

WESTERN AUSTRALIA

**No. 11**

# **LEGISLATIVE COUNCIL**

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## **MINUTES OF PROCEEDINGS**

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THIRD SESSION OF THE THIRTY-FIFTH PARLIAMENT

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WEDNESDAY, SEPTEMBER 15, 1999

**1. Meeting of Council**

The Council assembled at 4.00pm pursuant to order.

The President, Hon George Cash, took the Chair and read prayers.

**2. Petitions**

Hon Bob Thomas presented a petition, by delivery to the Clerk [SO 130], from 47 residents of Western Australia opposed to the proposal to locate a high level nuclear waste dump in Western Australia. (Table paper 161).

Hon Bob Thomas presented a petition from 19 residents of Western Australia opposing the section of the *Planning Appeals Bill* which authorises the Minister to intervene during an investigation of an appeal. (Table paper 162).

**3. Standing Committee on Public Administration — Twelfth Report — Administration of Environmental Complaints Relating to Public Health — A Case Study**

Hon Kim Chance presented the Twelfth Report of the Standing Committee on Public Administration in relation to the Administration of Environmental Complaints Relating to Public Health — A Case Study. (Table paper 163).

Hon Kim Chance moved, That the Report do lie upon the Table and be printed.

Question — put and passed.

**4. Standing Committee on Public Administration — Thirteenth Report — Outsourcing and Contracting Out — Investigations in the United Kingdom**

Hon Kim Chance presented the Thirteenth Report of the Standing Committee on Public Administration in relation to the Outsourcing and Contracting Out — Investigations in the United Kingdom. (Table paper 164).

Hon Kim Chance moved, That the Report do lie upon the Table and be printed.

Question — put and passed.

**5. Standing Committee on Ecologically Sustainable Development — Inquiry into the Management and Sustainability of the Western Rock Lobster Fishery**

The Leader of the House moved, without notice —

That —

The Standing Committee on Ecologically Sustainable Development inquire into the management and sustainability of the Western Rock Lobster Fishery having regard to —

- (1) The accountability of the Department of Fisheries and its rapid rate of expansion.
- (2) The potential conflict of interest of the department in being regulators and having involvement in projects and marketing.
- (3) A proportional redirection of Better Interests Development Funding to The Western Australian Rock Lobster Fishers Federation to enable them to better represent the interests of lobster fishers.
- (4) The ability of Western Australian fishers to store, feed and sell their product anywhere within Australia.
- (5) The establishment of a seafood exchange in Fremantle.

Debate ensued.

Question — put and passed.

#### **6. Motions Appearing on Notice Paper — Ruling by President**

The Attorney General sought a Ruling by the President in connection with Notices of Motions Nos 6, 7 and 8 which seek to censure Ministers who are not Members of the Legislative Council. Whilst the Attorney General accepts that the House can censure him he did not believe the House could censure a Minister in another House.

##### *President's Ruling*

The President made the following Ruling —

The Attorney General is not seeking to have the motions struck out but is seeking a ruling about the word “censure” as it applies to Ministers in another place. There have been relevant rulings in the past and as soon as I am able I will return to the House and confirm, if it is appropriate, those earlier rulings.

#### **7. Government Priorities and Funding Commitments**

Motion No 1 having been called,

Debate resumed on the motion of Hon Tom Stephens as follows —

That this House —

- (a) condemns the Government for its misplaced priorities and funding commitments to projects such as the belltower and the convention centre at the expense of core areas of State Government responsibility such as health, education, community safety and public transport; and

- (b) calls upon the Government to remedy its failure to deliver Government services at affordable rates and give priority to hospitals, schools, police and public transport.

*Interruption of Debate* — One hour having elapsed after the time fixed for the meeting of the House, the President announced that leave of the House would be necessary to enable the debate to continue.

Leave denied.

## **8. Questions Without Notice**

Questions without notice were asked by Hons Tom Stephens, Nick Griffiths, Jim Scott, Norm Kelly, Muriel Patterson, Bob Thomas, Cheryl Davenport, Tom Helm, Giz Watson, Ray Halligan, Ljiljana Ravlich, Ken Travers, Kim Chance, Greg Smith, Ed Dermer and John Cowdell.

