the matter, rather than having the present provision which relates to special circumstances.

One of the reasons I say that is experience has shown that many workers will be very happy to accept a discounted, redeemed lump sum and go off compensation. There are a number of reasons for that. One is the obvious reason that the worker would be able to claim social security benefits. Other workers may prefer a lump sum in order that they may pay off the mortgage on the house and then live on an invalid pension without having to pay mortgage instalments. There is no guarantee those sorts of circumstances will be regarded as falling into the class of special need and in fact, in the past, they have not been regarded as a basis for redemption.

Therefore, the Government should consider giving wider discretion to the Workers' Compensation Board to allow redemptions.

Having said that, I commend the Government for its inclusion of subclause (4). I was personally involved in persuading the Government to include that subclause. Having said it would be good to allow the board a wide discretion to permit redemptions, I now go on to say I am glad the Government has left no discretion in regard to mesothelioma sufferers who will be entitled, on application, to a lump-sum payment. This is most desirable, because mesothelioma is a disease which inevitably, and very quickly, has fatal consequences. The statistics show it may not manifest itself until something like 27 years after the asbestos dust has been deposited in the lungs. I believe the shortest latency period recorded in this State was 12 years and the longest 30 years. By that I refer to the period between contact with the asbestos dust and the development of the malignant tumour. Once the tumour has developed it progresses rapidly and it has always been fatal.

I shall give a hypothetical example of the distress this disease can cause. Back in the 1940s or 1950s a young man may have worked in the mine at Wittenoom, but has long since left. The mine closed in 1967. He may have been working in Perth in a completely different sort of job and, all of a sudden, he is struck down by the disease and it is clear his life expectancy is very short. That man may be the breadwinner of the family and a number of matters must be attended to in those circumstances. Therefore, it is only appropriate that the injured worker should have access to the full amount of his compensation immediately, if he so desires. Subclause (4) will facilitate that and the Government is to be congratulated for including it.

Clause, as amended, put and passed.

Clauses 69 to 71 put and passed.

Clause 72: Recovery of payments—

The Hon. G. E. MASTERS: I move an amendment—

> Page 50, lines 28 to 31—Delete the passage "sue and recover from that person the amount or part of the amount, as the case requires, of compensation or expenses so paid" and substitute the following passage—
>
> > apply to the Board for an order that compensation or expenses so paid be refunded, and the Board has jurisdiction to hear and determine such an application and to make any order in relation thereto or any part thereof as it considers appropriate in the circumstances.

The intent of this amendment is to retain within the board the power to make an order as to recovery of payments rather than having the entire matter dealt with by the District Court. Throughout this legislation every effort has been made to provide a complete service by the board and the vesting of this power in the board is an integral part of the function and jurisdiction of workers' compensation. It is simply a matter of following the intent of the legislation all the way through.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 73: Suspension of payments—

The Hon. H. W. OLNEY: I do not propose to move the amendments on the notice paper in my name, in view of the prior information which has been given to me by the Government that it will not accept them. However, I feel the drafting of this clause requires some attention and hopefully that will be something the Government will consider in its review of the working of this legislation in its early stages.

I am, of course, hopeful this clause will never be used, in which case the problems would never arise. The clause deals with the suspension of weekly payments, firstly, during the period the worker is serving a sentence of imprisonment—I suppose it is a vain hope that will never occur—and, secondly, during the period the worker is required to undertake rehabilitation treatment or training and refuses to do so, ceases to do so, or does not reasonably co-operate. I hope that latter situation never occurs and I suppose it will be a test of the quality of the rehabilitation programmes which are prescribed under the Act as to whether workers can be persuaded, induced, or inspired to follow through the rehabilitation designed for them.

I draw the attention of the Committee to subclause (4) which provides that, where a worker's compensation has been suspended for his failure to undertake rehabilitation or for his unauthorised cessation of rehabilitation treatment, or where the medical practitioner in charge of the programme says he is not co-operating, if the worker does not remedy the situation within one month his entitlement to compensation ceases. That seems to be a rather drastic step to take.

I am aware of the power of the board to extend the period of one month and direct that a longer period be given and I am hopeful that, if a worker applied to the board after the month had expired and indicated the reasons he could not complete rehabilitation, he would be able to return to the programme and receive compensation. I hope that is the case. If it is not, I hope the Government will review the situation.

Clause put and passed.

Clause 74: Worker entitled but dispute between employers—

The Hon. H. W. OLNEY: I advise the Chamber I do not propose to move the amendments in my name on the notice paper in regard to this clause. Once again, I feel the provision could be drafted in a clearer and more precise manner to achieve the object sought to be achieved; but I will not take up the Chamber's time in debating the fine points of draftsmanship.

Clause put and passed.

Clause 75 put and passed.

Clause 76: Restriction of application—

The Hon. H. W. OLNEY: The Committee has already rejected an amendment which related to my amendment to clause 76, and accordingly I do not propose to move my amendment.

Clause put and passed.

Clauses 77 to 79 put and passed.

Clause 80: Wilful and false representation—

The Hon. H. W. OLNEY: I move an amendment—

> Page 56, line 13—Delete the word "disability" and substitute the following passage—
>
> > a disease to which Part III Division 3 or a loss of function to which Part III Division 4 applies

This clause is the worst clause in this Bill and is one that the Opposition is very much opposed to in its present form. There is a provision in the existing law under the section dealing with progressive industrial diseases whereby a worker

is disentitled to compensation if he falsely represents that he has not previously suffered from the particular industrial disease. One can understand that as being sensible because it does in fact have some bearing upon the liability of the employer, even though the worker may not actually contract that disease in the course of his employment. If it happens to be the employment which is deemed under the Act to be the employment to which the disease is due, then that employer is primarily liable if the worker later contracts the disease.

I can understand this with respect to diseases under part III, division 3 or loss of function under part III, division 4; but I cannot understand or see any justification for this provision to apply generally, because the effect of it will be that any worker who has had any disability at all, whether it be a disease, a broken leg, or a back injury, may if he has previously had such a disability, be disentitled to compensation if he, on entering subsequent employment, wilfully and falsely represents himself as not having previously suffered from that disability. I mentioned this matter in my second reading speech and pointed out how under the new arrangements with relation to insurers it can react very seriously against workers.

Under the new arrangement it will be possible for insurers to load premiums where there is a bad claims record. In fact, the loading can go up to 50 per cent. There is also a provision whereby discounts can apply down to 50 per cent, so that in a real sense the insurers are now going to be looking to the safety record of employers in assessing premiums and those employers will, of course, be trying to keep their safety record intact in order to minimise their financial outlay on workers' compensation. One cannot object to that; employers should use whatever efforts are available to ensure that safe working conditions prevail.

It seems strange that in this International Year of Disabled Persons we are legislating in a way which will virtually ensure that anybody who has previously had a back injury will not get another job. That is an extreme assertion.

The Hon. W. M. Piesse: That is not true.

The Hon. H. W. OLNEY: I am sure the effect of it will be that insurers will try to avoid having to carry insurance for an employer where there is a potential back injury claim—which is the most difficult and costly insurance claim in workers' compensation—and will insist that the employer obtain a statement on every occasion from prospective employees as to whether or not the employees have had a back injury.

I anticipate that every insurer who sees that an employer is employing someone with a previous history of back injuries, will load the premiums and there will be absolutely no inducement to an employer to take on a person who has suffered a previous injury of that sort. In fact, not only will there be no inducement, there will be actually a grave disincentive. What would be more of a disincentive than a monetary penalty in the way of a loaded premium? It is always the case in workers' compensation that the employer takes the worker as he finds him.

Of course, this is one of the things about our system of insurance that has applied under the Workers' Compensation Act; there has been this provision of the loss ratio, so that it is worked out in advance, over the total claims experience of all the insurers, exactly how much profit the insurer is going to make.

Over a period of five years the insurers have been assured virtually a guaranteed percentage of profit because the premiums have been adjusted in that way. The advent of loadings and, to a lesser extent, discounts—there have always been some discounts—is going to throw that somewhat out of balance. I hope my fears are wrong, but I do fear that clause 80 will work to the severe disadvantage of workers.

If ever there was a case for providing a universal compulsory insurer, this is it; I am not simply saying that the State Government Insurance Office should be the only insurer, but rather that there should be something like the Motor Vehicle Insurance Trust, a consortium of insurers both private and State, which can provide arrangements under the Statutes whereby all employers or, in the case of the MVIT, all motorists, are insured by the one insurer so that the losses can be spread equitably across the board.

One of the burdens that the community must be prepared to carry is the extra cost involved in getting disabled people back to work. I would rather see a tax imposed so that there is a State-run fund similar to that contemplated by the Woodhouse report of a few years age, and similar to Medibank and the system in New Zealand, whereby the whole community contributes towards the cost of compensating people insured in work accidents.

That of course is only peripheral to the present clause, but it is a matter of considerable importance that under this clause there is the potential for previously disabled people to be

discriminated against by employers, and one is not able to point the finger at the employer for that discrimination because we are preserving a private enterprise profit-making system of insurance in this field. We will have the bad effects of the entrepreneurial system; that is, that people want to maximise their profits and minimise their expenses. I hope, if the Government does not agree to the amendment moved and the other one that is related to it in respect of this clause, it will give serious consideration to amending clause 80 so that it relates only to division 3 diseases and division 4 losses of function.

Another provision in clause 186 makes it an offence to fraudulently obtain or attempt to obtain any benefit under the Act by malingering or by making any false claim or statement, and I think that clause will be adequate to ensure that the dishonest worker—and there probably are a few dishonest workers occasionally who seek to take advantage of this legislation—will be dealt with in an appropriate manner. Clause 80 will only work in such a way as to stop people having the opportunity of employment, and that is a bad thing.

The Hon. G. E. MASTERS: I listened to the honourable member's comments with some interest and I could not agree with him at all when he said this clause, if it becomes law, would mean that people with injured backs could never gain employment. I thought it meant it would be difficult for them to obtain employment in a situation where in fact their backs are likely to be damaged again. We all know that most people have injured their backs at some time and I suggest probably at least 25 or 30 per cent of the members in this Chamber would have suffered from back injuries or back trouble at some time or other. The Hon. Bob Pike and the Hon. David Wordsworth have such a problem.

The Hon. D. K. Dans: I don't.

The Hon. G. E. MASTERS: The Hon. Des Dans does not. It must be because of lack of exercise.

Several members interjected.

The DEPUTY CHAIRMAN (the Hon. R. J. L. Williams): Order!

The Hon. G. E. MASTERS: It simply means that where an employer inquires of a prospective employee whether or not he has had a back injury and whether it is likely to be affected by the employment for which he is applying, and that person says, "No, I haven't got a bad back injury", and later an injury occurs and it is proved that in fact it is a follow up from a previous injury, then there needs to be some protection to the employer.

I know the honourable member has suggested that the insurance companies are trying to persuade employers to aim for a good safety record, and that is to be applauded. Perhaps if we include this clause, there will be fewer injuries because such people will not be employed in situations where they may cause a recurrence of their back injuries.

I strongly oppose this amendment, although I know the Minister for Labour and Industry has said he will keep the matter under review. I believe the proposition we are putting forward is reasonable, and it is a situation in which all employers have been involved at some time or another. Certainly it was of concern to me in the business I operated.

I urge members to support the clause as it stands. If there is any need to review it at a later time, it will be reviewed, as the Minister in another place has said.

Sitting suspended from 6.01 to 7.30 p.m.

The Hon. P. H. WELLS: This clause is not in the current Act; it is an entirely new clause. Some of the arguments the Hon. Howard Olney brought forward ring true. It is certainly pleasing to note that the Minister mentioned it is an area which would need to be monitored, or that the Government should have a fresh look at it. Why this rings true to me is that it seems reasonable that if someone wilfully and falsely represents himself he should pay the penalty.

The Hon. D. K. Dans: Only if they get caught.

The Hon. P. H. WELLS: I said only if it is wilful. Mr Olney said clause 186 covers fraudulent acts. It could well be that insurance companies to some degree will certainly discourage the employment of people who have a history of workers' compensation claims. I do not know how that may be overcome. If an insurance company considers that a person is a drain on workers' compensation insurance then that certainly is a black mark against that person. However, that is not the area with which I am concerned.

I am concerned that this clause could be used unintentionally against someone who may well have had a compensation claim previously. This clause could be used against such a person, despite the fact that it is at the discretion of the board. It is possible that a person could have had a compensation claim years ago; it may well have been a back injury, and a later claim could be totally unrelated to the previous injury. This could

be used against the person, but the decision is totally at the discretion of the board.

