

WESTERN AUSTRALIA

No. 13

VOTES AND PROCEEDINGS

OF THE

LEGISLATIVE ASSEMBLY

THIRD SESSION OF THE THIRTY-FIFTH PARLIAMENT

TUESDAY, 21 SEPTEMBER 1999

1. Meeting of Assembly.

The Assembly met at 2.00 p.m. pursuant to adjournment.

The Deputy Speaker took the Chair.

Prayers were read.

2. Death of Sir William Stewart Bovell - a former member of the Legislative Assembly and Minister of the Crown.

The Deputy Premier, without notice, moved,

That the House records its sincere regret of the death of Sir William Stewart Bovell and tenders its deep sympathy to his family.

The motion having been supported by Mr Barnett, Dr Gallop, Mr Shave and Mr Masters,

Question put and passed unanimously with members and officers of the Assembly standing in their places as a mark of respect.

3. Suspension of Standing Orders.

The Leader of the House, without notice, moved,

That so much of the Standing Orders be suspended as is necessary to enable consideration forthwith of a motion related to Australian armed forces in East Timor.

Question put.

The Deputy Speaker having counted the Assembly, and an absolute majority being present and there being no dissentient voice, the motion was declared by the Deputy Speaker to be carried with the concurrence of an absolute majority of the whole number of members of the Assembly.

4. Australian Armed Forces in East Timor.

The Deputy Premier, pursuant to the foregoing motion, moved,

- (1) That this Parliament, on behalf of the people of Western Australia, endorses the participation of personnel of the Australian armed forces in the multi-national peacekeeping operation in East Timor.

In doing so, this Parliament extends its sincerest appreciation to those Australian men and women who having committed themselves to the service of Australia's defence and security, continue to uphold a proud Australian tradition in their efforts to afford protection and self determination for the people of East Timor.

We extend to the families and loved ones of Australian personnel in the multi-national peacekeeping force in East Timor our best wishes and thoughts for their safety and a speedy return to their Australian homes.

We take this opportunity to reaffirm the faith and pride of the Western Australian people in the professionalism of the Australian Armed Forces.

- (2) That the Legislative Council be acquainted accordingly and be asked to concur with this resolution and that the joint resolution be forwarded to the Commander of International Force for East Timor, the Prime Minister and the Minister for Defence.

Debate ensued.

Question put and passed.

5. Brief Ministerial Statements.

The Minister for Employment and Training made a brief Ministerial Statement on Vocational Education and Training.

The Minister for Labour Relations made a brief Ministerial Statement on Worksafe Western Australia inspections in forest protests.

6. Questions.

Questions without notice were taken.

Questions on notice 380, 460, 492, 556, 566, 583, 591, 594, 595, 597, 602, 652 and 754 to 801 were answered other than 754 to 801.

Details of youth programs and projects organised, funded and supported by the Education Department of Western Australia through their CADETSWA Program and Community Languages Program were tabled in connection with Question on notice No. 380 (156)

A list of all properties recommended for registration by the Heritage Council of Western Australia for the years 1996, 1997, 1998 and 1999 were tabled in connection with Question on notice No. 556 (157)

7. Petitions.

Mr Shave presented a petition from 3429 persons praying that people with acquired brain injury have the opportunity to receive ongoing rehabilitation, have a choice of age appropriate community accommodation and have opportunities to experience a quality lifestyle that enables them to live an optimal level of independence in the community (P. 47).

Mr MacLean presented a petition from 131 persons praying that the Town Planning Development Act 1928, Statement of Planning Policy No. 11, Agricultural and Rural Land Use Planning Policy be opposed (P. 48).

8. Notices of Motion.

9. Papers.

The following papers were presented and ordered to lie upon the Table of the House -

Bunbury Port Authority - Annual Report, 1998-99 (147)
 Fish Resources Management Act - Orders (148)
 Fremantle Port Authority - Annual Report, 1998-99 (149)
 Government Railways Commission (Westrail) - Annual Report, 1998-99 (150)
 Health Act - Regulations (151)
 Local Government Act - Local Laws (152)
 Radiation Safety Act - Regulations (153)
 Road Traffic Act - Regulations (154)
 Western Australian Land Authority Act - Ministerial approval for contracts under section 17 of the Act (155)

10. Matter of Public Interest - Vacation Swimming Classes.

The Deputy Speaker informed the Assembly that he was in receipt of a notice from Mr Carpenter that he intended to move a motion on a matter of public interest.