The Minister for Finance, by leave, tabled documents regarding Wesfarmers CSBP Ltd Licence under the *Environmental Protection Act 1986* in response to a question without notice asked by Hon Tom Stephens. (Table paper 165).

## **9. Order of Business**

Ordered — That Orders of the Day Nos 3, 4 and 5 be taken before Order of the Day No 1 (Leader of the House).

## **10. Address-In-Reply**

The Order of the Day having been read, for the adjourned debate on the further amendment of Hon Bob Thomas as follows —

That the following words be added to the motion —

And further advises His Excellency of the Legislative Council's concern with the failure of the Liberal National Party Coalition Government to properly handle the RFA process and in particular, its failure to meet the needs of timber industry workers, their families and their communities who are adversely affected by the outcome.

Debate resumed.

Leave granted to Hon Greg Smith to continue his speech at the next sitting.

On the motion of the Attorney General the debate was adjourned to the next sitting.

## **11. Extension of Sitting Time**

The Attorney General moved, That the House continue to sit beyond 10.00pm.

Question — put and passed.

**12. Workers' Compensation and Rehabilitation Amendment Bill**

The Order of the Day for the consideration of the Committee's report upon Legislative Assembly Message No 139 having been read,

The Attorney General moved, without notice —

That Standing Orders be suspended so far as will enable me to move the following motion as an instruction to the Committee of the Whole House on Legislative Assembly Message No 139 —

That the committee's consideration of a counter-proposal to Amendment No 3 be in the form that it appears on Supplementary Notice Paper No 9—2 standing in the name of the Attorney General and not otherwise.

The motion requiring the concurrence of an absolute majority.

Question — put.

There being a dissentient voice the President ordered the House to Divide.

(Ayes 20)

Hon Kim Chance  
Hon John Cowdell  
Hon Murray Criddle  
Hon Cheryl Davenport  
Hon Max Evans  
Hon Peter Foss  
Hon Nick Griffiths  
Hon John Halden  
Hon Tom Helm  
Hon Helen Hodgson  
Hon Barry House

Hon Norm Kelly  
Hon Murray Montgomery  
Hon Murray Nixon  
Hon Simon O'Brien  
Hon Ljiljana Ravlich  
Hon Greg Smith  
Hon Bob Thomas  
Hon Derrick Tomlinson  
Hon Muriel Patterson (*Teller*)

(Noes 2)

Hon Giz Watson  
Hon Jim Scott (*Teller*)

Question thus passed.

The concurrence of an absolute majority of the whole number of members being met Standing Orders suspended.

The Attorney General then moved —

That the committee's consideration of a counter-proposal to Amendment No 3 be in the form that it appears on Supplementary Notice Paper No 9—2 standing in the name of the Attorney General and not otherwise.

Question — put and passed.

The President left the Chair.

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**In Committee**

(Hon John Cowdell in the Chair)

Amendment No 3.

“ **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(7) 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” and inserting, in the appropriate alphabetical positions, the following definitions —

“ **“annual average weekly earnings amount”** means —

- (a) in relation to the financial year ending on 30 June 2000, \$29 762;

Note: This is the nearest whole number of dollars to the amount obtained by multiplying by 52 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 annual average weekly earnings 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 annual average weekly earnings 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;

“**prescribed level**”, in relation to the degree of disability of a worker, means —

- (a) the degree of disability that would, if compensation were to be paid in accordance with Schedule 2, give rise to a payment equal to the annual average weekly earnings amount; or
- (b) if a lesser degree of disability is prescribed by regulations, that lesser degree. ”.

(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”**, 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), (8) or (11), a degree of disability of 30%; or
- (b) if the question arises for the purposes of section 93E(4), the prescribed level of disability.

(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, but no regard is to be had to any mental

ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker.

- (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 has a significant disability and elects, in the prescribed manner, to retain the right to seek damages and the election is registered in accordance with the regulations.

(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 the prescribed level and that agreement or determination is recorded in accordance with the regulations.

(5) Subject to subsection (6), 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.

- (6) Despite subsection (5), 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.

- (7) Subject to subsections (8) and (10), 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.
- (8) Subsection (7) 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.
- (9) Subsection (8) relates only to the degree of the original disability, and any recurrence, aggravation or acceleration of it is not to be taken into account.
- (10) If an agreement or determination under subsection (8) is recorded, the worker may apply for any compensation which, but for subsection (7), would have been payable under this Act in relation to a relevant period or expenses incurred during a relevant period.

