WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Committee

Resumed from 20 September. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 365: Representation —

Progress was reported after the clause had been partly considered.

Hon Dr STEVE THOMAS: I think I am just about done with this clause. I just want to check in relation to representation under clauses 365 and 366 together. If an employee wanted a representative, who is not an authorised agent, in the room with them with legal representation who is an authorised agent, will the representative be illegal? Will it be illegal for one of the five people who currently exist in an advisory sense to be in the room as a personal adviser during negotiations, or can they be there as a support person of some sort because there will be legal representation in the room that meets the requirements under clauses 365 and 366? Sorry; this is on the assumption that they are not working for the lawyer of the company. We said yesterday that if they are working for them, they can be there, but what if they are not working for them but are separate from the legal representative?

The DEPUTY CHAIR (Hon Dr Sally Talbot): While we wait for the parliamentary secretary, members will notice that the clocks have now given up again.

Hon Dr Steve Thomas: They're probably on a four-day week!

Hon MATTHEW SWINBOURN: I will answer this as directly as I think I can. If we are talking about a conciliation room, there is no express prohibition that the person we are talking about cannot enter the room if the worker, for example, wants that person with them. I do not want to mislead in any way. If too many people are in the room, a conciliator may say, "I would like some of the people to be out of the room because it is not helping to facilitate conciliation"; however, that does not preclude them. They would be limited, in the sense that they are not there to provide advice to the worker, because they cannot provide that legal advice. They could be there to provide support and those sorts of things. If I am being perfectly frank, if the worker is represented by a lawyer, I suspect the arrangement would be that, unless the person has a particular affinity with one of those five representatives, they are likely to rely on just their lawyer. It is probably more a theoretical situation in time than a practical one. That is a matter for individual workers.

Hon Dr STEVE THOMAS: That is probably right. I think it would be fairly unusual, but I was just checking all the parameters. I am comfortable with the answer, and I am happy to move on from the clause.

Clause put and passed.

Clauses 366 to 382 put and passed.

Clause 383: General provisions about rules —

Hon MATTHEW SWINBOURN: I note supplementary notice paper 99, number 3, and the amendment in my name at 7/383. I move —

> Page 271, lines 8 and 9 — To delete "in the *Gazette*" and insert —
>
> in accordance with the *Interpretation Act 1984* section 41

By way of explanation, which comes back to previous explanations, and for the sake of *Hansard* and any who follow the debate, this amendment is required due to the commencement on 1 July 2023 of the Legislation Act 2021, which, among other things, provides for publication of certain subsidiary legislation on the WA legislation website rather than in the *Government Gazette*. Clause 383 contains a provision that refers to publication of the conciliation rules and arbitration rules in the *Government Gazette*. Parliamentary Counsel's Office advises that rules made under the bill will be prescribed under the Legislation Regulations 2023 and will be required to be published on the WA legislation website. The reference in clause 383(3)(b) to commencement "on the day of publication in the *Gazette*" has to be changed to "in accordance with the *Interpretation Act 1984* section 41".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 384 to 390 put and passed.

Clause 391: Appeal against arbitrator's decision —

Hon NICK GOIRAN: We now move to part 6, division 8, of the bill, which deals with appeals to the District Court. Within this provision, clause 391 has a reference to a 28-day period. I understand that some District Court authority

has held that this 28-day time frame is strict and cannot be extended in special or exceptional circumstances. That is unusual because the time limit for the majority of appeals, including between the Magistrates Court and the District Court, and from the District Court to the Supreme Court, can be extended in special or exceptional circumstances. What is the rationale for the strict time frame, and has the government given any thought to including a provision that allows a party to bring an application for an extension of time?

Hon MATTHEW SWINBOURN: I am advised that what the member raised about this High Court decision was not something that we were familiar with as an issue. It certainly was not an issue that stakeholders raised or wanted addressed. Therefore, in the exercise that we are trying to achieve with the reform—we do not like using that word for this bill—or rewrite of this act, that thing has not been contemplated in an amendment. Why it is strict goes back to when the bill or the provision in the current act was originally drafted. I do not know that I can take an explanation any further. I am trying to put to the member that we—the advisers here—have not put thought to the issue the member raised in those terms. To reflect further on that, stakeholders did not put it to us as something we should address. In our defence, if it had been raised at an earlier time via stakeholder engagement, some greater consideration probably might have been given to it. The member has raised it today, but we are not in a position to take it any further than that.