One of the points I would like to put to the Minister is that the board is always hearing hard-luck stories and it has my sympathy. There are people who take the opportunity of reporting a football injury at work on a Monday morning.

The Hon. D. K. Dans: There are two sides of the coin.

The Hon. P. H. WELLS: The board is often hearing hard-luck cases and because of this new clause it could well err in its decisions. It is in the interests of the insurance companies to protect themselves in the same way that businessmen have to protect themselves from bad debts. A notice is made public naming those people who are bad debtors, and I would not like to see a notice being published naming those people who have a record of workers' compensation claims. If a situation like this arose I would suggest the Government has a fresh look at it. We should not argue who is at fault but be able to recognise that there are accidents that require to be covered.

The Hon. Tom McNeil: Why pick on footballers, they are the ones who are not covered.

The Hon. P. H. WELLS: This clause is one that is often found in an ordinary life insurance policy. Ordinary life insurance is a totally different thing from workers' compensation insurance. What we should be doing is getting people back into the work force and where a person has had an accident and is honest about it, I suggest he should be employed. I am not saying insurance companies have a great history of not meeting claims.

What concerns me is that this is a new clause. It has been inserted in the Bill for a purpose and I trust that it is a humane one and that the clause is not used to deprive people of compensation, particularly in an unrelated case. I am referring to a person who had a back injury and then suffered a totally unrelated injury and because he unintentionally wrote something on the claim it could be used against him. In this type of case I would say that a worker has not necessarily wilfully and falsely represented himself and I would hope that the board would act responsibly in a case of this nature.

The Hon. D. K. DANS: This clause intrigues me. I will not go into other areas of compensation but I will use a term that is sometimes used. What if a worker has a back injury—presumably there are other injuries and there are many different types of back injuries—and he goes to a doctor, or to a series of doctors, to be treated and they finally pronounce him fit and totally recovered from that injury? It appears to me that if a person is declared fit and at some future stage he applies for a job, two things could happen. He could neglect to say he had been totally cured—I do not think he should have to mention that—and subsequently if he injured his back again he could be deemed to be not compensable. I believe that, irrespective of what is in this Bill, any employer who denied employment to a person who had totally recovered would have a hard job proving that in court. This means that an employer would not be prepared to employ a person who had suffered a back injury.

I will touch briefly on the compensation available to seamen, which is not different from the area covered by the Bill before us. As I mentioned earlier, only two things can happen in respect of a seaman. A medical inspector of seamen can declare a seafarer either fit for work or not fit for work. There are no half measurers. When a seafarer is declared fit by his own doctor and subsequently by a medical inspector of seamen he is fit and there is no doubt about it.

Who is going to be the arbiter in these matters? A person may have chopped off one of his right fingers and then do the same thing to one of his left fingers; or a person could break an arm or strain a muscle in his back and then be declared fully recovered and fit. However, if that person neglected to inform a new employer of his previous injuries he could be in trouble.

I believe a person should be afforded more protection than this Bill provides and that the courts should have the jurisdiction to handle these cases.

The Hon. G. E. MASTERS: Where a person is required to sign a declaration that he has previously broken his arm or had had a bad back or some other injury—

The Hon. N. E. Baxter: When does he do this?

The Hon. G. E. MASTERS: I am saying if he is asked if he has had a previous injury he would be required to say, "Yes". The employer would be within his rights to say he was unable to employ him because he may well have a recurring injury. The person may then present a certificate which indicates he is fit for work, but the employer could say that he would not employ him because it is a fact of life that the injury may recur. In most cases where an employer has that assurance and the person looks fit and appears willing it is more than likely he will get the job.

The protection will always be there because if a person again injures his back or suffers some other injury and has a certificate to say he was fit prior to injuring his back again the board, in its

discretion, will simply say, "Yes, it is a fresh injury and you are able to receive compensation". Generally speaking, that is how the clause would operate.

The Hon. D. K. DANS: Is the Minister seriously suggesting that if someone like the Hon. Joe Berinson, who had a bad back and is declared fit and fully recovered, went along to an employer and, being the honest citizen he is, said that five years ago he injured his back and has been declared fully recovered, the employer would say, "That may well be the case, but I am not going to employ you"? Is the Minister saying that person could then go back to the board—I do not know how long it would take—and, using its discretion, the board would say to the employer, "Employ that man"?

The Hon. G. E. Masters: That is not what would happen.

The Hon. D. K. DANS: How long would that person wait before he obtained the job? I agree that in most cases employers would say, "That is good enough for me. You can start now". But what would happen if an employer said he would not employ that person? I envisage that the profession to which the Hon. Joe Berinson belongs will have a field day with this clause.

Does the person get paid from the time he applies for the job until the tribunal says the employer was wrong in not accepting him?

The Hon. P. H. Wells: He does not go there until he has had an accident.

The Hon. D. K. DANS: I do not see it that way. If the employer does not have any right to say this, why have the clause? If a person has an accident and is declared unfit and goes along to an employer and does not say anything about his injury until he has another accident, that is when employers join forces.

The Hon. G. C. MacKinnon: It has to be the same disability and not another accident.

The Hon. D. K. DANS: That is right. I see problems because the matter is not clear. I do not expect the Minister to make a decision tonight, but it is something worthy of consideration.

The Hon. G. E. MASTERS: I am not sure whether I have fully understood the Leader of the Opposition. My understanding is that when an employer is interviewing a person he has the option of employing him or not employing him. He does not have to employ him. Whether the person is fit or unfit, the choice belongs to the employer. The board's discretion is used if an injury occurs. The option of employment is with the employer at all times, and so it should be; in certain cases it is otherwise but in almost all cases the option is with the employer. The question about a person's fitness can be asked and then a decision made by the employer whether or not to employ him.

There could be the occasional difficulty where a person is able to do the job but the employer says he is not prepared to take the risk of employing him. This question was raised in another place and the Minister there gave the clear understanding—as I do now—that he was not prepared to make an amendment. The matter will be reviewed if any difficulties arise in the operation of this clause. In the meantime it is considered it will cover the problem. It is thought worth while to allow the board to have a discretion.

The Hon. D. K. DANS: I am fully aware that no employer has to give a reason for not employing a person; nor does he have to give any reason for dismissing a person. I am dealing with a situation where an employer says, "Have you ever had a back injury?" and the applicant for the job, being an honest person, replies, "Yes, but I have fully recovered". The employer has no choice. He has immediately been given a reason for not employing that person and is therefore in difficulties. If he were to say that he was not going to employ the person and not give any reason, he would have no problem. As members know, there are thousands of well-intentioned small employers who, out of their own mouths, would convict themselves when confronted with the occasional smart aleck.

When Mr MacKinnon, Mr Logan, and I were members of a committee inquiring into workers' compensation we thought we were doing a marvelous job until we found members of the legal profession and others were able to drive horses, buggies, and even railway engines through the Bill we produced. This has always been the case with workers' compensation legislation. This Bill will be no different. Despite the expertise involved in drafting the Bill it will still be wide open to interpretation. Many people know that right now and they will be sharpening their pencils and untangling their wigs in readiness to tackle this legislation.

The way the clause is framed at the moment could lead to all sorts of difficult situations. What we are trying to achieve will not be achieved. People do not care if someone has hurt his back 15 times, they just do not want to be involved in all the legalities. I remember a steel company in Port Kembla which decided to employ its own doctors. It got into all kinds of strife in this area

because of the problems created and because of the legal and technical difficulties that arose.

I hope the Minister does consider the points I have raised. He should bear in mind that some of the small businessmen will doubtless fall for the three card trick played by some of the smart alecks around.

The Hon. W. M. PIESSE: I see this clause as providing protection to workers. All a worker need do is admit he has suffered an injury. The clause will be his protection, because if he tries to obtain a job of lifting steel poles having previously injured his back, and his employer is not aware of this, he could do irreparable harm to himself.

I hope members will consider this aspect. I have certainly seen many people who have suffered greatly because they have injured their backs and then gone back to do work for which they were unfit and subsequently done irreparable harm to themselves. They have then had to put up with a half existence because of their foolishness. No hardship is involved for a person to admit he has suffered a previous injury and has been told he is cured. It is then in the hands of the employer to say, "I do not think you ought to be lifting these steel poles, because the injury might recur".

The malingerers are taken care of in other parts of the Bill; this clause is not aimed at them. This is a safety clause and I hope members see it in that light.

As for discrimination, if a person is not given a particular job because he previously suffered an injury and the work may aggravate that injury, who is to say that the employer should say, "Take your chance and injure your back again; we will pay for it; the money is nothing compared to the loss if you ruin your back for the rest of your life"?

In reply to Mr Wells' argument that there may come a time when everyone is on compensation because they cannot get jobs, I point out that someone always has to pay and we will run out of payers.

The Hon. N. E. BAXTER: It seems that some members of this Committee have a very queer idea of what compensation is and is not about and how it works. If we take out a workers' compensation policy we in fact take out a comprehensive policy which includes compensation. We do not fill in a form and say that a worker has hurt his back. We merely take out a comprehensive policy.

It is wrong for members to suggest that a person would go along for a job and say that he injured his back five years ago. He would say nothing of the sort. By law the employer has to take out a workers' compensation policy. The time when a person is required to declare that he has a bad back is when he further injures his back and claims workers' compensation. That is when he indicates he has had a previous injury.

In all the years I have employed people I have paid for a workers' compensation policy. During that time I have had five employees covered for workers' compensation, and I have never queried one of them as to whether they have had a bad back, a broken ankle, or anything else. An employer does not bother to ask such questions. It is an insurance company's responsibility to bother about such things. An employer merely takes out a policy for workers' compensation and nothing else occurs until an employee suffers a disability of some sort. At that time it can be argued whether the disability was caused by a previous injury. It is not considered when someone is first employed.

I know of a case concerning a chap, someone fairly close to me, who had a back injury some time ago. He went to many doctors and spent a great deal of money having his bad back fixed. He went back to work and could carry out the normal functions of his work. However, he did something on the job which put out his back again. There was no chance of the insurance company paying compensation because this person had a previous injury. When he went back to work his back was okay, but a particular operation of the job he was doing caused his back to go again. Some people have a naturally weak back which can go in a number of places. A part of the vertebrae can go and pinch a nerve at one time, and then another part of the back can go and pinch another nerve.

The Hon. W. M. Piesse: The clause refers to an employee wilfully and falsely representing himself as not having a previous injury.

The Hon. N. E. BAXTER: If he does not state that he has suffered a previous injury he would be regarded as wilfully and falsely representing himself.

The Hon. W. M. Piesse: That is not necessarily so.

The Hon. N. E. BAXTER: The claim form is the only place he can state that he has had a previous injury. The clause uses the words, "at the time of seeking or entering employment".

The Hon. P. H. Wells: Most companies have a form they get employees to fill in.

The Hon. N. E. BAXTER: Companies I know of do not have such a form.

The Hon. P. H. Wells: Most large companies have a form for prospective employees to fill in.

The Hon. N. E. BAXTER: Most employers, such as farmers, never ask an employee to fill in any form. The employer obtains a policy to cover all employees. Some employees stay for only a few days, a week, or a few weeks; but the policy covers all employees over a period. The employer does not include on the policy the name of every worker he employs from time to time. How can it be proved that an employee has wilfully and falsely represented himself as not having previously suffered from a disability? There is only one place it can be proved, and that is in a court of law. The litigation would be started by an insurance company to show that the worker wilfully and falsely represented himself. The Workers' Compensation Board cannot decide such a thing; the matter must be taken to a court so that the insurance company concerned has an opportunity to prove that the claimant had a previous disability which he wilfully and falsely represented.

Certain things could happen. If a person has had, for instance, a back injury, and suffers another back injury to a different part of his back, he would need to show by using the evidence of doctors and others that the first back injury had nothing to do with the second. A court would be the only place where such a thing could be proven. That is why this clause needs rewording; it will be detrimental to many honest workers. Most injured workers want to be cured of a disability, particularly a back injury, so that they can get back to work. However, if they have a weak back, they may suffer the injury again.

By way of this clause an insurance company could get away with not paying a penny for compensation if a worker has, for instance, a weak back. This clause will disadvantage workers, and the Government should take it back for reconsideration.

I do not believe the Hon. Howard Olney's amendment will give workers reasonable cover, and that is evidenced by the issues I have raised. In the main, workers do not have enough money to enter into lengthy litigation, but the insurance companies do. Some insurance companies will get out of paying if they can, especially if the amount involved will set them back a bit.

I reiterate that the Minister should take back this clause to determine whether some wording can be devised to put it on a proper footing.