- (11) In subsection (10) —

**“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 (8) is recorded; and

(b) during which the degree of disability is agreed or determined to have been not less than 30%.

(12) 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 a sum equal to twice the prescribed amount, but the maximum amount may be awarded only in a most extreme case of a disability of less than 30% in degree.

(2) In assessing the severity of the disability for the purposes of subsection (1), no regard is to be had to any mental ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker.

(3) Subsection (1) has effect in respect of the amount of a judgment before the operation of section 92(b).

(4) 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.

(5) 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.
- (6) 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.
- (7) This section applies regardless of whether the damages are awarded against one or several employers.
- (8) An issue as to the amount of damages that may be awarded, is to be determined by reference to the prescribed amount as in effect on the date on which the determination is made.

## **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(10) 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 amended by 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 amended by 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) the annual average weekly earnings amount for the purposes of section 93A; and
  - (c) Amount C for the purposes of Schedule 1 clause 1.
- (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 1<sup>st</sup> to the 4<sup>th</sup> weekly payments: Amount A but not more than Amount C or less than Amount D;
  - (b) for weekly payments after the 4<sup>th</sup>: 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 1<sup>st</sup> to the 4<sup>th</sup> weekly payments: Amount B but not more than Amount C or less than Amount E;
  - (b) for weekly payments after the 4<sup>th</sup>: 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 4<sup>th</sup>, 12<sup>th</sup>, 26<sup>th</sup> or 52<sup>nd</sup>, 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 5<sup>th</sup> weekly payment after the coming into operation of this section is to be regarded as the 5<sup>th</sup> weekly payment and so on.

”.  
”.

The Attorney General moved —

That the new amendment as alternative to Amendment No 3 be agreed to.

Question — That the Clause to be deleted be deleted — put and passed.

Substitute Clause 32(1) and (2) agreed to.

Substitute Clause 32(3).

The Attorney General moved —

To delete the words “and inserting, in the appropriate alphabetical positions, the following definitions —” and

To delete the definitions of “**annual average weekly earnings amount**” and “**prescribed level**”.

Amendment agreed to.

Proposed subclause, as amended, agreed to.

Substitute Clause 32(4) agreed to.

Substitute Clause 32(5).

Subsection 93D(1)(b).

The Attorney General moved —

To delete the words “prescribed level of disability” and substitute the following words —

“ a degree of disability of 16% ”.

Debate ensued.

On the question, That the words to be deleted be deleted.

Question — put.

The Committee divided.

(Ayes 11)

Hon Murray Criddle  
Hon Max Evans  
Hon Peter Foss  
Hon Barry House  
Hon Murray Montgomery  
Hon Murray Nixon

Hon Simon O'Brien  
Hon Greg Smith  
Hon W N Stretch  
Hon Derrick Tomlinson  
Hon Muriel Patterson (*Teller*)

(Noes 12)

Hon Kim Chance  
Hon John Cowdell  
Hon Cheryl Davenport  
Hon Nick Griffiths  
Hon John Halden  
Hon Tom Helm  
Hon Helen Hodgson

Hon Norm Kelly  
Hon Ljiljanna Ravlich  
Hon Jim Scott  
Hon Giz Watson  
Hon Bob Thomas (*Teller*)

Amendment thus negated.

Subsection 93D(2).

The Attorney General moved —

To delete the words “, but no regard is to be had to any mental ailment, disorder, defect, morbid condition or symptom of the worker that arises, recurs or is aggravated or accelerated as a consequence of, or secondary to, a physical defect of the worker”.

Debate ensued.

Amendment — put and passed.

Proposed subsection, as amended, agreed to.

Subsections 93D(3) to (11) agreed to.

Subsections 93E(1) and (2).

Debate ensued.

Subsections agreed to.

Subsection 93E(3).

Hon Nick Griffiths moved —

In proposed paragraph (b) — To delete the words “has a significant disability and”.

Debate ensued.

Amendment agreed to.

Proposed subsection, as amended, agreed to.

Subsection 93E(4).