Hon NICK GOIRAN: Can the parliamentary secretary remind me when the next review of this statutory scheme is expected to occur? It is not under the existing provisions; I seem to recall that, but it has been a few weeks since we looked at this bill. I think an existing statutory review mechanism is in the current legislation. This is obviously a complete rewrite, so I am less concerned about the current regime. Moving forward, when would this statutory regime next occur? The context is that that would seem to be the next best opportunity to have this issue re-ventilated.

Hon MATTHEW SWINBOURN: It will be five years from the commencement of this act. Again, I would say that if this is an issue that is felt strongly out there, representations could be made earlier than that. We do not want to keep coming back into the act, but some other amendments may occur, although I am not suggesting that that is on the cards at this time. As the member knows and highlighted in his second reading contribution, a lot of work goes on under the hood of this regime. If that is something that the member knows stakeholders are particularly interested in, I can only encourage them to make the minister and WorkCover more fully aware of that.

Clause put and passed.

Clauses 392 to 420 put and passed.

Clause 421: Threshold requirements for commencement of proceedings and award of damages —

Hon NICK GOIRAN: Clause 421 brings us to part 7, division 2, of the bill. Generally, part 7 deals with the somewhat controversial issue of common law proceedings in workers compensation claims. Perhaps it is a point that is not very well known by Western Australians, but ordinarily if somebody is negligent, the victim of that negligence is in a position at common law to be able to sue. In Western Australia—admittedly, it is not an exclusively Western Australian restriction—we do not allow people to exercise their common law rights without having to jump through certain hoops and hurdles. That is not new in Western Australia; it has been the case for probably at least a couple of decades. Part 7 deals with those hoops and hurdles. I refer to a submission from Slater and Gordon, which states —

> Given the current delays in obtaining decisions from an Arbitration, we are of the view that if matters are not able to be settled by way of 92F deeds for disputed claims the delay will be extended, and the costs associated with the process will also be significantly increased. This is contrary to the principles of the Act and is contrary to section 3(d) of the current Act as the proposed pathways in relation to settlements is not *'fair, just, economical, informal and quick'*.
>
> The pre-arbitration conferences will become obsolete as the success of these conferences were based on parties entering into 92(f) deeds of settlement to avoid the risk to all parties having the liability dispute determined at the Arbitration Hearing. The Deeds facilitated a resolution of the dispute with liability remaining declined.

Is WorkCover WA expecting an increase in arbitrations once this new or rewritten and revised statutory scheme comes into force?

Hon MATTHEW SWINBOURN: WorkCover does not expect an increase in arbitrations as a consequence of the changes to the regime in the bill.

Hon NICK GOIRAN: More broadly, has the government spent any time considering whether to revise the existing restrictions on common law rights? I know this is a longstanding, contentious issue. There was a time when the threshold was, as I seem to recall, based on the percentage disability of the person and that changed to a percentage of impairment regime. People have to go through various hoops and hurdles. When we last considered this bill, we identified a gap in the guides. I think the example that was given was with respect to the back. A whole percentage

range that is particularly pertinent to those who are trying to access the thresholds of 15 per cent and 25 per cent whole body impairment is non-existent in the schedule. Is any work being done to give special consideration to this? I am talking about reform of the common law restrictions as opposed to the rewrite.

Hon MATTHEW SWINBOURN: The short answer to the member's question is no, not at this time. As the member knows, it would be fair to say that this is a contentious area, and that it has been since it was introduced some 20 years ago. I believe I was a workers comp officer at the time that it happened, not that I was dealing with whole-of-body elections and that sort of thing. Protests and all sorts of things went on. To be as frank as I can be, it is not currently a matter that the government or WorkCover are looking at in terms of revision. To be fair, we are focused on trying to get this exercise completed and embedded. Hon Nick Goiran asked about the five-year statutory review. I am absolutely certain that more submitters will raise the point about the need for reform. It is probably pertinent to make the point that this position is consistent and comparable with the position in other states around Australia. Although there is no uniform workers compensation scheme, some interested parties like consistency in this area. Hon Nick Goiran probably knows which parties I am referring to. Any reform in this area is a big job and there would need to be a lot of consultation and discussion. To be as plain as I can be, the government is not working on that at this time.