At least five members having risen in support,

Mr Carpenter moved,

That this House condemns the Education Minister for deliberately misleading the Parliament and the public of Western Australia over his role in the out-sourcing of vacation swimming classes in that he sought to conceal that the impetus for change came directly from his own office and goes against all the best advice from his Department and an independent analysis.

Debate ensued.

Question put.

The Assembly divided.

(Ayes 18)

Ms Anwyl
 Mr Brown
 Mr Carpenter
 Dr Edwards
 Dr Gallop
 Mr Graham

Mr Grill
 Mr Kobelke
 Ms MacTiernan
 Mr McGinty
 Mr McGowan
 Ms McHale

Mr Marlborough
 Mr Ripper
 Mrs Roberts
 Mr Thomas
 Ms Warnock
 Mr Cunningham (*Teller*)

(Noes 29)

Mr Barnett	Mr House	Mr Pental
Mr Barron-Sullivan	Mr Johnson	Mr Prince
Mr Bloffwitch	Mr Kierath	Mr Shave
Mr Board	Mr MacLean	Mr Sweetman
Mr Bradshaw	Mr McNee	Mr Trenorden
Dr Constable	Mr Marshall	Mr Tubby
Mr Cowan	Mr Masters	Dr Turnbull
Mrs Edwardes	Mr Minson	Mrs van de Klashorst
Dr Hames	Mr Nicholls	Mr Osborne (<i>Teller</i>)
Mrs Hodson-Thomas	Mrs Parker	

Question thus negatived.

11. Variation to the Order of Business.

Ordered, That Government Business Order of the Day No. 14 be next considered.

12. Workers' Compensation and Rehabilitation Amendment Bill 1997 (No. 85).

The Order of the Day for the consideration in detail of Legislative Council message No. 4 was read.

CONSIDERATION IN DETAIL

The message was as follows:

Message No. 4

The Legislative Council acquaints the Legislative Assembly that in reply to Message No 139 of 1998 from the Legislative Assembly relating to the Workers' Compensation and Rehabilitation Amendment Bill 1997 —

- That it does not insist on its Amendment No 1 [to delete Clause 13];
- That it does not insist on its Amendment No 2 [to delete Clause 22];
- That it disagrees with the Legislative Assembly's substituted new Amendment No 3 [Clause 32];
- That it proposes the following new amendment as an alternative to the Legislative Assembly's substituted new amendment,

in which further amendment the Legislative Council desires the concurrence of the Legislative Assembly.

Schedule indicating the further amendment made by the Legislative Council as an alternative to the Legislative Assembly substituted new amendment to the Legislative Council Amendment No 3 in the Workers' Compensation and Rehabilitation Amendment Bill 1997

No 1

Amendment No. 3

Clause 32, page 19, line 19 to page 20 line 10 — To delete the Clause and substitute the following Clause —

“ **Amendments about awarding of damages and related matters (sections 5, 61, 84ZH, 84ZR and 192, Part IV Division 2 and Schedule 1), and saving and transitional provisions**

32. (1) Section 5(1) of the principal Act is amended by deleting the definition of “prescribed amount” and substituting the following definition —

“ **“prescribed amount”** means —

- (a) in relation to the financial year ending on 30 June 2000, \$119 048;

Note: This is the nearest whole number of dollars to the amount obtained by multiplying by 208 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August and November 1998 and February 1999.

- (b) in relation to any subsequent financial year, the nearest whole number of dollars to —

- (i) the amount obtained by varying the prescribed amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the **“WCI”**) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or
- (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the prescribed amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars;

”.

- (2) Section 61(7) of the principal Act is amended by inserting after paragraph (b) the following —

“ (ba) if section 93E(20) applies to the payment of compensation; or

”.

- (3) Section 93A of the principal Act is amended by deleting the definitions of “Amount A”, “Amount B”, “future pecuniary loss” and “non-pecuniary loss”.

”.

- (4) After section 93B(3) of the principal Act the following subsection is inserted —

“ (3a) This Division does not apply to the awarding of damages if the disability results in the death of the worker.

”.

- (5) Sections 93D, 93E and 93F of the principal Act are repealed and the following sections are substituted —

“ **Assessment of disability**

- 93D.** (1) In this section —

“relevant level” means a degree of disability of 30%.