The Hon. H. W. OLNEY: I am almost beginning to wish that I had not moved this amendment. In fact, I am beginning to think I did not move the amendment because what we have been hearing does not seem to have much bearing on what we started to talk about. It is important that we get to what the clause is all about.

In answer to the Hon. P. H. Wells, I refer him to section 8 (4) of the principal Act, first introduced in 1912. It is to the effect that if it is proved that a worker at the time of entering employment wilfully and falsely represented himself in writing as not having previously suffered from the disease in question, compensation shall not be paid. Section 8 deals with the third schedule diseases referred to in the Act. That is why I said at the outset clause 80 is similar to the section which has always prevailed in respect of industrial diseases. I accept there is good reason for that provision because normally with industrial diseases—this is not inevitable—the last employer in the industry is left holding the baby. Most of the diseases referred to in the third schedule manifest themselves at a later stage.

In the plastering industry employees are susceptible to dermatitis. An employer in the plastering industry may well inquire of a prospective employee, "Have you ever had dermatitis from plaster?" There may be circumstances whereby a worker has become sensitised by way of his last employment—it would need to be in the last 12 months—but when he goes to another employer in the industry he may have an outbreak of dermatitis and that employer is left with the responsibility of paying the employee's compensation.

I reiterate that there is good reason for section 8(4) existing in the Act, and the amendment seeks to restore that position in respect of the new schedule 3 diseases, and new schedule 4 losses of functions. Perhaps noise-induced hearing loss is something an employer in a noisy industry may inquire about of a prospective employee. It may beome important for the employer to ascertain whether a worker has suffered any previous loss of hearing through noise induction.

We accept that there are circumstances in which an employer might reasonably want to protect himself by ascertaining whether a prospective employee has suffered previously from a particular disease or loss of function, and the present Act enables him to do so. However, the new proposal is to substitute the term "disability" for "disease". Under the definition of "disability" the provision will apply to all previous disablements arising, whether by injury, disease, recurrence of an existing condition, or whatever.

My complaint is not directed towards protecting the dishonest person. I know from my experience, and I am sure any of us who have had

anything to do with people who have been injured at work would know, that there is nothing so degrading for a man, a breadwinner, to be placed in the position of having lost his employment through an industrial accident or disease, and then having recovered and being fit for work, being unable to obtain work; and that applies particularly in these days.

I am fearful the board will never be called upon to exercise its discretion because it can be exercised only if the worker obtains a job and makes a further claim in respect of a previous disability. I am concerned that employers will turn such workers away if they think such workers are a bad insurance risk.

The Hon. N. E. Baxter outlined that which traditionally has been the position in regard to workers' compensation. The insurer makes no inquiry as to the condition of employees. The insurance policy is merely taken out and the premium paid. However, it will be a different game from now on because insurers will be able to load premiums in circumstances where they believe there is a high risk. They will grant rebates, and employers will try to obtain rebates and avoid loadings.

I suspect it will be inevitable that most insurers covering workers' compensation in industries will say to employers, "If you want to insure with us get this form filled in every time you take on somebody". Certain questions will be asked of workers, and they will be obliged to answer, and sign the form in front of them. For the sake of getting a job and to have an income a worker may say, "No, I haven't previously had a back disability". That will mean the insurer will not load the premium because a bad risk does not seem apparent. If the worker's statement is wilfully false and he suffers an injury during the course of his employment he will not be compensated for that injury.

The changes we seek are moderate indeed and would only restore the present position. We are not asking to advance, as it were, to a situation under which workers would be in a more advantageous position than they are under the present legislation. Not one word has been said in respect of the change proposed by this clause, a change which suggests that wilful and fraudulent misstatements as to previous conditions have been a problem in the past. The Minister has not said that is the case; indeed, because this problem has not occurred in the past, he cannot say it is.

For the most part employers have not been interested or concerned to ask the question of whether an employee has had a previous disability. Because of the new loading and discounting provisions which will apply, employers will ask the question, and a previously injured worker will be at a disadvantage.

Another point is that the position may well be that the whole clause is a nonsense thing anyhow. If we read it closely we will understand that if a worker claims compensation for a disability and wilfully and falsely represents himself as not having suffered previously from the disability, the question is raised as to whether we are talking about the same disability.

If he has an injury as a result of an accident in his employment, it is a disability. There is no way in the world he could have previously suffered the same injury. If the clause is to make any sense at all, when it mentions "disability" it must surely mean the same sort of disability.

A man may be asked whether he has ever received compensation for an injured back. If he says "No" when he has had a previous back injury and then injures himself at a different level—he might originally have had an injury to the cervical spine and the second injury might be to the lumbar spine—he would be disentitled because the question he would be asked would be whether he had received compensation for a back injury.

Perhaps this is an area where the court will be able to exercise its discretion and, hopefully, this will always be in favour of the worker. There is a problem here because it is an area in which we are covering new ground. I am disappointed the Government will not accept my proposed amendment because it is very acceptable, and the Government's provision is unreasonable.

The Hon. G. E. MASTERS: I have listened to a great deal of discussion on this clause but I think Mrs Piesse really put the explanation in a nutshell. She made a fair comment about what this clause seeks to do.

The Hon. D. K. Dans: I do not agree.

The Hon. G. E. MASTERS: We are talking about protection and that is the most important issue. Most certainly insurance companies are providing an incentive for employers. I am sure employers have a lower accident rate as a result of this, and it is to their credit. That is very much what the Bill is all about, and if there are less injuries as a result of the fluctuation in premiums, that is good.

Mrs Piesse made the point that if an employer knows a person suffers from a disability or a particular back injury, it is not likely that person would be given a task to do which would make his injury worse.

I am grateful for Mr Baxter's explanation of why I have a bad back; however, I would disagree with him on the interpretation of this clause. My understanding of Mr Baxter's comment is that a person would be required to declare—at the time of employment, if so asked—if he had suffered from an injury.

I support the clause.

The Hon. D. K. DANS: All I can say is that the Minister is extremely naive, and although I do not like to say it, so is Mrs Piesse. In a very roundabout way the Minister has answered the question I asked a few moments ago; that is, that when a person applies for a job he will be asked—

The Hon. G. E. Masters: May be asked.

The Hon. D. K. DANS: —whether he has suffered an injury. The Minister did not say "may be asked". The Minister said this is protection for the worker because when he applies for a job, the employer will ask whether he has had any other injuries. I doubt whether the employer would say, "I am going to employ you; my main business is moving pianos, but you can trail along behind and see that we do not bump into doors". What a lot of nonsense! That is what the Minister said.

The Hon. G. E. Masters: I did not say that at all.

The Hon. D. K. DANS: That is what the Minister implied. I believe Mr Olney grasped the point. I believe this clause will cause the Minister more trouble than the problems he is attempting to avoid. Mr Baxter was quite correct when he spoke about the Act and when he said it is not relevant that when a man applies for a job those questions should be asked. What is the good of having this provision if it is not relevant until such time as a man is injured? We may as well tear up the legislation which relates to this clause.

I am pleased this legislation will be reviewed in 12 months' time because I am sure many points will be brought to light. This provision seems to be quite stupid. It looks good, but in its practical application it contains many problems. This problem may not be found in the Act, but outside where people have other recourses to law.

The Hon. N. E. BAXTER: I do not seem to be able to get through to the Minister what happens when one takes out a workers' compensation policy. All this talk about employers inquiring as to whether a prospective employee has had a previous injury—

The Hon. D. K. Dans: I agree with you.

The Hon. N. E. BAXTER: —is utter rubbish because it is mandatory that an employer take out a workers' compensation policy; if he does not he will be fined. The clause should not be in the Bill, unless it is made a sensible clause.

The Hon. H. W. Olney: We should reject it entirely.

The Hon. N. E. BAXTER: The employer does not pay the compensation, the insurance company against whom the claim is made must pay. The worker does not claim from the employer, he claims from the insurance company. However, in the interim period the employer has to meet the payments until the matter is agreed. The liability is with the insurance company. An employer does not pay a premium for a workers' compensation policy and then meet all the workers' compensation payments.

The onus is not on the employer, it is on the insurance company. The only time a person declares he has had a back injury is when he fills in a form for compensation. So, if there is any dispute about it the matter goes to litigation in the court, unless of course the man admits that he falsely misrepresented the position when filling in the form. If the man concerned has had an injury, it might have been in the lower back or in the high spine near the neck. When I was farming in the south-west I did my back in and I could not stand up for some time after I got out of bed. A number of years later I injured my neck. Therefore, my disabilities were in different places. Under this clause, if a man has had a previous back injury he would be making a wilful and misleading statement. This matter must be looked at because it could do a disservice to many people.

Amendment put and negatived.

Clause put and a division taken with the following result—

Ayes 17

Hon. V. J. Ferry	Hon. N. F. Moore
Hon. H. W. Gayfer	Hon. P. G. Pendal
Hon. A. A. Lewis	Hon. W. M. Piesse
Hon. P. H. Lockyer	Hon. R. G. Pike
Hon. G. C. MacKinnon	Hon. I. G. Pratt
Hon. G. E. Masters	Hon. P. H. Wells
Hon. N. McNeill	Hon. W. R. Withers
Hon. I. G. Medcalf	Hon. D. J. Wordsworth
	Hon. Margaret McAleer *(Teller)*

Noes 9

Hon. N. E. Baxter	Hon. R. T. Leeson
Hon. J. M. Berinson	Hon. Tom McNeil
Hon. J. M. Brown	Hon. H. W. Olney
Hon. D. K. Dans	Hon. F. E. McKenzie
Hon. R. Hetherington	*(Teller)*

Pairs

Ayes	Noes
Hon. R. J. L. Williams	Hon. Peter Dowding
Hon. T. Knight	Hon. Lyla Elliott

Clause thus passed.

Clause 81: Effect of annual leave, long service leave, and sick leave—

The Hon. H. W. OLNEY: I move an amendment—

> Pages 56 and 57—Delete subclauses (2) and (3) and substitute the following—
>
> > (2) A worker's entitlement to compensation for incapacity under this Act shall be reduced by the amount of any sick leave entitlement received by him from his employer during or in respect of the period of such incapacity.

The purpose of my amendment is to try to make the Government's intention fully effective. The proposals in the Bill in a somewhat longwinded way simply provide what my amendment provides; namely, that a worker who is paid sick leave during a period of incapacity for which he is entitled to weekly payments must refund the sick leave payments once he has been granted workers' compensation, and if he does not, he may be sued for them. If he does refund those payments, the employer must reinstate the worker's sick leave entitlements.

There is nothing fundamentally wrong with that concept in general terms, but there is a technical difficulty which is that this Parliament has no power whatever to legislate in a way which binds an employer who is bound by a Federal award. There are many workers in this State who are entitled to workers' compensation under State legislation whose general conditions of employment and sick leave entitlements arise under Federal awards. The effect of the Government's proposal is that it will apply to workers under State awards and to workers not covered by awards, but not to workers under Federal awards.

I believe this is wrong; it is discriminatory. With this in mind, I have moved an amendment which does not attempt to tell the employer what he shall or shall not do but rather is addressed to the employee. I am saying that we should let him have his sick leave and if he is entitled to compensation, his compensation should be reduced accordingly. What could be simpler? More than that, it will apply to all workers without discrimination.

The Hon. G. E. MASTERS: I ask members to oppose this amendment, and for very good reasons. I cannot understand the thinking of the Hon. Howard Olney in moving his amendment. I would have thought the provision in the Bill was reasonable, and was what workers' compensation is really all about.

When a person is injured and is entitled to workers' compensation, very often the employer pays him sick leave for a week or two weeks until the matter is resolved. It is reasonable that once workers' compensation is paid to that person—and, remember, it is paid as from the date of the injury—the worker should refund the amount of sick leave payment he has received.

By accepting the amendment, we would be doing two things: Firstly, we would be taking away the right of the employee to receive workers' compensation; and, secondly, we would be penalising the worker by taking away a certain amount of his sick leave which he might want to use at a later stage.

The Hon. Howard Olney maintains there will be conflict between Federal and State awards. We are dealing here with State legislation, and we have a responsibility to proceed with the clauses as they appear before us. I believe the amendment will have the effect of penalising the employer and the employee and take away from the insurance company its responsibility to pay workers' compensation. I urge members to oppose the amendment.

The Hon. H. W. OLNEY: I do not disagree with much of what the Minister said. In fact, I agree with the general philosophical approach of the clauses I seek the Committee to reject. It is true that on many occasions, for one reason or another, workers are not paid workers' compensation immediately, regrettable as that might be, and must resort to sick leave entitlements to keep body and soul together. In such cases, when compensation is finally awarded by the board, it is backdated to the time of the incapacity occurring.