Hon NICK GOIRAN: This clause sets out the threshold requirements before a worker can commence their common law proceedings and receive any award for damages as a result of negligence of their employer. Will this make any changes to the thresholds?

Hon MATTHEW SWINBOURN: No, member.

Clause put and passed.

Clause 422 put and passed.

Clause 423: Effect of election to retain right to seek damages on entitlement to compensation —

Hon NICK GOIRAN: Clause 423(1) states —

> If a worker's election to retain the right to seek damages has been registered by the Director as referred to in section 421(1)(b)(i) and the worker's degree of permanent whole of person impairment as assessed by an approved permanent impairment assessor is less than 25% —
>
> (a) the amount of any income compensation payments to which the worker is entitled under this Act in respect of the injury for any time during the first 6 months after the day on which the election is registered (the ***registration day***) is the reduced amount provided for by subsection (2); and
>
> (b) the worker is not entitled to any income compensation payment in respect of the injury to the extent that the payment would be for any time that is more than 6 months after the registration day; and
>
> (c) the worker is not entitled to any permanent impairment compensation in respect of the injury; and
>
> (d) the worker is not entitled to any medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation in respect of the injury for expenses incurred after the registration day

That sets out a pretty harsh regime for workers. Are any changes being made with this new regime?

Hon MATTHEW SWINBOURN: No, this is the same as the current act.

Clause put and passed.

Clauses 424 to 433 put and passed.

Clause 434: Worker entitled to proceed against third party for damages —

Hon Dr STEVE THOMAS: I thought I was going to make it through to the lunch break, but we will see how we go! If the parliamentary secretary is happy, we will do division 4 in one hit. There are four clauses. Division 4 relates to remedies against third parties. To start, can the parliamentary secretary perhaps give us an example of a third party that might be dealt with under clause 434, when a third party is liable to pay damages in respect of an injury? What circumstances is this clause trying to catch? The explanatory memorandum effectively just repeats the bill a bit.

Hon MATTHEW SWINBOURN: We have only a short time, but I have a statement to read that will hopefully address some of what the honourable member wants, and then we can come back to specific issues. Part 7, division 4 deals with common law remedies against third parties and is the same as the current act. A third party will be a person other than the worker's employer who is otherwise liable for damages due to their negligence. An example is when a worker is engaged by their employer to work on a big construction project controlled by a large principal contractor. If, for example, the principal failed to provide safe scaffolding on the site and the worker fell, resulting in significant injuries, this part will provide the following remedies against the third party due to their negligence. Firstly, the worker may take action against the third party principal to recover damages and against

their employer who paid compensation. Secondly, a worker will not be entitled to both compensation and damages, and an award of damages must be reduced to account for the payment of compensation by the worker's employer to avoid double dipping. Thirdly, the employer will have a right to be indemnified by the negligent third party principal whose faulty scaffolding caused the worker's injury for the cost of paying the worker's compensation.

Sitting suspended from 1.00 to 2.00 pm

Hon Dr STEVE THOMAS: We are dealing with division 4 of part 7 of the bill, which relates to remedies against third parties. The minister had read out a document on common law remedies against third parties. I want to check a couple of things before we move on. This section will effectively allow an employee, if necessary, to take action against two parties at once. Will it be limited to two parties? They might have multiple subcontractors —

Hon Matthew Swinbourn: It is the employer and multiple parties.

Hon Dr STEVE THOMAS: I assume it would have to be, under those potential circumstances in the construction industry with a subcontractor to a subcontractor to a subcontractor to a head contractor, for example. That is fairly simple. If I can deal with division 4 all at once, an employer's right to be indemnified by a third party I presume is not talking about insurance as such, but one level of that debate can indemnify another level of that debate. I presume that would be had by agreement. If one does not get agreement to that, would it potentially be insurance companies driving that? I know it is in clause 435; I am dealing with the whole lot in one hit. Would the parliamentary secretary rather that I just focused on clause 434 and went through one clause at a time?

Hon Matthew Swinbourn: Whatever is the most direct way.

Hon Dr STEVE THOMAS: Okay. Indemnified by a third party under clause 435 I presume is not the insurance companies who will be fighting it, but in fact they could be indemnified by one other contractor level in the debate?