- (2) For the purposes of section 93E, the degree of disability of the

worker is to be assessed —

- (a) so far as Schedule 2 provides for such a disability, as a percentage equal to —
 - (i) if only one item of that Schedule applies to the disability, the percentage of the prescribed amount provided for by that item, as read with section 25; or
 - (ii) if 2 or more items of that Schedule apply to the disability, the sum of the percentages of the prescribed amount provided for by those items, as read with section 25;
- (b) to the extent, if any, that paragraph (a) does not apply, as the degree of permanent impairment assessed in accordance with the AMA Guides;
- (c) to the extent, if any, that neither paragraph (a) nor (b) applies, in accordance with the regulations,

or if more than one of paragraphs (a), (b) and (c) applies, as the cumulative sum of the percentages assessed in accordance with those paragraphs.

- (3) If section 25 applies, the percentage under subsection (2)(a) is calculated in accordance with the formula —

$$\frac{PD}{100} \times TD$$

Where —

PD is the percentage of the diminution of full efficient use.

TD is the relevant percentage set out in Column 2 of Schedule 2.

Example 1

A worker loses 40% of the full efficient use of one eye. The percentage under subsection (2)(a) is:

$$\frac{40}{100} \times 50 = 20$$

Example 2

A worker loses the little finger of the left hand, 30% of the full efficient use of one eye and 10% of the full efficient use of the right arm below the elbow. The percentage under subsection (2)(a) is:

$$6 + \left[\frac{30}{100} \times 50 \right] + \left[\frac{10}{100} \times 80 \right] = 6 + 15 + 8 = 29$$

- (4) If the worker and the employer cannot agree on whether the degree of disability is not less than the relevant level, the worker may, subject to subsection (5), refer the question to the Director.
- (5) A question can only be referred under subsection (4) if the worker produces to the Director medical evidence from a medical practitioner indicating that, in the medical practitioner's opinion, the degree of disability is not less than the relevant level.
- (6) As soon as practicable after receiving a referral under subsection (4) the Director is to notify the employer in accordance with the regulations.
- (7) If within 21 days after being notified under subsection (6) the employer notifies the Director in accordance with the regulations that the employer considers that the degree of disability is less than the relevant level, a dispute arises for the purposes of Part IIIA.
- (8) The Director is to consider the dispute in consultation with the parties.
- (9) Except in a case to which subsection (10) applies, if the dispute is not resolved by agreement the Director is to refer the question for resolution under the provisions of Part IIIA (other than Division 2).
- (10) If the dispute relates to a disability mentioned in section 33, 34 or 35, the dispute is to be referred to a medical panel for determination as described in section 36 and so far as applicable this Act applies in relation to the reference as if it were a reference under section 36 except that the only question to be considered and determined on the reference is the question that was referred.
- (11) Unless notification is given by the employer under subsection (7), the employer is to be regarded as having agreed that the degree of disability is not less than the relevant level.

Restrictions on awarding of damages and payment of compensation

93E. (1) In this section —

“agreed” means agreed between the worker and the employer, whether under section 93D(8) or otherwise;

“degree of disability” means the degree of disability of the worker assessed in accordance with section 93D(2);

“determined” means determined or decided on a reference under section 93D(9) or (10);

“termination day” means the day that is 6 months after the day on which weekly payments commenced.

- (2) Weekly payments of compensation ordered by a dispute

resolution body to commence are to be regarded for the purposes of this section as commencing or having commenced on —

- (a) the first day of the period in relation to which weekly payments are ordered to be made; or
- (b) the day that is 5 months (or such shorter period as is prescribed) before the day on which the order is made,

whichever is later.

(3) Damages can only be awarded if —

- (a) it is agreed or determined that the degree of disability is not less than 30% and that agreement or determination is recorded in accordance with the regulations; or
- (b) the worker elects, in the prescribed manner, to retain the right to seek damages and the election is registered in accordance with the regulations.

(4) In this section —

“Amount F” means twice the prescribed amount.