Hon Nick Griffiths moved —

To delete the subsection.

Debate ensued.

Amendment agreed to.

New subsection 93E(4),

Hon Nick Griffiths moved —

To insert the following new subsections —

“ (4) In this section —

“**Amount F**” means twice the prescribed amount.

“**Amount G**” means —

(a) for the financial year ending on 30 June 2000, \$10 000;  
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, \$30 000; 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.

Debate ensued.

New subsections agreed to.

Subsection 93E(5).

The Attorney General moved —

To delete the words “subsection (6)” and substitute the words “subsections (6) and (6a)”.

Debate ensued.

Amendment agreed to.

Proposed subsection, as amended agreed to.

Subsection 93E(6) agreed to.

New subsection 93E(6a).

The Attorney General moved —

After section 93E(6) — To insert the following —

“ (6a) Despite subsection (5), 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. ”.

New subsection agreed to.

Subsections 93E(7) to (12) agreed to.

Subsection 93F(1)(b).

The Attorney General moved —

To delete the words “a sum equal to twice the prescribed amount” and substitute the words “Amount A”.

Debate ensued.

Amendment agreed to.

Proposed subsection, as amended, agreed to.

Subsection 93F(2).

The Attorney General moved —

To delete the subsection.

Amendment agreed to.

Subsections 93F(3) to (7) agreed to.

Subsection 93F(8).

The Attorney General moved —

To delete the words “the prescribed amount” and substitute the words “Amount A”.

Amendment agreed to.

Proposed subsection, as amended, agreed to.

New subsection 93F(9).

The Attorney General moved —

After section 93F(8) — To insert the following —

“ (9) 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;

”.

Amendment agreed to.

Subsection 93G agreed to.

Substitute Clause 32(6) and (7) agreed to.

Substitute Clause 32(8).

Debate ensued.

Substitute Clause agreed to.

Substitute Clause 32(9) and (10) agreed to.

Substitute Clause 32(11).

The Attorney General moved —

To delete section 193(1)(b) and substitute the following —

“ (b) Amount A for the purposes of section 93F; ”.

Amendment agreed to.

Substitute Clause, as amended, agreed to.

Substitute Clauses 32(12) to (21) agreed to.

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The President resumed the Chair.

The Chairman reported, That the Committee had considered Message No 139 from the Legislative Assembly, and had proposed a new amendment as an alternative to Legislative Assembly Amendment No 3.

The Attorney General moved —

That Legislative Assembly Message No 139 be recommitted for the purposes of reconsidering proposed section 93D(1).

Question — put and passed.

The President left the Chair.

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### **In Committee**

(Hon John Cowdell in the Chair)

Proposed Section 93D(1).

Hon Nick Griffiths moved —

To delete the definition of “**relevant level**” and substitute the following definition —

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

Amendment agreed to.

Proposed section, as amended, agreed to.

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The President resumed the Chair.

The Chairman reported, That the Committee had further considered Message No 139 from the Legislative Assembly, and had agreed to further amendment.

Report adopted.

Legislative Assembly acquainted accordingly.

### **13. Prisons Amendment Bill**

The President reported the receipt of Message No 5 from the Legislative Assembly forwarding the Bill for concurrence.

The Attorney General moved, That the Bill be now read a first time.

Question — put and passed.

Bill read a first time.

The Attorney General moved, That the Bill be now read a second time.

On the motion of Hon Bob Thomas the debate was adjourned to the next sitting.

### **14. Telecommunications (Interception) Western Australia Amendment Bill**

The President reported the receipt of Message No 9 from the Legislative Assembly forwarding the Bill for concurrence.

The Attorney General moved, That the Bill be now read a first time.

Question — put and passed.

Bill read a first time.

The Attorney General moved, That the Bill be now read a second time.

On the motion of Hon Bob Thomas the debate was adjourned to the next sitting.

**15. Adjournment**

The Minister for Transport moved, That the House do now adjourn.

Question — put and passed.

The House adjourned at 9.55pm until Thursday, September 16, 1999 at 11.00am.

**Members present during the day's proceedings**

Attendance: Present, all members except Hons Dexter Davies, Mark Nevill and Christine Sharp.

**GEORGE CASH**  
President

**L B MARQUET**  
Clerk of the Legislative Council