The DEPUTY CHAIR (Hon Sandra Carr): Minister.

Hon MATTHEW SWINBOURN: Parliamentary secretary, unfortunately.

The DEPUTY CHAIR: I apologise. I just gave you a promotion!

Hon MATTHEW SWINBOURN: That is all right.

Hon Dr Steve Thomas: You are often promoted.

Hon MATTHEW SWINBOURN: Not paid, though.

I think the member is correct in that regard. This division deals with first of all creating the principal at clause 434 that workers are entitled to recover against tort fees, if I can use that term, that go beyond their employer for a claim for workers compensation. The next clause then talks about recovery between the employer and another third party. In most of those situations, the worker is not involved in any of that, and it is typically between the employer's insurer and the other party's insurer, if there is one. But in place of the insurer standing in place of the employer in that particular instance and the further third party, there are matters of that. Then, obviously, clause 436 will allow for circumstances in which there is a recovery of third party indemnity payment from the worker, to avoid double recovery. There is no double dipping, that famous *Seinfeld* saying, to avoid that situation. That is what this clause essentially does. Behind the chair, I spoke to the member about how this will obviously be most pertinent for those situations in which there are common law claims and large sums of money at stake; therefore, there could be disputations between groups about who should be paying those large sums. But ultimately, it is about ensuring, if we can come right back to the worker, that they are not left in a position in which they are unable to recover against those who are truly responsible for their injuries.

Hon Dr STEVE THOMAS: I thank the parliamentary secretary for that pretty comprehensive answer of the question. I fully accept that there are potentially multiple levels of liability for one subcontractor who may not be in a position to provide a safe workplace because either the head contractor or the main subcontractor does that. I presume this is not different from the existing act.

Hon Matthew Swinbourn: No, there is no change.

Hon Dr STEVE THOMAS: I assume that worked reasonably well and will work reasonably well in the new act.

Clause put and passed.

Clauses 435 to 504 put and passed.

Clause 505: Authorised use or disclosure of information —

Hon Dr STEVE THOMAS: Clause 505 is the last issue I want to raise. It relates to the authorised use or disclosure of information. Obviously, information can be disclosed in good faith for a certain set of circumstances but not for others. Is this the same as in the existing act?

Hon MATTHEW SWINBOURN: Yes, it is the same.

Hon Dr STEVE THOMAS: How often is there a blockage of the disclosure of information to the employer or the employer's insurance company? Both the act and, largely, the bill says that we can do it in relation to things under this act. Is there a blockage in the flow of information between the various parties in relation to—I am not phrasing this very well, I might have to come back to this. Effectively, how free and open is the flow of information? Will this clause allow, for example, information around an employee to be passed in good faith to the employer if it assists the employer to provide an alternative workplace that they can manage?

Hon MATTHEW SWINBOURN: If I can perhaps give the member more context about what this clause is trying to achieve, it might address his concerns. As I indicated before, there is no change in effect from the current regime and what we are proposing in this new bill. Effectively, it is not quite what the member did, which is to say it is a permissible thing for employers to exchange information. The current regime and the bill provide quite specific provisions with regard to how information for workers and relating to workers can be used. An employer cannot use a worker's information often without the consent of the worker.

This is a more general provision, as opposed to the much more specific provisions in other parts of the bill, about how information can be exchanged to protect worker information rather than to create a right for employers to use it. Obviously, it provides a good-faith mechanism for when the use or disclosure of information happens under the circumstances listed at clause 505(1)(a) to (f), but it also provides protections at subclause (2), because if the use or disclosure of information is authorised under the circumstances listed at subclause (1), no civil or criminal liability will be incurred, the use or disclosure will not be regarded as a breach of any duty of confidentiality or secrecy imposed by law, and, at (c) —

> the use or disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

That last one obviously relates to doctors and lawyers who might have professional and ethical obligations and statutory responsibilities over how they use information. As long as they do it in good faith, they will be protected by that additional clause.

Hon Dr STEVE THOMAS: I think, if I try to do it in the form of an example, I am thinking specifically about the capacity of an injured worker to go back to the same or a different workplace. Obviously, their medical practitioner of choice is under a professional and ethical obligation. But, for example, would it be allowable under clause 505 for an employer to pass on information to the next employer about the ability of one of their employees who had been through a case and had chosen alternative employment?