“Amount G” means —

- (a) for the financial year ending on 30 June 2000, \$20 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount B,

under subsections (11) and (13);

“Amount H” means —

- (a) for the financial year ending on 30 June 2000, \$60 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount H,

under subsections (11) and (13);

“non-pecuniary loss” means —

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

- (5) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.
- (6) The maximum amount of damages that may be awarded for non-pecuniary loss is Amount F, but the maximum amount may be awarded only in a most extreme case.
- (7) If the amount of non-pecuniary loss is assessed to be Amount G or less, no damages are to be awarded for non-pecuniary loss.
- (8) If the amount of non-pecuniary loss is assessed to be more than Amount G but not more than Amount H, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over Amount G.
- (9) If the amount of non-pecuniary loss is assessed to be more than Amount H but less than the sum of Amounts G and H, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over Amount G - [amount so assessed - Amount H].
- (10) No entitlement to damages is created by this section and this section is subject to any law that prevents or limits the awarding of damages.
- (11) By operation of this subsection and subsection (12) or (13) each of Amounts F, G and H is recalculated for each financial year with effect from 1 July (the recalculation date), commencing on 1 July 2000, by varying the respective amounts for the preceding financial year —
 - (a) by the percentage by which the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Statistician varies between 1 April in the calendar year preceding the recalculation date and 31 March in the calendar year of the recalculation date; or
 - (b) if the relevant information is not so published, in accordance with the regulations.
- (12) If an amount recalculated under subsection (11) as Amount F is not a multiple of \$1 000 it is to be rounded off to the nearest multiple of \$1 000 (with an amount that is \$500 more than a multiple of \$1 000 being rounded off to the next highest multiple of \$1 000).
- (13) If an amount recalculated under subsection (11) as Amount G or H is not a multiple of \$500 it is to be rounded off to the nearest multiple of \$500 (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500).
- (14) On or before 1 July in each year the Minister is to publish a notice in the *Gazette* setting out Amounts F, G and H as they will

have effect on and from that 1 July.

- (15) Failure to publish, or late publication of, a notice under subsection (14) does not affect the operation of subsection (11), (12) or (13).
- (16) Issues as to whether damages for non-pecuniary loss may be awarded and as to the amount of those damages that may be awarded are to be determined by reference to Amounts F, G and H as in effect on the date on which the determination is made.
- (17) Subject to subsections (18) and (19), if weekly payments of compensation in respect of the disability have commenced an election cannot be made under subsection (3)(b) after the termination day.
- (18) Despite subsection (17), if —
 - (a) medical evidence complying with section 93D(5) was produced to the Director not less than 21 days before the termination day; and
 - (b) a dispute arising under section 93D(7) has not been resolved before the termination day,

an election can be made under subsection (3)(b) within 7 days after the dispute is resolved.
- (19) Despite subsection (17), the Director may, in such circumstances as are set out in regulations, extend the period within which an election can be made under subsection (3)(b) until a day to be fixed by the Director by notice in writing to the worker.
- (20) Subject to subsections (21) and (23), if an election has been made under subsection (3)(b) compensation under this Act is not payable in respect of the disability, or any recurrence, aggravation or acceleration of it, in relation to any period after the day on which the election is registered or any expenses incurred during such a period.
- (21) Subsection (20) ceases to apply if, after the election is made, it is agreed or determined that the degree of disability is 30% or more and that agreement or determination is recorded in accordance with the regulations.
- (22) Subsection (21) relates only to the degree of the original disability, and any recurrence, aggravation or acceleration of it is not to be taken into account.
- (23) If an agreement or determination under subsection (21) is recorded, the worker may apply for any compensation which, but for subsection (20), would have been payable under this Act in relation to a relevant period or expenses incurred during a relevant period.
- (24) In subsection (23) —

“relevant period” means any period —

- (a) which is after the day on which the election is registered and before the agreement or determination under subsection (21) is recorded; and
 - (b) during which the degree of disability is agreed or determined to have been not less than 30%.
- (25) If the liability for an incapacity resulting from the disability has been redeemed under section 67, damages are not to be awarded in respect of the disability.

Restrictions on awarding and amount of damages if disability less than 30%

93F. (1) Unless an agreement or determination that the degree of disability of the worker is not less than 30% is recorded for the purposes of section 93E —

- (a) the amount of damages to be awarded is to be a proportion, determined according to the severity of the disability, of the maximum amount that may be awarded; and
 - (b) the maximum amount of damages that may be awarded is Amount A, but the maximum amount may be awarded only in a most extreme case of a disability of less than 30% in degree.
- (2) Subsection (1) has effect in respect of the amount of a judgment before the operation of section 92(b).
- (3) No entitlement to damages is created by subsection (1) and that subsection is subject to any other law that prevents or limits the awarding of damages.
- (4) If —
- (a) section 93E(3) does not allow damages to be awarded in respect of the disability; or
 - (b) damages in respect of the disability have been awarded in accordance with subsection (1),

the employer is not liable to make any contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (the **“Contribution Act”**) in respect of damages awarded against another person in relation to the disability.