We have the position where the worker may well get what one might call a double indemnity. He receives compensation for a period for which he has received sick leave payments and it is quite right in those circumstances that he should refund the sick leave payments and his sick leave entitlements should be reinstated.

This is a new provision in the legislation; however, in the past I know of no employer who, in the absence of a section like this in the Act, has ever refused to take back the sick leave payments and reinstate the worker's sick leave. After all, when the compensation comes through, it does not come from the employer but from the insurance company.

A very large section of the community of Western Australia works under Federal awards; I instance builders' labourers, shearers, construction and maintenance workers' and

waterside workers—Mr Gayfer knows all about them. What I am complaining about is that the Federal award worker who receives sick leave payments and later receives compensation payments will be able to thumb his nose at the employer because there is no way this law, passed by this Committee, can direct an employee to pay back money to his employer; nor can it direct the employer to reinstate the sick leave entitlements of a worker under a Federal award. It is for that reason the Government should take action.

The Hon. N. E. BAXTER: I do not accept the amendment because I do not think it will achieve what Mr Olney believes it will achieve. I agree with him in regard to a worker reimbursing sick leave payments and having his sick leave reinstated. However, that reimbursement should be in the hands of the insurance company. When the final decision is made as to whether workers' compensation will be payable, it is the insurance company which pays the worker.

If, as normally happens, the employer has been paying weekly sick leave payments for a period, an adjustment could be made by the insurance company to reimburse the employer. This would be a much simpler way of handling the matter than requiring the worker to reimburse the employer. Very often, the worker is living fairly close to his wages and when the time comes to repay the money he may not have it. This could cause him problems.

The Hon. P. H. WELLS: I see some value in the amendment. My understanding—limited though it may be in workers' compensation matters—is that although the insurer pays the money in the end, the weekly payments continue to be paid by the employer. The injured worker still goes to his company and receives his normal weekly wages. The employer is the person best able to make the adjustment.

When I have been associated with the paying of wages for injured workers, I have always made up the wages of those injured workers, regardless of whether they were on workers' compensation. The Act requires companies to continue to pay the injured worker his normal weekly wage. The employer then is reimbursed by the insurance company.

A problem could arise in that, under the Act, the company is bound to pay compensation from the time of the injury and the obligation is on the employee to repay his sick leave payments. Under the amendment moved by the Hon. Howard Olney, the employer would be able to take into consideration he has already paid sick leave payments and has therefore met his obligation. However, the provision in the Bill means that it cannot be done in that way. If I have misunderstood the situation, perhaps the Minister can correct me.

The Hon. G. E. MASTERS: The Government's objection to the amendment is this: If I am an employer and one of my employees is injured, the normal practice is that he will go on sick leave for one or two weeks, during which time I will pay that employee his normal weekly wages.

The Hon. G. C. MacKinnon: You pay that yourself.

The Hon. G. E. MASTERS: That is right. After, say, two weeks, it is found that the injured worker is entitled to workers' compensation. Workers' compensation is payable from the time he was injured. However, during that time he has been paid two weeks' sick leave payments. Under the Government's proposal the injured employee will be required to pay back the employer his sick leave payments, and will then receive workers' compensation from the insurance company.

The Hon. P. H. Wells: The point is that the employer must pay the worker his normal weekly wages, and then be reimbursed by the insurance company.

The Hon. G. E. MASTERS: I repeat that if the worker has been paid sick leave payments and then receives workers' compensation—

The Hon. G. C. MacKinnon: Paid by the insurer.

The Hon. G. E. MASTERS:—that is right—he must repay his sick leave payments and his sick leave is reimbursed and will be available in reserve for a future date.

The Hon. P. G. Pendal: So, he is not disadvantaged at all.

The Hon. G. E. MASTERS: No.

If we do what the Hon. Howard Olney suggests, we are taking from an injured employee possibly a week or two weeks of sick leave which he should not be losing, because the insurance company should be paying him.

The Hon. N. E. BAXTER: I do not think the Minister got around the fact that we would reimburse the employer for the man's paid-out sick leave. An employee is injured and he claims compensation. During the period before the board agrees that he is entitled to compensation, the employer pays the weekly payments—firstly from sick leave entitlements for a fortnight, and then when the employee has run out of sick leave entitlements, the employer puts him on weekly payments until such time as the insurance

company or the board decides that the worker is entitled to compensation.

When it reaches that stage, the employer has paid sick leave, and he has paid, say, four weeks more to cover the employee. When the insurance company pays out, the employee has to reimburse the employer for the two weeks' sick leave, and the insurance company has to reimburse the employer for the four weeks' wages paid out.

What is wrong with having the insurance company reimburse the employer for the full six weeks, instead of the insurance company reimbursing the employer for four weeks, and the worker reimbursing the employer for two weeks? It is too silly!

The Hon. G. E. MASTERS: If some members do not understand now, obviously I am not explaining it well enough so I will put it in another way. Assume I am an employer and the Hon. Norman Baxter is employed by me and he is injured, and I am not sure whether it is a workers' compensation case. Nevertheless, he is a good employee so I say, "Righto, I will pay you sick leave". After two weeks he says, "Hang on, this is a workers' compensation claim. I was injured as a result of my work, and I am entitled to compensation for a long period".

If the workers' compensation claim is accepted, the insurance company says, "When was he injured?" I say, "On 1 May". The company says, "Righto, from 1 May we will pay full workers' compensation payments". However, for two weeks he received sick pay when he was entitled to compensation, so the insurance company pays the compensation back to the day of his injury. As he has received two weeks' extra pay, he has to pay that money back to me, and then he has workers' compensation payments from the day of his injury.

The Hon. N. E. Baxter: What happens if the insurance company does not pay out for six weeks after the—

The Hon. G. E. MASTERS: If a certificate has been lodged, the insurance company is required to pay within 14 days.

The Hon. G. C. MacKinnon: The answer to the question is that insurance companies often do not pay out for two years, and the fellow starves.

The Hon. G. E. MASTERS: The honourable member knows that this Bill provides protection if there is a justifiable claim. The board can act, and payment will be made within 14 days of the lodgment of the certificate.

The Hon. N. E. Baxter: How long does it take to get the certificate through?

The Hon. G. E. MASTERS: Very quickly. However, we are not talking about that at the moment.

Because the employee has lost his sick pay entitlement unnecessarily, it should be returned to him and he should continue on compensation.

The Hon. N. E. Baxter: What is wrong with the insurance company sending a cheque for the two weeks' sick leave to the employer instead of the employee?

The Hon. G. E. MASTERS: There is a problem with this. Quite often the amount of the sick leave would be more than the workers' compensation, with entitlements and different things.

The employer is paying insurance premiums for workers' compensation, so the insurance company should be paying the worker rather than the employer. The responsibility for the workers' compensation payment is being placed right back where it belongs, on the shoulders of the insurance company.

The Hon. P. H. WELLS: I am slightly confused. When I was an employee, I was paid on a monthly basis. My payments came—regardless of whether they were sick pay, holiday pay, or compensation—if I was entitled to them.

The Hon. J. M. Berinson: Or even if you worked!

The Hon. P. H. WELLS: As I understand it, the workers' compensation people shifted a lot of the work onto the employers. The money did not come from the insurance company. The Minister is saying that the money comes from the insurance company, and certainly the insurance company reimburses the employer. However, an earlier change in the Act shifted the responsibility for sending the money from the insurance company to the employer, so the worker received his weekly wages.

If a worker goes off sick with a compensable disease, and he presents a certificate to his employer within 14 days, the employer must start paying weekly compensation payments. It may well be a fortnight before the payments start. He has been paid in advance and the money is in his hands; and it will continue to be paid by the same source.

The Hon. Tom McNeil: That is what the Minister said.

The Hon. P. H. WELLS: The Minister said the insurance company would pay it. I am saying that the insurance company refunds the employer.

The Hon. G. E. Masters: You are wrong.

The Hon. P. H. WELLS: I am stating what actually happened. In the two years prior to coming into Parliament, I paid people on workers' compensation. I made claims for the company. I am saying that in that situation the person's cheque was posted by the employer each pay day. If it was not received at the right time, the employee went into the SGIO to complain that he was not being paid.

The company was required to pay the worker's entitlement. If the entitlement is to workers' compensation and not to sick pay, surely it is simple for the insurance company to adjust the sick pay, provided the worker is entitled to compensation under this Bill.

The system explained by the Minister was that the company would have to start sending cheques once the certificate had been served on it. It is served within 14 days, so from that date the employer has to pay the entitlements due under the Bill. However, we have indicated already that the worker has been paid in advance, so he must pay back that money.

Would it not be simpler for the paymaster to have the authority to make automatic adjustments so there is no necessity to send a bill to the employee for the sick pay he has been given? That is how it worked until 18 months ago when I came into this Parliament. I assume it is working that way now, under the present Act. If the company for which I worked is doing the wrong thing, I will be pleased to advise it. I understand that is how most companies handle workers' compensation.

The Hon. H. W. OLNEY: I would really like to move on to the next amendment. I am impressed by the Minister's eloquence; but I am depressed by the fact that I persuaded Mr Wells to support me so vociferously. However, I have to concede that Mr Baxter was probably right when he said that my amendment would not do what I intended.

In endeavouring to cover the situation of a worker covered by the Federal award, perhaps I have gone for overkill. There are much more interesting parts of the Bill still to be debated.

I was forewarned that the Government would not agree to this amendment. The Bill has an anomaly in it, and attention should be given to it. Perhaps I should leave it at that.

The Hon. G. E. MASTERS: Perhaps the Hon. Howard Olney would be good enough to place one star, two stars, or three stars against his amendments so we know just how important they really are.

The Hon. H. W. Olney: Just look at the short list, and not the long list.

Amendment put and negatived.

The Hon. N. E. BAXTER: I move an amendment—

> Page 56, line 37—Delete the word "worker" and substitute the words "insurance company".

That would have the effect of making the insurance company liable to repay to the employer the money paid to the employee by way of sick leave entitlements. If that adjustment was made, the money would not go straight to the worker and have to come back to the employer, but it would go direct to the employer and reimburse him for the money he paid out.

No doubt the situation arises where an employer pays out sick leave entitlements for a fortnight; but by the time the insurance company pays out, it could take at least another 14 or 28 days. Irrespective of what the Minister said, the insurance company has to pay out within 14 days. The point is that the employee has been on sick leave payments for a fortnight, and then it turns out that he was entitled to compensation for those 14 days. If the insurance company has to reimburse the employee for the 14 days after the employee is found to be entitled to compensation, it may as well reimburse the employer for the 14 days in which the employee was paid the sick leave entitlement.

It is stupid to turn around and say that we will pay this bit to the employer and that bit to the employee who will then have to pay the employer for the sick leave entitlement. Therefore, I ask why the insurance company cannot reimburse the employer.

The Hon. G. E. MASTERS: I cannot follow the argument of the Hon. Norman Baxter. The employer does not necessarily have to pay sick leave, anyway, unless there is a very good reason for it. Generally speaking, if it is considered at the early stage workers' compensation is justified, the claim would be made accordingly.

If the boss pays the worker sick leave a decision is then made as to whether it would become a workers' compensation payment. However, the employer does not then have to go to the worker and say, "You must pay me back that month's pay, because you owe it to me". The claim is moved from one of sick pay to one of workers' compensation.

When we talk about the insurance company paying, we are really talking about the boss, because the insurance company pays the boss who

then pays the worker. If one were in that situation, one would simply inform the insurance company there was a workers' compensation claim, the company would acknowledge it, the certificate would be produced, and the boss would continue to make the payments. If there was an adjustment, because of sick pay—if the sick pay was a little more or a little less than the workers' compensation payment—the boss would make the adjustment. There is no transfer of cash.

Certainly, as the Hon. Peter Wells said, the employer pays, but it is done under an arrangement whereby the insurance company pays back the money. If the boss cannot afford to meet the workers' compensation payments, the insurance company will come to the party immediately. However, when we say "the worker shall pay back" it is true that legally he should pay back the whole amount, but an adjustment is made, so the difference is paid back by the worker.

It has to be put in this way to ensure the worker is liable to return the sick pay and receive the workers' compensation. It is a simple book arrangement. There has to be a requirement written into the Act that sick pay, paid by the boss, not by the insurance company, is repaid to the boss.

Amendment put and negatived.

Clause put and passed.

Clauses 82 and 83 put and passed.