Hon Matthew Swinbourn: No.

Hon Dr STEVE THOMAS: Could an insurance company, an alternative employer or a contractor provide that information, or could they provide that information only with the permission of the employee? Clause 505(1)(e) states that the use or disclosure of information is authorised with the consent of the person to whom the information relates. If I am an employee who has worked for somebody and I have a gammy leg that potentially means I cannot continue in similar work, that information might be relevant to the employer I am trying to go to. Apart from me giving permission, what are the circumstances in which that information could be forwarded?

Hon MATTHEW SWINBOURN: In that circumstance, it would be only with the consent of the worker. If the member is thinking that the prospective employer can go to a previous employer and say to them, "Can you tell us whether this person has had a workers compensation claim, the nature of the claim and what kind of injury they had?", that previous employer has no right and it is not permissible for them to disclose that information unless the worker has consented for that information to be disclosed. It is a matter of the terms of employment whether the employee might have a duty to disclose a relevant piece of information about themselves to a prospective employer. I do not want to get stuck on the detail of that, because that is not dealt with by the bill, as such; that is another area of employment law. But if, for example, the prospective employer has a legitimate reason to determine whether the worker is fit to meet the inherent requirements of the position, that employer has to make their own inquiries with the worker concerned. For example, they might require the worker to undergo a medical, and that medical may disclose previous injuries or restrictions and those sorts of things. That is generally how that sort of stuff is managed. It is not the case that employers are going back to previous employers. In fact, in my experience, employers are generally extremely reluctant to provide any information about previous employees to any prospective employer, for very good reasons. It exposes them to a range of liabilities. These days, lots of employers will not provide references for employees, because they feel that they may be held responsible if that employee does not perform according to the reference that has been provided. They will often confirm that the employee was employed by them, which they are entitled to disclose, but go no further than that.

For our purposes here, it is not a significant area of concern that has been raised with us by employers or people who represent employers that this is restrictive and prevents them from finding out information about prospective workers.

Hon Dr STEVE THOMAS: It piqued my interest, because it was raised in the consultation process by the Chamber of Minerals and Energy, which said —

> CME recommends that clause 505 is redrafted to provide clarity on the sharing of information on worker's existing abilities and injuries. CME considers information on a worker's existing work restriction requirements is required to determine whether a new employee is able to undertake and sustain a role safely and effectively.

It has come up. That is not to say that it has come up significantly.

Hon Matthew Swinbourn: I acknowledge that, member.

Hon Dr STEVE THOMAS: I put that on the table. I think that full awareness becomes a critical issue, but it also has to be balanced against the privacy of the individual, as well. I find myself in a sad situation in which giving references is a dangerous exercise these days. I wonder where we will end up with this—no-one will issue a reference again and everything will have to be done on guesswork. That is why I think we have to be careful about the laws we put in place and the potential litigation that may follow. I think there should be a freer transfer of information, but I have not gone to the point of drafting an amendment and trying to argue it through; I simply make the point. I will rest after saying that I think we are perhaps a little overly restrictive in the information that we can share. I think, in many cases, it is to the benefit of a potential employer to have that information. Probably, most employees give permission for it, and that would be reasonable. We would have no way to measure how often that does or does not happen. One would think it would be more common than not, but I think, in cases, there are employers who know about a pre-existing history. My gammy knee is not necessarily obvious to a medical practitioner if I have taken three Panadol before I go to my medical, but psychological issues are even less obvious. There is a transfer issue. I have no great solution for it; I have no amendment that makes it work. I just raise it as an issue, to make sure that we do not gloss over it and assume that the government can tick it off without having it tabled. I will leave it, but I think it is a significant issue to think about going forward.

Clause put and passed.

Clause 506: Disclosure of claim information for pre-employment screening —

Hon MARTIN ALDRIDGE: Welcome back, parliamentary secretary.

Hon Matthew Swinbourn: Thank you.

Hon MARTIN ALDRIDGE: I am looking forward to expediting the passage of the Workers Compensation and Injury Management Bill 2023. I think I said in my second reading contribution that it was the government's lowest priority, and I think the last few months have demonstrated that to be the case; nevertheless, we might make some progress this afternoon before another priority comes along, perhaps in the next sitting week.