- (5) If section 93E(3)(b) allows damages to be awarded in respect of the disability —
- (a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against other persons in relation to the disability

are not to exceed the damages that could have been awarded in accordance with subsection (1); and

- (b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against another person in relation to the disability, the amount of damages that may be awarded in accordance with subsection (1) is reduced by the amount of that contribution.
- (6) This section applies regardless of whether the damages are awarded against one or several employers.
- (7) An issue as to the amount of damages that may be awarded, is to be determined by reference to Amount A as in effect on the date on which the determination is made.
- (8) In this section —

“Amount A” means —

- (a) in relation to the financial year ending on 30 June 2000, \$250 000;
- (b) in relation to any subsequent financial year, the nearest whole number of dollars to —
 - (i) the amount obtained by varying Amount A for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the **“WCI”**) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or
 - (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying Amount A for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars.

Regulations

93G. Regulations may provide for —

- (a) the notification to be given to workers of the effect of the provisions of this Division;
- (b) the form and lodgment of elections under section 93E(3)(b);

- (c) the registration by the Director of elections under section 93E(3)(b) if an agreement or determination for the purposes of section 93E(4) has been recorded, and the power of the Director to refuse to register an election if not satisfied that the worker has been properly advised of the consequences of the election;
- (d) the recording by the Director of an agreement or determination under section 93E as to the degree of disability of a worker;
- (e) the way in which applications under section 93E(23) are to be made and dealt with. ”.

(6) In subsections (7) and (8) —

“**amended provisions**” means Part IV Division 2 of the principal Act as amended by this section;

“**assent day**” means the day on which this Act receives the Royal Assent;

“**former provisions**” means Part IV Division 2 of the principal Act before it was amended by this section.

(7) The amended provisions do not affect the awarding of damages in proceedings —

- (a) commenced before the assent day; or
- (b) for the commencement of which the District Court gave leave under the former provisions before the assent day,

and the former provisions continue to apply in relation to those proceedings.

(8) If weekly payments of compensation in respect of a disability —

- (a) commenced before the assent day; or
- (b) were ordered by a dispute resolution body to commence before the assent day,

and the termination day referred to in section 93E of the amended provisions would be within 3 months after the assent day, the termination day is postponed by this subsection so that it is the day that is 3 months after the assent day.

(9) Section 84ZH(2) of the principal Act is inserting after “that loss” the following —

“ , and as to the degree of disability assessed in accordance with section 93D(2) ”.

(10) Section 84ZR(2) of the principal Act is inserting after “Schedule 2” the following —

“ and as to the degree of disability assessed in accordance with section 93D(2) ”.

(11) Before Part XIII of the principal Act the following section is inserted —

“ **Publication of prescribed amount and average weekly earnings**

193. (1) On or before the 1 July on which a financial year begins the Minister is to publish a notice in the *Gazette* setting out, in relation to the financial year —

- (a) the prescribed amount;

- (b) Amount A for the purposes of section 93F; and
 - (c) Amount C for the purposes of Schedule 1 clause 11.
- (2) Publication under subsection (1) is for public information only and the operation of this Act is not affected by a failure to publish or a delay or error in publication. ”.
- (12) Schedule 1 clause 7(4) to the principal Act is amended by deleting “the items referred to in clause 11(3), (4) and (5)” and substituting the following —
- “ overtime or any bonus or allowance ”.
- (13) Schedule 1 clauses 11 and 11A to the principal Act are deleted and the following clause is substituted —
- “ **Weekly earnings**
- 11.** (1) Subject to clauses 12 to 16, for the purposes of this Schedule “**weekly earnings**” has the meaning given by this clause.
- (2) In this Schedule —
- “**Amount A**” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus —
- (a) any over award or service payments paid on a regular basis as part of the worker’s earnings;
 - (b) overtime; and
 - (c) any bonus or allowance;
- “**Amount Aa**” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus any over award or service payments paid on a regular basis as part of the worker’s earnings;
- “**Amount B**” means the worker’s average weekly earnings (including overtime and any bonus or allowance) over the period of one year ending on the day before the disability occurs in the employment that the worker is in when the disability occurs or, if the worker is then in more than one employment at the end of that period, the sum of the average weekly earnings (including overtime and any bonus or allowance) in each employment, but if the worker has been in an employment for a period of less than one year, the worker’s average weekly earnings in that employment are to be determined over that lesser period;
- “**Amount C**” means, during a financial year —
- (a) the amount obtained by multiplying by 1.5 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August, November