Clause 84: Industrial award and partial incapacity—

The Hon. H. W. OLNEY: I move an amendment—

> Pages 57 and 58—Delete subclause (1) and substitute the following—
>
> > (1) Notwithstanding any industrial award or industrial agreement, other than any award or certified agreement made under the Conciliation and Arbitration Act 1904 of the Commonwealth, where a worker is disabled from earning full wages by reason of a disability for which compensation is or has been payable under this Act, he may be employed at such wage, being such proportion of the full wage for work in the same employment, as he and the employer may agree as being appropriate to his earning capacity having regard to the nature and extent of his disability.

The proposed amendment states in more precise terms the Government's intention in the clause.

The Bill is deficient insofar as it does not recognise the point I made earlier; that is, this Parliament has no authority to dictate what employers under Federal awards may or may not do. The effect of the amendment is to ensure that, in as many cases as possible, where the worker has been disabled and in fact is not really worth a full day's or full week's pay, he and the employer can come to an agreement and he can work at a below award rate. If they cannot agree the board will have the responsibility to assess the portion of the award rate. This clause would probably work in conjunction with a partial incapacity payment, so the worker would end up with the full award rate; but the new employer would pay what the worker was worth and the previous employer, or the insurer, would pay the balance to make up the full wage.

I understand the Government accepts this amendment which does not seek to change the proposal, but rather makes it a little clearer in its operation.

The Hon. G. E. MASTERS: The Government supports the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 85 to 95 put and passed.

Clause 96: Composition—

The Hon. G. E. MASTERS: I move the following amendments—

> Page 66, line 2—Insert after the word "Regional" the word "Advisory".
>
> Page 66, line 3—Insert after the word "Australia" the word "Limited".

This is simply a correction of the title of the Western Australian Regional Advisory Board of the Insurance Council of Australia Limited. It was printed incorrectly.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 97 to 122 put and passed.

Clause 123: Order as to total liability—

The Hon. G. E. MASTERS: I move an amendment—

> Page 90, line 10—Delete the words "weekly payments" and substitute the words "the liability for the incapacity".

This amendment is necessary for the reasons outlined in respect of clause 68; that is, the lump-sum redemption covers the total entitlement for incapacity, not just weekly payments.

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

Page 90, lines 11 and 12—Delete the words "in respect of the disability".

This is a simple amendment. These words are no longer necessary, as a result of the amendment to line 10 of this clause.

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

Page 90, line 13—Delete the words "weekly payments" and substitute the words "the incapacity".

This is a consequential amendment and is quite straightforward.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 124 to 126 put and passed.

Clause 127: Medical practitioners, dentists, chiropractors, or physiotherapists may be prohibited from charging or receiving professional fees—

The Hon. H. W. OLNEY: In view of the Committee's previous decision with respect to amendments relating to occupational therapists, I do not propose to move the amendments in my name on the notice paper in relation to this and the next clause.

Clause put and passed.

Clauses 128 and 129 put and passed.

Clause 130: Fees, costs, and charges re proceedings—

The Hon. G. E. MASTERS: I move an amendment—

Page 95, lines 31 and 32—Delete the words "unless he has been given" and substitute the words "without giving him".

The use of the word "unless" on two occasions within the one paragraph tends to be confusing and the proposed amendment is intended simply to clarify that situation.

The Hon. H. W. OLNEY: The amendment I have on the notice paper was necessary because the clause did not make sense as it read, namely because of the word "unless" appearing twice, one of which the Minister has moved to remove. I am not sure whether it does now make sense, but I think it makes more sense than previously. In those circumstances, I do not propose moving my amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 131: Requirements for taking proceedings—

The Hon. H. W. OLNEY: To save the Deputy Chairman the need of reading the proposed additional subclauses, I advise him that I do not propose moving them. However, I draw to the Government's attention the content of the proposals that appear on the notice paper which relate basically to making specific provision for giving oral notice of injury and claim, and also for the provision of an accident book by employers.

One of the biggest problems with which workers are confronted when they contest a claim or when their claim is contested in court, is proving the giving of notice of the injury. The Act does have fairly wide discretions with respect to the effect of failing to give notice, but that in itself has never been a real problem. What is important and is often hard to prove is what the worker says happened to him at the time, because that is normally the most accurate statement of what did happen. In our law we have no provision for the keeping of accident books. New South Wales and Victoria have such a provision. In fact, those two States have provisions identical to the ones on the notice paper.

The Government ought to give serious consideration to legislating to provide for the keeping of accident books in order to facilitate the proper recording of contemporary events. This is not something that is necessarily going to assist the worker in every case; it may not assist the employer in every case. But, irrespective of whom it may assist more than the other, we all have an interest to ensure that the truth is recorded and there is a reliable record of what is said about the accident or the injury at the time it happens. I hope this action is something which will go on the Government's list of revisions.

Clause put and passed.

Clauses 132 to 144 put and passed.

Clause 145: Premium Rates Committee—

The Hon. G. E. MASTERS: I move amendments—

Page 104, line 22—Insert after the word "Regional" the words "Advisory Board of the".

Page 104, line 23—Insert after the word "Australia" the word "Limited".

These are two simple amendments aimed at creating the present title; that is, the Western Australian Regional Advisory Board of the Insurance Council of Australia Limited. They make the clause consistent with clause 96.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 146 to 154 put and passed.

Clause 155: Worker may be required to attend medical examination—

The Hon. H. W. OLNEY: I move an amendment—

> Page 111, line 17—Insert after the clause designation "155." the subclause designation "(1)".

The purpose of moving this amendment is to facilitate the following amendment to add a further subclause. Clause 155 as it stands is quite adequate in that it empowers the Workers' Assistance Commission to require a worker to attend a specialist for medical examination and assessment of the means and prospects of rehabilitation, etc. There is no provision in clause 155 whereby the commission may require the worker to undertake treatment by way of rehabilitation or a programme of occupational and vocational training; yet under clause 73, to which we have already agreed, the worker can have his compensation suspended during any period when he is required by the commission to undertake rehabilitation or treatment and training and fails to do so. The Bill is deficient to the extent that it does not empower the commission to require the worker to undertake rehabilitation or occupational or vocational training, and the two amendments to this clause are designed for the purpose of achieving that end.

The Hon. G. E. MASTERS: The Government has no objection to this amendment.

Amendment put and passed.

The Hon. H. W. OLNEY: I move an amendment—

> Page 111, after line 23—Add the following new subclause to stand as subclause (2)—
>
> > (2) The Commission may at any time require the worker to undertake treatment by way of rehabilitation or a programme of occupational or vocational training.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 156 to 170 put and passed.

Clause 171: Workers' rights against insurer—

The Hon. H. W. OLNEY: I move an amendment—

> Page 119, line 40—Delete the word "or" where first occurring and substitute the passage " , ".

It is obvious this is either a mistake in printing or in drafting and I will spare the Chamber the wearisome ordeal of listening to what clause 171 is about because I understand the Government accepts that a mistake has been made and accepts the amendment.

The Hon. G. E. MASTERS: The Government supports the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 172: Payment to worker from General Fund—

The Hon. H. W. OLNEY: I move an amendment—

> Page 120, line 25—Insert after the word "Act" the following passage—
>
> > or the case is one to which section 171(2) applies.

I was only joking a minute ago when I said I was going to spare the Chamber the ordeal of hearing about clause 171 because one must hear a bit about that to understand this amendment. Clause 171 deals with the right of a worker to pursue the insurance company in cases where the employer has ceased to exist or cannot be found. Whether it be a deceased employer, a company that has been wound up, or an employer who has left the jurisdiction of the State; it does not matter; the worker can have direct access or remedy against the insurer.

Subclause (2) of clause 171 provides for the liability of the insurer in those circumstances. If that liability is less than the liability of the employer to the worker would have been, the worker may proceed with the balance against the personal representative of the employer. The liability of the insurer is limited to its liability under the contract, but if for some reason—I cannot imagine any circumstances—that indemnity is not adequate to satisfy the whole of the worker's claim, the worker can pursue the legal personal representative of the absent, defunct, or missing employer.

Clause 172 goes on to make provision for circumstances where payment is to be made against the general fund or what is usually called the uninsured workers' fund.

It is deficient to the extent that it does not cover the situation referred to in clause 171(2) and I think it should; indeed, when the matter is brought to the Government's attention I think it agreed that it should. For this reason the Opposition proposes that these additional words be inserted.

The Hon. G. E. MASTERS: The Government supports this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 173 to 195 put and passed.

Clause 196: Weekly payments after the age of 65—

The Hon. H. W. OLNEY: I move an amendment—

Page 133, line 13—Delete the figures "65" and insert the figures "64".

This is one of the transitional clauses and in its present form is inconsistent with the policies of the other clauses that relate to the cutting off of compensation at age 65. Clause 57 provides that if a disability occurs before age 64 the compensation terminates at age 65; but if it occurs after age 64 compensation runs for one year. Under this clause there will be an anomalous situation in respect of those persons whose injuries occur prior to age 64 and prior to this Bill coming into operation because they would in fact have their weekly payments terminated at age 65. If before this Bill comes into operation a worker is injured before age 64 he will receive compensation, but if he is over 64 but not 65 at the time of injury his payments will terminate at age 65.

This anomaly was drawn to my attention recently by a worker who will turn 65 on 14 December this year which is, I understand, a couple of weeks after this Bill will become an Act. Therefore, he would receive payments until 14 December whereas it is the expressed intention of the Government that all workers receive payments for one year after the Act comes into force.

The Hon. G. E. MASTERS: The Government supports the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 197 to 201 put and passed.

Schedule 1—

The Hon. H. W. OLNEY: I move an amendment—

Page 141, clause 7(1) of schedule 1, line 1—delete the words "of this clause".

This is only a matter of draftsmanship. The words are surplus because the "subclause" has been defined in clause 5, so it is unnecessary to say "subclause (3) of this clause". The deletion of these words makes the phraseology correct.

The Hon. G. E. MASTERS: The Government supports this amendment.

Amendment put and passed.

The Hon. H. W. OLNEY: I move an amendment—

Page 141, clause 7 of schedule 1—Add after subclause (4) the following new subclauses to stand as subclauses (5) and (6)—

(5) Unless otherwise authorised by the Commission, compensation shall be paid by the employer to the worker at the employer's usual place of payment of wages on the employer's usual pay days or, at the request of the worker, shall be sent by prepaid post to the worker's address.

(6) A worker when fulfilling any requirement of the Commission made under section 155, is deemed for the purposes of this clause to be totally incapacitated.

The first of these two subclauses is self-explanatory and will remove the doubt that prevails from time to time as to the responsibility of employers for the payment of compensation. Sometimes there is a variation in practice, particularly when the insurers are responsible for meeting compensation payments; although in most cases today employers pay the compensation and then claim on indemnity under the policy. Therefore in subclause (5) we seek to spell out in clear terms that compensation is to be paid on the ordinary pay day and is to be paid at the usual place of payment of wages unless a worker requests it be posted to him. We feel this will be a much more satisfactory arrangement than that which now exists; that is, that the employer pays when and where he decides.

Proposed subclause (6) makes it quite clear that while a worker is off work being examined for assessment for rehabilitation or while he is undergoing a course of rehabilitation he is deemed for the purposes of this clause to be totally incapacitated and he is to be paid compensation at the ordinary rate.

The Hon. G. E. MASTERS: The Government supports this amendment.

Amendment put and passed.

The Hon. H. W. OLNEY: I move an amendment—

Page 142, clause 11 (1) of schedule 1, last line—Insert after the word "agreement" the following passage—

plus any over award or service payment payable on a regular basis as

part of the worker's wages, salary or other remuneration

This amendment is designed to overcome an anomaly that has been in the Act since 1975 when the Government amended what was previously clause 2 of the first schedule to overcome the decision of the high Court in the case of Kezich *v.* Leighton. At that stage the form of the appropriate clause was substantially the same as the form of schedule 1, clause 11, in this Bill. This clause deals with the definition of the term "weekly earnings" and it provides that where a worker is covered by an award he receives the ordinary wage rate for a week's work.

I refer members to page 143 of the Bill which says, "but excluding in each case referred to in subclauses (1) and (2) ... overtime .... and any bonus or incentive ..."

First of all we are saying "weekly earnings" means what is provided under the award for a week's work but we exclude from that overtime—fair enough—and the payment of any bonus or incentive with the exception of over-award payments and service pay. There is no way in the world that an over-award payment can be a payment included in subclauses (1) and (2), because they deal with what is provided under the appropriate award.

By definition an "over-award payment" is something payable in excess of an award provision. The Minister, in his second reading speech, said on at least two occasions that it is the intention of the Government to maintain what it calls 100 per cent compensation, including over-award payments and service pay. The words "except-over award payment" in subclause (4) have generally been construed as meaning not, "except over-award payment", but "including over-award payment". In most cases over-award payments have been paid as part of the compensation payment. This anomaly has been pointed out by the court on at least one occasion, when an insurer admitted liability to pay what is called the "nickel bonus", although that was an over-award payment. There is no provision in subclauses (1) and (2) of clause 11 of schedule 1 to take care of over-award payments.

Service pay is different. It may be service pay provided in the award, or it may be non-award service pay. There is a variation in the provision from award to award; but many service payments are over-award payments. There is no problem if the service pay is provided in the award; but if it is not in the award, it is no different from any other over-award payment.

When the Workers' Compensation Bill 1981 went before the lower House, the equivalent provision to clause 11 of the schedule was clause 14 in that Bill. It had, after the word "agreement", the following words—

> ... plus the total weekly amounts payable on a regular basis in addition to those total wages, salary, or other remuneration;

It will be seen that the amendment I have moved is substantially the same but a little more specific in that rather than referring to the total weekly amounts payable on a regular basis, I used the words "an over-award or service payment payable on a regular basis".

The Government was persuaded to remove those words from the Workers' Compensation Bill and to return to the form of the Act. The reason it was persuaded to remove those words was that a particular union official looked at subclause (4) and found that the words "except over-award payments" had been deleted. Obviously if the words that I have indicated as part of subclause (1) were included, there would be no need to have "except over-award payments" in subclause (4).

Unfortunately the Minister agreed to restore the clause to its former glory. He has compounded the error into which he was persuaded to fall in this Bill. To make sense of the Government's intention to carry out its stated objective of compensating workers, not only for their ordinary wages, but also for over-award and service payments, it is necessary for a positive statement as to their inclusion to be made in subclauses (1) and (2).

It is not good enough for the Minister to say this has worked in the past, and it does what we think it does. The fact is that in the past it has worked to an extent. After the Full Court drew attention to the anomaly and the fact that the nickel bonus was not strictly payable as compensation, the SGIO decided to pay it no longer as part of the compensation, whereupon the usual industrial methods were threatened, and the SGIO decided to resume its previous payment of the nickel bonus as part of the weekly payments. Other insurers may do that also.

If the matter were ever tested, I have no doubt it would be found that over-award payments are not included as part of compensation. For this reason, I urge the Committee to agree to the amendment.

The Hon. G. E. MASTERS: The Government opposes this amendment for a number of reasons. One of them is that it was as a result of discussions that the Government already included in subclause (4) a provision which covers over-

award payments and service pay as part of the worker's weekly earnings for the purpose of this Bill.

The provision is similar to the present Act. It has been expanded, and service pay was agreed to as part of the tripartite negotiations. The matter is covered in the latter part of this clause, and I ask members to oppose the amendment.

Amendment put and negatived.

The Hon. H. W. OLNEY: I move an amendment—

Page 143, clause 11(2) of schedule 1, line 16—Delete the words "a relevant" and substitute the word "an".

This amendment removes the nonsense from the clause. It talks about the weekly earnings being the amount payable under a relevant award or industrial agreement, and, if there is no relevant award, the amount payable under a relevant industrial award or agreement which can be fairly applied. It is obvious that the words "a relevant" ought not to be there because they are conditioned by the fact that there is no relevant industrial award or industrial agreement.

The Hon. G. E. MASTERS: The Government supports the amendment.

Amendment put and passed.

The Hon. H. W. OLNEY: I do not propose to move the next amendment standing in my name. It is identical to that lost recently. Nor do I intend to move the amendments to clause 14 of schedule 1, which were designed to clarify the position with regard to workers under the pastoral industry award.

Clause 14 of the schedule deals with casual and seasonal workers. It prorates their compensation to the ratio of the number of weeks worked in a year to 52. That is all right for the ordinary, casual or seasonal worker who does not work for a full year. However, different considerations apply to shearers.

After putting this amendment on the notice paper, I had some reservations as to whether it was appropriate in view of the fact that the Australian Workers' Union and the insurers have a gentlemen's agreement. What greater gentlemen could one have than the Australian Workers' Union and the insurance industry? As Mr Brown says, that is an outstanding example of co-operation! Perhaps it would be desirable to let that arrangement continue.

In addition, I do not intend to move the amendment to clause 17 of schedule 1 relating to occupational therapy.

The Hon. G. E. MASTERS: I move an amendment—

Page 144, clause 17(1) of schedule 1, line 8—Insert before the word "charges" the passage "other attendance and treatment by way of rehabilitation;".

This amendment is necessary to enable the paramedical groups approved by the Minister and published in the *Government Gazette* for the purpose of treatment by way of rehabilitation, as set out in clause 5, to claim medical charges in respect of their treatment of workers as part of their rehabilitation.

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

Page 144, clause 17(1) of the schedule, last two lines, to page 145, line 4—Delete the passage, " , and if and when those expenses reach a sum equal to 10% of the prescribed amount, there shall be no revival of, or increase in the entitlement to such expenses upon any subsequent increase in the prescribed amount".

Both this and the following amendment are complementary. They are intended to clarify the position that medical expenses are limited to 10 per cent of the prescribed amount unless the board determines otherwise. The effect of this change and the next one is to put a qualification on the board's power to increase medical expenses above 10 per cent, where the increase is considered necessary.

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

Page 145, clause 17(1) of the schedule, line 6—Insert after the word "inadequate" the following passage—

, and there shall be no revival of, or increase in, the entitlement to such expenses upon any subsequent increase in the prescribed amount

I have previously explained the reason for this amendment.

Amendment put and passed.

Schedule 1, as amended, put and passed.

Schedules 2 to 6 put and passed.

New clause 37—

The Hon. G. E. MASTERS: I move—

Page 30—Insert after clause 36 the following new clause to stand as clause 37—

37. Whenever after the proclaimed date a worker becomes disabled from earning full wages by reason of suffering from lung cancer in association with that form of pneumoconiosis known as asbestosis he is deemed to be so disabled by pneumoconiosis and this Act applies subject, however, to this Division: but a worker who, after receiving compensation pursuant to this section, is subsequently employed in any process entailing substantial exposure to asbestos dust whether by the same or any other employer, is not entitled to any further compensation or benefit, in respect of any period of incapacity due to asbestosis or to the aggravation or acceleration of such disease, arising from his subsequent employment in that process.

This clause provides for consistency with clause 36 in that, for the related diseases of pneumoconiosis, asbestosis, and lung cancer, a worker is limited to only one claim. This effectively ensures that a worker cannot make two separate claims—such as one for lung cancer and another for asbestosis—which would enable him to receive two prescribed amounts for basically the same disability.

New clause put and passed.

New clauses 132 to 134—

The Hon. H. W. OLNEY: I move—

Page 97—Insert after clause 131 the following new clauses to stand as clauses 132 to 134—

132. Where a worker, after a disability has occurred, makes a statement in writing, in relation to the disability to his employer or to an insurer or to any person acting on behalf of the employer or insurer, the statement shall not be admitted in evidence if tendered by the employer or insurer, or used by the employer or insurer in substantive proceedings before the Board unless the employer or insurer has at least 28 days before the hearing of those proceedings supplied to the worker or to a solicitor or agent acting on behalf of the worker in the proceedings a copy in writing of the statement.

133. Where an employer or insurer has in his possession a copy of a report relating to a worker who has suffered a disability, being a report by—

(a) a medical practitioner, by whom the worker has been referred to another medical practitioner for treatment or tests related to the disability;

(b) a medical practitioner who has treated the worker for the disability; or

(c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the disability,

and the worker's claim is disputed, the employer or insurer shall at the request of the worker or a solicitor or agent acting for him in the proceedings and within 7 days of such request supply to the worker, solicitor or agent, as the case may be, a copy of the report.

134. Evidence of any communication between a worker and a person employed by the Commission and acting in the capacity of a social worker or rehabilitation counsellor is not admissible in proceedings before the Board unless, during the course of the proceedings, the worker consents to the evidence being so admitted.

The clauses are self-explanatory and the Committee does not need me to run through each of them in turn. They have been proposed in order to help facilitate the fair and expeditious trial of disputed claims before the court. They have been framed in terms virtually identical to provisions which already apply in other States. I understand the Government has no objection to them.

New clauses put and passed.

Title put and passed.

As to Report

The Hon. G. E. MASTERS: I inform the Committee that I will ask the President to have the report made an order of the day for the next day of sitting because of two small amendments moved by the Hon. Howard Olney to schedule 1 dealing with clause 11. There was some doubt about the call. Nevertheless, I was listening to the member's comments with interest and I intend to discuss those two matters further with the Deputy Premier before finalising this Bill.

Bill reported with amendments.

BUSH FIRES AMENDMENT BILL

Second Reading

Debate resumed from 3 November.

THE HON. J. M. BROWN (South-East) [10.07 p.m.]: This is an important but simple piece of legislation because it requires that the

Act provide a clear and precise definition of what is a tractor or, in this instance, what is a self-propelled machine. The Bill amends section 27 of the Act because confusion has arisen within the insurance industry about problems which could arise with self-propelled machinery marketed in Western Australia without vertical exhaust discharging systems. The machines in question do not come under the definition of "tractor" in the Bush Fires Act, although they are considered to be tractors.

Because of technological changes it has been necessary to amend the Act to define clearly what is a self-propelled header and to define the necessary clearance for the exhaust system. Unsatisfactory exhaust systems could cause problems in our State, a State very conscious of its responsibility to control bushfires.

It is important to note that the insurance companies are insisting that the machinery must comply with all legal requirements to qualify for insurance coverage. This is the reason for the introduction of the Bill. The need for the amendment was brought to the attention of the Minister by the Bush Fires Board and through representations from the local authorities and the Country Shire Councils' Association. I am fully aware that the tractor machinery association was greatly involved in this matter and certainly would have made representations to have this matter clearly defined in amending legislation.

It is important to note that this definition is applicable only during a prohibited burning season and in the main applies to exhaust systems of headers and tractors. Members should note that exhaust systems do have spark arresters which help prevent bushfires. They are a real safeguard in this respect.

The amendment is to define what should happen with a self-propelled header which does not have a vertical exhaust, which can be either upwards or downwards—an upswept exhaust or a downswept exhaust. A requirement is made that the exhaust pipe should terminate at least two metres above the ground and a further requirement is that exhaust emissions be discharged either horizontally or in a direction upwards of the horizontal plane. That is the crux of the amendment to section 27 of the Act.

It has always been necessary to have a fire extinguisher on a harvesting machine, whether it be self-propelled or tractor-drawn. No alteration is to be made here. Insurance companies require that fire extinguishers be carried otherwise an insurance claim might be considered void.

We support the amendment and acknowledge the importance of it. It will make sure that people with self-propelled headers conform to the requirements of the Act. In a State which is very conscious of fire control, I am sure everyone will support this amending legislation.

THE HON. A. A. LEWIS (Lower Central) [10.14 p.m.]: I too support the Bill and I thank the Minister and his officers for their co-operation. One would think that such a simple amendment would not entail a great deal of work, but I know just how much work the Minister and his officers had to do to introduce this simple Bill to the House.

Only one aspect remains uncovered, the aspect of self-propelled machinery such as speed rowers and self-propelled balers. They are becoming quite popular, as is the actual baling of straw during the hay-making season. The regulations would not apply to that machinery; therefore we may have a problem. Probably we could get over it because of the limited numbers of such machinery; we could go back to a system of special licences issued under the regulations. That is a matter we can discuss in the future.

I further thank the Minister for the speed with which the amendment was brought forward after he realised how much importance was attached to this matter.

Some 27 self-propelled headers come under the category of machinery with non-vertical exhausts. Various models have been produced over the last 18 or 19 years, but it is only in the last year or so that their use has picked up. There was some alarm amongst the machinery industry and farmers that insurance companies would not pay compensation for fires caused by the exhaust systems.

The other interesting point is that nowhere can I find evidence of a fire being started by a non-vertical exhaust system on a self-propelled harvester. I have asked around the industry for such evidence, but nobody knows of such an occurrence. We all know of plenty of fires lit by tractors with unsound exhaust systems, and we believe the fact that the self-propelled harvesters are not causing fires is a credit to the people who service them. The extent of the evidence we have been able to obtain is that non-vertical exhausts have not yet caused a fire.

Finally, I thank the Minister for his co-operation and wish the Bill a speedy passage.