and February preceding the financial year; or

- (b) if any relevant amount of earnings is not published, the amount obtained by varying Amount C for the preceding financial year in accordance with the regulations;

Note: During the financial year ending on 30 June 2000 Amount C is \$852.52.

“Amount D” means the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation;

“Amount E” means the minimum weekly earnings to which the worker would have been entitled, at the time of the incapacity, under the *Minimum Conditions of Employment Act 1993*;

“bonus or allowance” means any bonus or incentive, shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance;

“earnings” includes wages, salary and other remuneration;

“overtime” means any payment for the hours in excess of the number of ordinary hours which constitute a week’s work.

- (3) In the case of a worker whose earnings are prescribed by an industrial award when the disability occurs, weekly earnings are —
 - (a) for the 1st to the 4th weekly payments: Amount A but not more than Amount C or less than Amount D;
 - (b) for weekly payments after the 4th: Amount Aa, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount D.
- (4) In the case of a worker to whom subclause (3) does not apply, weekly earnings are —
 - (a) for the 1st to the 4th weekly payments: Amount B but not more than Amount C or less than Amount E;
 - (b) for weekly payments after the 4th: 85% of Amount B, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount E.
- (5) Subject to subclause (6), the references in the definition of Amount A in subclause (2) to overtime and any bonus or allowance are references to those items averaged over the period of 13 weeks ending at the time of the incapacity.
- (6) If the worker was totally or partially incapacitated from working or for any other reason did not work during any part of the period of 13 weeks mentioned in subclause (5), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.

- (7) Regulations made for the purposes of subsection (3)(b) or (4)(b) may provide for lesser amounts (but not less than Amount D or E, whichever is applicable) to be determined in respect of weekly payments after the 4th, 12th, 26th or 52nd, or after such other numbers of weekly payments as are prescribed. ”.
- (14) Schedule 1 clause 12 to the principal Act is amended by deleting “11(1) or (2)” and substituting the following —
 “ 11(3) ”.
- (15) Schedule 1 clause 13 to the principal Act is amended by deleting “11(1) or (2)” and substituting the following —
 “ 11(3) ”.
- (16) Schedule 1 clause 13(1) to the principal Act is amended by deleting “or agreement”.
- (17) Schedule 1 clause 13(2) to the principal Act is amended by deleting “the exclusions referred to in clause 11(3) and (4)” and substituting the following —
 “ overtime or any bonus or allowance ”.
- (18) Schedule 1 clause 16(1) to the principal Act is amended by deleting “11(5)” and substituting the following —
 “ 11(4) ”.
- (19) Schedule 1 clauses 12, 13(2) and 16(1) and (2) to the principal Act are amended by deleting “or industrial agreement”.
- (20) In subsection (21) —
“amended provisions” means Schedule 1 to the principal Act as amended by this section;
“former provisions” means Schedule 1 to the principal Act before it was amended by this section.
- (21) If weekly payments commenced before the coming into operation of this section —
 (a) the amended provisions do not apply to the first 4 weekly payments after the coming into operation of this section and the former provisions continue to apply to those weekly payments; and
 (b) for the purposes of the amended provisions the 5th weekly payment after the coming into operation of this section is to be regarded as the 5th weekly payment and so on. ”.

The Minister for Labour Relations moved, That Legislative Council alternative Amendment No. 3 be agreed to subject to the following amendments -

Amendment No. 1

Heading to clause 32 - to delete “84ZH, 84ZR and 192” and substitute the following -
 “And 193”.

Amendment No. 2

Clause 32 (5), proposed section 93D (1) - to delete the subsection and substitute the following subsection -

- “(1) In this section -
 “relevant level”, in relation to a question as to the degree of disability of the worker, means -
 (a) if the question arises for the purposes of section 93E (3)(a), (9) or (12), a degree of disability of 30%; or
 (b) if the question arises for the purposes of section 93E(4), a degree of disability of 16%.”.