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [10.17 p.m.]: I thank members for their support of this legislation. Two

matters have been raised. One relates to the newer types of harvesting equipment of a windrowing nature. I do not know whether such equipment will meet the requirement of the exhaust being two metres above the ground; most exhausts on such equipment are much lower. Probably the exhaust pipes can be raised, but certainly we will have to do some tests if the exhausts are closer that a metre to the tops of crops, because I know producers are concerned about this matter.

The Hon. A. A. Lewis raised the fact that horizontal exhausts have not yet caused a fire. No doubt as such equipment is worth in the vicinity of $100 000 the cost of a new exhaust pipe would not be much to bear.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by the Hon. D. J. Wordsworth (Minister for Lands), and transmitted to the Assembly.

QUESTIONS

Questions were taken at this stage.

ADJOURNMENT OF THE HOUSE

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [10.37 p.m.]: I move—

That the House do now adjourn.

Claremont Technical College: Closure

THE HON. R. HETHERINGTON (East Metropolitan) [10.38 p.m.]: A couple of weeks ago I spoke during the adjournment debate about the proposed closure of the Claremont Technical College. I hoped that tonight I might be able to congratulate the Minister on having changed his mind and agreed to accept the alternative proposal put to him by the staff and students of the college, that the college in fact would become an annexe of the Wembley Technical College, and go on much as it is. Indeed, I give the Minister due credit for the fact that he visited the college and talked to the staff and students. They were quite delighted by his response. Last Wednesday, they held a public meeting about the college at which they congratulated the Minister.

However, today some of those people believe the Minister has sold them down the river. I hope that statement is not too strong. However, there is now another proposal. WAPSEC has entered the field and it is proposed to put the Claremont Technical College under the control of the Claremont Teachers' College or the Western Australian CAE, when it comes into operation. I hope the Minister will not follow this alternative because it is a deplorable proposal. It will be only a temporary expedient. The whole thing will be looked at again in three years' time when it might be decided that the college should be attached to the Perth Cultural Centre complex. I would argue that this should not be and I will certainly argue it at some length if necessary.

It should not be desirable to do this kind of double shuffle. If the Wembley proposal were adopted, it would be most favoured by the staff and students of the Claremont Technical College because it would allow the college to go on as it is until such time as the cultural complex is built and it could be decided if there were something better to do with it.

However, to place the college under the control of the CAE, with a staff seconded from the Education Department would seem to be a shabby, temporary shuffle. Certainly, I am never happy when I see WAPSEC extending its tentacles over everything in this State, because it is an empire-building complex. We could well do without WAPSEC interfering with this college.

The other thing which worries me—I hope this will be considered carefully—is what would happen to the college if it did come under the control of the CAE. Would some kind of entrance qualifications be imposed—the very thing the Claremont Technical College does not have now? Its personnel have no rights to be trained, and people who show signs of ability may be enrolled at the college without having necessary academic qualifications.

I hope the Minister abides by what he said during the amicable discussions he had with students and staff of the college and that his last thoughts on the matter are that he will support the Wembley annexe proposal, because that seems to be the desirable course as far as the Claremont Technical College is concerned. It would retain its character and its nature. If it were placed under the auspices of the Claremont Teachers' College, the WA CAE, or WAPSEC—this great pyramidal octopus—who knows where it would finish up.

I hope the Government, the Minister, and members of goodwill on both sides of the Chamber will urge that the Claremont Technical College become an annexe of the Wembley Technical College, and leave it as a going concern and not place it under the control of the Claremont Teachers' College in order primarily

that the 800-odd part-time students could thereby be charged fees.

We talk about culture, and about the artistic needs of the State; we boast about our cultural complex. However, on this occasion, we seem to be serving mammon, rather than serving God. It would be a sorry thing if we took a step which was likely to destroy the Claremont Technical College in order that we may charge part-time students fees. It should be left where it is.

The Claremont Technical College grew up under the technical division of the department. It was a happy historical accident and if we left well enough alone it could continue to do the good work towards promoting art and creativity in this State that it has been doing for the last 12 years.

I urge the Government to consider leaving it alone. A creative body is a delicate flower. Members might not think so when they see the students at the college; they look a fairly tough lot. It is hard to build up such a body, but it has been built up, largely by a happy accident. It has been built up by dedicated work by teachers who have obtained the best from their students. It is a unique institution and the Government should think very hard before it destroys it.

I strongly recommend the Wembley annexe proposal is the one which should be followed.

THE HON. P. G. PENDAL (South-East Metropolitan) [10.43 p.m.]: I also wish to mention the options which are available to the Government and which currently are being examined in relation to the Claremont Technical College, because some members of the staff association have approached me on a number of occasions in recent weeks.

Like the Hon. Robert Hetherington, I would certainly prefer to see the college—if it is to change at all—become an annexe of the Wembley Technical College.

As late as this morning I had the opportunity of urging that course on the Minister for Education, and in particular to urge on him that whatever option was followed in resolving this matter he should give no consideration at all to the proposal to incorporate the Claremont Technical College into the Claremont Teachers' College.

The integration of the technical college into the teachers' college is educationally unsound. We are talking about two entirely separate and distinct educational streams. One is a technical college, and the other is a college of advanced education. On that ground, the Minister would be well advised not to permit the integration of the technical college into a college of advanced education.

The second good reason that the Minister should not follow that course is that the Commonwealth Government is involved heavily in the tertiary level of education, including colleges of advanced education. It would be a backward step if the technical colleges of this State were gobbled up, bit by bit, by the colleges of advanced education. The colleges of advanced education are empire builders; and if that step were followed, what has been until now a very excellent technical education system in this State would be diluted.

As late as this morning I made those views known to the Minister for Education in the hope that, in choosing his options, he will not succumb to any suggestion that he should adopt the option of incorporating the technical college into the Claremont Teachers' College.

Question put and passed.

House adjourned at 10.46 p.m.

QUESTIONS ON NOTICE

EDUCATION: NON-GOVERNMENT SCHOOLS

Budget Provisions

636. The Hon. D. K. DANS, to the Minister representing the Treasurer:

I refer the Treasurer to table 7 of the Consolidated Revenue Fund, Functional Analysis of Expenditure, page 38 of the Financial Statement 1981-82—

(1) Can the Treasurer confirm that for the education category, assistance to private schools, the proposed estimate of expenditure for 1981-82 is not consistent with departmental estimates of expenditure found elsewhere in the Budget papers?

(2) Is it a fact that the estimate in the functional analysis understates the correct estimate by about $1 million?

(3) Will the Treasurer inform the House of what precisely is the correct figure for proposed expenditure in 1981-82 on private schools?

The Hon. I. G. MEDCALF replied:

(1) and (2) The functional analysis of expenditure is prepared following the end of each financial year for the Australian Bureau of Statistics to enable inclusion of State expenditure figures in the Australian national accounts. For the assistance of members, the practice has been followed in recent years of providing an estimated functional statement of proposed Budget expenditure which is prepared in large degree by allocating expenditures to functions on a pro rata basis in line with actual expenditure in the previous year. This procedure inevitably results in some deviations from the expenditure estimates in some items which are corrected when actual figures are available and more precise allocations are made.

It is regrettable that this procedure can lead to a substantial deviation from the expenditure Estimates items relating to a particular item—as, for instance, assistance to private schools on this occasion. It raises the question as to whether it is desirable to continue providing a breakdown of the Estimates on a functional basis with the Budget papers if it has to be prepared on a broad brush basis which is the only way possible in the limited time available after finalisation of the Budget.

I have asked the Treasury to give some thought to this question so that a decision can be made ahead of next year's Budget preparation.

(3) The expenditure Estimates submitted to Parliament as proposed votes are the definitive figures and estimates provided therein of proposed expenditure on assistance to private schools, and are the correct figures. In addition to that amount, a sum of $240 000 is estimated to be paid from the item Subsidies and Grants on boarding allowances for students attending private schools in 1981-82.

CO-OPERATIVE BULK HANDLING LTD.

Takeover: Mr Tuckey

653. The Hon. D. K. DANS, to the Minister representing the Minister for Labour and Industry:

(1) Has the Minister's attention been drawn to a statement in the *Daily News* of Monday, 2 November 1981, that the Merredin Zone Council of the Primary Industry Association has rejected Mr Tuckey's plan that farmers take control of Co-operative Bulk Handling facilities?

(2) Will the Minister now add his voice to that of the farming community of Merredin in rejecting Mr Tuckey's plans which constitute a blatant attempt to pre-empt and bypass the normal arbitration procedures of this State?

The Hon. G. E. MASTERS replied:

(1) Yes.

(2) The Government believes that the due processes of the law should be used to resolve all disputes, including industrial disputes.

NOISE: ABATEMENT ACT

Operation

654. The Hon. P. G. PENDAL, to the Minister representing the Minister for Health:

(1) Are the full provisions of the Noise Abatement Act, as amended, now in operation?

(2) If not, why not?

(3) Are local authorities able to act upon receipt of form "A" signed by a complainant as per page 7 of the schedule to the Noise Abatement Neighbourhood Annoyance Regulations 1979?

(4) If not, why not?

The Hon. D. J. WORDSWORTH replied:

(1) No.

(2) The Act could not be proclaimed due to delay in the nomination of a member for the council. This has now been received and it is expected that the Act will be proclaimed shortly.

(3) Yes.

(4) Not applicable.

EMPLOYMENT AND UNEMPLOYMENT

Australian Iron and Steel Pty. Ltd.: Retrenchments

655. The Hon. D. K. DANS, to the Minister representing the Minister for Labour and Industry:

(1) Has the Minister's department carried out any research on what the multiplier effect might be for each retrenchment at the Kwinana blast furnace facility?

(2) If so, will the Minister supply details?

The Hon. G. E. MASTERS replied:

(1) and (2) No.

656. *This question was postponed.*

FUEL AND ENERGY: ELECTRICITY

Charges: Non-profit Organisations

657. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Fuel and Energy:

(1) Is the Minister aware that the State Energy Commission is charging the senior citizens welfare centre at Victoria Park and the Harold Hawthorne senior citizens centre at Carlisle the "commercial" rate for electricity?

(2) What is—

(a) the "commercial" rate per unit; and

(b) the "domestic" rate per unit?

(3) As these centres are non-profit organisations, whose main consumption of electricity is for the purpose of providing meals for the aged and for their "Meals on Wheels" service, will the Minister explain why the cheaper "domestic" rate is not available to them?

(4) Is the Minister prepared to assist these organisations in continuing this worthwhile service by reducing the rate charged from that of "commercial" to "domestic"?

(5) If not, why not?

The Hon. I. G. MEDCALF replied:

(1) I am advised that the two premises fall into the "general" category and are therefore billed under Tariff L1 (industrial, commercial and general).

(2) (a) Tariff L1 is a stepped tariff. For the above cases charges would fall in the range 9.05 to 9.34 cents/kWh plus a monthly fixed charge of $4.25.

(b) Tariff A1 (domestic) is a flat tariff of 6.29 cents/kWh plus a monthly fixed charge of $3.56.

(3) Tariff A1 is only available to normal private domestic dwellings.

(4) No.

(5) There are many worthwhile organisations which are engaged in community related activities which are in the "general" category. If exceptions are made in particular cases, such action would be unfair to the remainder. It is Government policy to hold the domestic tariff strictly to normal private domestic dwellings.

STOCK: SHEEP

Dipping

658. The Hon. H. W. GAYFER, to the Minister representing the Minister for Agriculture:

(1) What is the drift in Western Australia in the numbers of flocks being dipped

since compulsory dipping of sheep was discontinued?

(2) How does the Department of Agriculture arrive at the answer to question (1)?

(3) What is the drift in numbers of lice infected flocks in Western Australia since the compulsory dipping of sheep was discontinued?

(4) How does the Department of Agriculture arrive at the answer to question (3)?

(5) Is an estimate available of the percentage of sheep in Western Australia that may have been treated with Clout against the traditional methods of dipping?

(6) Are there other lice repellents such as Clout in the pipeline?

The Hon. D. J. WORDSWORTH replied:

(1) Precise figures are not known, however data available suggests that 80 to 85 per cent of farmers dipped sheep in 1977 when routine dipping was compulsory and 85 to 90 per cent are now dipping or treating lice by other means.

(2) The above estimates are based on reports from field staff in 1977 and a combination of field staff reports and an intensive survey in the Kojonup Shire in 1980-81.

(3) and (4) The table below shows the number of properties in quarantine for lice at the end of each month between January 1976 and September 1981.

(5) No.

(6) Yes.