Amendment No. 3

Clause 32 (5), after proposed section 93D (2) - to insert the following subsection -

“(2a) For the purposes of section 93E (4) only, if item 36A of Schedule 2 applies to the disability, subsection (2)(a) applies as if the percentage of the prescribed amount provided for by that item were 100% instead of 60%.”.

Amendment No. 4

Clause 32 (5), after Example 2 in proposed section 93D (3) - to insert the following example -
 “Example 3

A worker loses 10% of the full efficient use of the back (including thoracic and lumbar spine) and 15% of the full efficient use of the neck (including cervical spine). The percentage under subsection (2)(a) (for the purposes of section 93E (4) only) is:

$$\left[\frac{10}{100} \times 100 \right] + \left[\frac{15}{100} \times 40 \right] = 10 + 6 = 16$$

”

Amendment No. 5

Clause 32 (5), proposed section 93E (3) (b) - to insert after “worker” the following -
 “has a significant disability and”.

Amendment No. 6

Clause 32 (5), proposed section 93E (4) to (16) - to delete the subsections and substitute the following subsection -

“(4) For the purposes of subsection (3) (b) the worker has a significant disability if it is agreed or determined that the degree of disability is not less than 16% and that agreement or determination is recorded in accordance with the regulations.”.

Amendment No. 7

Clause 32 (5), proposed section 93E (19) - to insert after “day” the following -
 “(not being a day that is more than 6 months after the termination day) ”.

Amendment No. 8

Clause 32 (12) - to delete “7(4)’ and substitute the following -
 “ 7 (2) ”.

The Acting Speaker having directed that a separate question be put on each amendment,

Question proposed, That Amendment No. 1 be agreed to.

Question put and passed.

Question proposed, That Amendment No. 2 be agreed to.

Question put and passed.

Question proposed, That Amendment No. 3 be agreed to.

Question put and passed.

Question proposed, That Amendment No. 4 be agreed to.

Question put and passed.

Question proposed, That Amendment No. 5 be agreed to.

Question put and passed.

Question proposed, That Amendment No. 6 be agreed to.

Question put and passed.

Mr Kobelke moved, That the following amendment to Legislative Council alternative Amendment No. 3 be agreed to -

Clause 32 (5), proposed section 93E (19), line 1 - to delete the words “in such circumstances” and substitute the following -

“where a worker’s disability is not sufficiently stabilized to allow for an informed choice at election, or in such other circumstances”.

Question put.

The Assembly divided.

(Ayes 17)

Ms Anwyl
Mr Bridge
Mr Carpenter
Dr Edwards
Dr Gallop
Mr Graham

Mr Grill
Mr Kobelke
Ms MacTiernan
Mr McGinty
Mr McGowan
Ms McHale

Mr Marlborough
Mr Ripper
Mr Thomas
Ms Warnock
Mr Cunningham (*Teller*)

(Noes 27)

Mr Baker	Mr Kierath	Mr Prince
Mr Barnett	Mr MacLean	Mr Shave
Mr Bloffwitch	Mr McNee	Mr Sweetman
Mr Board	Mr Marshall	Mr Trenorden
Mr Bradshaw	Mr Masters	Mr Tubby
Dr Constable	Mr Minson	Dr Turnbull
Mr Day	Mr Nicholls	Mrs van de Klashorst
Mrs Edwardes	Mrs Parker	Mr Wiese
Mrs Hodson-Thomas	Mr Pental	Mr Osborne (<i>Teller</i>)

Question thus negatived.

Question proposed, That Amendment No. 7 be agreed to.

Question put and passed.

Question proposed, That Amendment No. 8 be agreed to.

Question put and passed.

On the question, That Legislative Council alternative Amendment No. 3 be agreed to subject to the above amendments,

Question put and passed.

Consideration in detail concluded.

Ordered, That the Legislative Council be acquainted accordingly.

13. Adjournment.

The Leader of the House moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly, at 9.40 p.m. until Wednesday, 22 September 1999 at 12 noon.

Members present during any part of the day's proceedings - All the members except Mr Ainsworth, Mr Court, Mrs Holmes, Mr Omodei and Mr Strickland.

PETER J. McHUGH,
Clerk of the Legislative Assembly.

GEORGE J. STRICKLAND,
Speaker.