DEPARTMENT OF AGRICULTURE, W.A.
SHEEP LICE TOTAL IN QUARANTINE AT THE END OF EACH MONTH

	1976	1977	1978	1979	1980	1981
January	418	341	696	743	707	767
February	364	324*	632	634	621	681
March	343	364	565	542	574	607
April	325	350	561	520	546	577
May	315	350	554	521	547	560
June	328	463	574	523	604	578
July	336	526	619	570	688	618
August	340	612	683	651	772	669
September	366	707	749	741	839	723
October	358	756	816	797	860	
November	349	723	818	788	842	
December	340	740	789	783	841	

Note: The figures above are the nett at the end of each month.

Each month, properties are released from quarantine and new quarantines are imposed.

These numbers vary with the time of year ranging from a low of 29 in and out to a maximum of over 100. For example, 158 were released from quarantine in February 1979.

* Policy of non-compulsory dipping introduced February 1977.

INDUSTRIAL DEVELOPMENT: STEEL

Products: Finished

659. The Hon. D. K. DANS, to the Minister representing the Minister for Industrial Development and Commerce:

(1) From what countries were finished steel products imported into Western Australia for each year of the period 1976-77 to 1980-81 inclusive?

(2) What were the quantities involved from each country?

The Hon. I. G. MEDCALF replied:

(1) and (2) The information is available from the Australian Bureau of Statistics publication entitled "Statistics of Western Australian Trade (Interstate and Overseas) 1978-79", and the same publication in earlier subsequent years.

LAND

Reserve No. 840

660. The Hon. H. W. GAYFER, to the Minister for Lands:

(1) Is the Minister aware that—

(a) Executive Council approved the purpose of Reserve No. 840 (Avon District) being changed from "Water" to "Parkland", and notice to this effect was published in the *Government Gazette* dated 4 September 1981;

(b) the Shire of Brookton advised the Under Secretary for Lands by letter dated 25 November 1980 that the council could see no advantage in vesting the reserve in council and changing from "Water" to "Parkland";

(c) the council based its opinion on the facts that the area had been lightly cleared and was therefore suitable for grazing purposes—if not grazed it was envisaged it would become a severe fire hazard; and

(d) council suggested it would have been preferable to dispose of the reserve to an adjoining land owner or lease it under conditions in regard to future clearing and use by an adjoining owner?

(2) Would the Minister be prepared to review the situation and arrange for a departmental officer to have on-site discussion with council representatives and adjoining land owners?

The Hon. D. J. WORDSWORTH replied:

(1) (a) to (d) Yes.

(2) No. The decision to retain the reserve and to change its purpose to "Parkland" was made after consultation with the council and the PWD and after taking into account the views and interests of the adjoining landholder, the prospects of vegetation in the area recovering its natural condition and the policy of the department towards the retention of such areas.

Notwithstanding that the land has been parkland cleared and farmed, it is considered desirable to keep it as a reserve in the expectation that its natural vegetation will recover. I point out that there are a number of shires taking a concerned approach to matters of soil conservation and salinity control and have requested that reserves similar to Reserve No. 840 be fenced off to allow regeneration to occur.

FUEL AND ENERGY: PETROLEUM PRODUCTS

Refined: Imports

661. The Hon. D. K. DANS, to the Minister representing the Minister for Fuel and Energy:

(1) From what countries were refined petroleum products imported into Western Australia for each year of the period 1976-77 to 1980-81 inclusive?

(2) What were the quantities involved from each country?

The Hon. I. G. MEDCALF replied:

(1) and (2) The data sought by the member is not normally assembled by the State Energy Commission, which relies on the Commonwealth Statistician for such information. I am advised that this information is available from the Australian Bureau of Statistics publication "Statistics of Western Australian Trade (Interstate and Overseas)" Catalogue No. 5401.5. This data is printed up to and including 1978-79, and more recent figures are available from the Australian Bureau of Statistics.

I feel sure the Parliamentary Librarian can obtain the publications very readily.

WATER RESOURCES: CATCHMENT AREAS

Herbicides: Use

662. The Hon. R. HETHERINGTON, to the Minister for Forests:

Does the Forests Department use, or has it used in recent years, 2,4,5-T and/or 2,4-D in water catchment areas?

The Hon. D. J. WORDSWORTH replied:

Yes, both herbicides are used with stringent restrictions applying.

TRANSPORT: BUSES

MTT: Members

663. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Transport:

Will the Minister advise what background of experience in public transport did Mr J. S. Yull have prior to his appointment as a member of the Metropolitan Transport Trust?

The Hon. D. J. WORDSWORTH replied:

Mr John Yull has had many years experience in a senior executive capacity as a management consultant in finance and commerce in Western Australia.

HOSPITAL: PRINCESS MARGARET

Car Parking

664. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Health:

(1) Is it correct that the car parking area at Princess Margaret Hospital has two covered floors set aside for staff, and a third, uncovered, floor designated for parents with sick children?

(2) Could the Minister inform me what is the total space available for the parking of cars at the Princess Margaret Hospital, and what criteria are used in the allocation of parking space?

(3) Will the Minister see if it is possible for covered parking space to be allocated to parents of chronically ill children?

The Hon. D. J. WORDSWORTH replied:

(1) The upper level of the multi-level car park at Princess Margaret Hospital is designated for visitors to the hospital and this would include parents with sick children.

Three parking bays in the centre level of this car park are designated for patients attending the orthotics department.

(2) 9 399 square metres containing 573 bays. The following persons are allowed to park in these bays—

All doctors,
all departmental heads,
staff who use their vehicles regularly on hospital business,
other staff, depending on length of service,
visitors, including parents of sick children.

(3) The hospital advises that the stairs from the lower levels of the multi-level car park are inconvenient for parents who have children in pushers, wheelchairs, etc. However, the Minister for Health will take up the suggestion that the hospital should specifically give consideration to the parents of chronically ill children who are required to visit the hospital frequently.

TRANSPORT: BUSES

Perth-Newman

665. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Transport:

(1) Was any subsidy paid to a private bus company to operate a service between Perth and Newman or beyond prior to that company taking over Westrail's Perth-Meekatharra service?

(2) If so, what was the annual subsidy paid to this company in the financial year prior to the takeover?

(3) (a) Is any additional amount to be paid annually following the takeover; and
(b) if so, how much?

(4) (a) If no subsidy was paid prior to the takeover, is one now to be paid; and
(b) if so, what is the annual amount?

The Hon. D. J. WORDSWORTH replied:

(1) and (2) No.

(3) (a) Yes.
(b) For the period 1 June to 31 August 1981, $152.35. The amount of $152.35 is not a subsidy to the company, as such, but represents the difference between the pensioner and student fare concessions offered by the former operator and the concession offered by the current operator. The amount paid represents a subsidy to the user of the service.

(4) (a) and (b) No.

HOSPITAL: PRINCESS MARGARET

Orthopaedic Boots

666. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Health:

(1) Is it true that physiotherapists at the Princess Margaret Hospital are advising parents to obtain orthopaedic boots, to enable children to learn to walk, from a private company at the cost of $53?

(2) Are the boots supplied by Princess Margaret Hospital regarded by some physiotherapists as too weak to support a child's ankles?

The Hon. D. J. WORDSWORTH replied:

(1) Parents buy shoes commercially and the Princess Margaret Hospital arranges modifications through the orthotics department. If this causes financial hardship, the hospital may provide shoes without charge.

(2) The wrap around boots provided by the hospital are specifically for very young children and are prescribed by physiotherapists. No complaints from physiotherapists are on record. If the member has a specific instance he could raise it with the Minister for Health who will have it investigated.

TRANSPORT: ROAD

Wool

667. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Transport:

Referring to question 580 of Wednesday, 14 October 1981, will the Minister advise what price per bale is paid to each of the carriers listed in part (2) of the question for consignments of—

(a) less than 40 bales; and

(b) 40 bales or more?

The Hon. D. J. WORDSWORTH replied:

(a) and (b) Because of differing distances involved and financial arrangements that previously existed between farmers and road carriers the rates varied considerably. However, due to the commercial nature of the arrangement referred to in question 580 the rates are confidential to Westrail and the road carriers concerned.

EDUCATION: SWIMMING POOLS

Subsidy

668. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Education:

(1) What payment was made to Government schools under the pool subsidy scheme for each of the years 1978-79 to 1980-81 inclusive?

(2) What payment was made to non-Goverment schools under the pool subsidy scheme for each of the years in (1)?

The Hon. D. J. WORDSWORTH replied:

	1978-79	1979-80	1980-81
	$	$	$
(1)	16 655	14 499	2 774
(2)	Nil	10 000	Nil

HOUSING: RENTAL

Qualifying Income

669. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Housing:

Referring to question 601 of Wednesday, 21 October 1981, concerning income eligibility criteria for State Housing Commission rental homes—

(1) When was the $2 per week for each dependent child applied?

(2) When was it last increased?

(3) When is it likely to be increased again?

The Hon. G. E. MASTERS replied:

(1) The $2 per week dependent child allowance was introduced on 1 January 1974 under the terms and conditions of the Housing Agreement (Commonwealth/State) 1973.

(2) and (3) As it is now the responsibility of the State to determine levels of eligibility involving family income this aspect is considered at the time of review.

EDUCATION: NON-GOVERNMENT SCHOOLS

Registrations: New

670. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Education:

How many new non-Government schools have been registered in WA for each of the years 1976-1981 inclusive?

The Hon. D. J. WORDSWORTH replied:

1976	6
1977	5
1978	4
1979	10
1980	4
1981	9

CONSUMER AFFAIRS

Salesmen: Trainee Courses

671. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Consumer Affairs:

Referring to question 390 of Wednesday, 19 August 1981—

(1) Will the Minister advise me of the outcome of the investigation of the Trade Practices Commission?

(2) If advice is not yet to hand, will the Minister provide me with the result as soon as it comes to hand?

The Hon. G. E. MASTERS replied:

(1) The Bureau of Consumer Affairs has not yet had a final response from the Trade Practices Commission.

(2) Yes.

LAND: NATIONAL PARKS AND NATURE RESERVES

Purchases

672. The Hon. R. HETHERINGTON, to the Minister for Conservation and the Environment:

(1) What funds were allocated for the purchase of land for national parks and nature reserves in each of the financial years—

(a) 1976-77;
(b) 1977-78;
(c) 1978-79;
(d) 1979-80;
(e) 1980-81; and
(f) 1981-82?

(2) What funds were expended on the purchase of land for national parks and nature reserves in each of the above years?

(3) Which department has the responsibility for allocation of funds for purchase of land for national parks and nature reserves?

(4) What priority system is used to decide allocation of funds for purchase of land for national parks and nature reserves?

The Hon. G. E. MASTERS replied:

(1) (a) 1976-77 State Government $500 000 with $250 000 from the Commonwealth.
(b) 1977-78 State Government $750 000.
(c) 1978-79 State Government $150 000.
(d) 1979-80 State Government $300 000.
(e) 1980-81 State Government $100 000.
(f) 1981-82 State Government $200 000.

(2) All of the funds were expended to 1980-81. Decisions have yet to be made on 1981-82 funds.

(3) The Environmental Protection Authority has established the Parks and Reserves Committee to advise it on what land should be purchased for national parks and nature reserves. The Parks and Reserves Committee membership is Mr. J. F. Morgan, Surveyor General (Chairman), the Conservator of Forests, the Director of Fisheries and Wildlife, Chairman of the National Parks Authority and the Valuer General. The authority then makes a recommendation to the Under Secretary for Lands.

(4) All proposals are considered on their value for national parks, forest conservation, or wildlife areas.

EDUCATION: TECHNICAL

College: Claremont

673. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Education:

The Minister for Education and the Deputy Premier have each stated publicly that the closure of Claremont Technical College would save $800 000 whereas in answer to question 638 of Wednesday, 28 October 1981, the saving was given as $400 000—

(1) Can the Minister reconcile these two figures?

(2) Will the Minister give me a detailed breakdown of the savings which would be achieved by the closure of Claremont Technical College?

The Hon. D. J. WORDSWORTH replied:

(1) The figure of $800 000 represents the savings over a full year. The figure of $400 000 applies to the financial year 1981-82.

(2) Alternative proposals which may enable courses to continue at the site are presently being considered and costed.

674 to 677. *These questions were postponed.*

PRISONS: PRISONERS

Governor's Pleasure

678. The Hon. J. M. BERINSON, to the Minister representing the Chief Secretary:

How many persons sentenced to be detained during the Governor's pleasure on the expiration of a term of imprisonment have not yet completed that term of imprisonment?

The Hon. G. E. MASTERS replied:

Eight persons sentenced to be detained during the Governor's Pleasure on the expiration of a term of imprisonment have not yet completed that term of imprisonment.