Clause 506 will place a restriction on the disclosure of claim information for pre-employment screening. I know this issue was canvassed in the second reading debate; I think it may have been in the contribution of Hon Kate Doust, but it was some months ago that we were at the second reading stage. Was it an election commitment of the government to move this way?

Hon MATTHEW SWINBOURN: The first thing is that I do not think it is an election commitment. I am trying to establish where it has come from because I am sure that will be the member's next question. We are trying to understand the genesis of it. I thank Hon Martin Aldridge for his earlier comments about assisting to progress this bill as expeditiously as possible. It is certainly not on the bottom of the government's list of priorities, as the member suggested, but it would be most appreciated if we could make progress today because, as the member knows, a number of changes in this bill will benefit workers and people that the member cares about. Let me see whether I can get more advice about where it has come from, because I presume that is where the member will want to go.

I am advised that after the 2014 review, complaints were made about the practice of prospective employers seeking the disclosure of information from workers. Those matters were raised with the current minister, who directed WorkCover to include this amendment in the bill to address the issue. It was in the green bill or the exposure draft, or however we wish to describe that. We recognise that there were polarising views and, as the member can imagine, it was split between those who represent workers and those who represent employers. They have very different views on this provision.

Hon MARTIN ALDRIDGE: Does the public sector require the disclosure of workers compensation claims as part of its selection processes?

Hon MATTHEW SWINBOURN: I cannot give the member a definitive answer for the entire public sector because I do not have the advisers at the table who would have that information for each segment of the public sector. I am advised that WorkCover discourages that practice and has discouraged particularly the Public Transport Authority from engaging in that practice. Our understanding is that it now seeks worker consent for that information, rather than making it a precondition of employment. The member may have examples that he can give to me. I am not

denying that it happens, particularly if he has information to the contrary, but, obviously, the government's position will be quite clear in the passage of the bill that it is no longer permissible.

Hon MARTIN ALDRIDGE: I cannot remember the clause 2 debate and when the bill will come into effect. But the government likes to hold itself as a model employer and sets standards often above those that are required by written law as a model employer. I wonder whether a public sector direction on this practice might be considered, by way of a circular or other instrument available to the minister and the Public Sector Commissioner, to address this practice at least in the public sector. I accept that the parliamentary secretary does not have at the table representatives from the appropriate agency, which I assume is the Public Sector Commission, which I think falls within the Premier's portfolio, or at least used to. But I am wondering whether there is any advice on the government contemplating a response of that nature.

Hon MATTHEW SWINBOURN: As the member can appreciate, Minister Johnston is the Minister for Industrial Relations. That does not, unfortunately, give him the authority to determine industrial relations practices across the public sector. I am sure that other people will disagree with me, but that is my view. We have an adviser from the minister's office here, so I can give an undertaking that we will get our minister to raise the issue that the member has raised with the appropriate minister in relation to the public sector because I think his point is well made.

Hon MARTIN ALDRIDGE: The parliamentary secretary indicated I might have an example, and I do. That is because when we were having this debate, I was midway through signing an employment contract for one of my staff. I am sure the parliamentary secretary is familiar with this form; it is called the parliamentary electorate office contract of employment, which is a Department of the Premier and Cabinet form. A provision on page 2 says —

> Worker's Compensation Claims
>
> Have you ever made a claim for Worker's Compensation?

The applicant has two options —

> Yes, details are outlined below
>
> No

Then obviously there is a very small box for the applicant to provide details of their workers compensation claims. I understand that the parliamentary secretary suggested that a conversation occurred between WorkCover and the Public Transport Authority about this conduct. Would that type of question, once this bill is proclaimed, be prohibited under this legislation?

Hon MATTHEW SWINBOURN: Yes, member.

Hon MARTIN ALDRIDGE: The next question that is asked on the same form that I just mentioned is under the title of "Health". It says —

> Do you, to the best of your knowledge, have a medical condition that may hinder you from undertaking this position? If "Yes", please provide details.

There are yes or no tick boxes, and then a details box to enter information. Would that question be prohibited under this bill?

Hon MATTHEW SWINBOURN: No, member, it would not. That does not fall under the purview of the workers comp system per se. That question is not prohibited by what we are doing with this bill.

Hon MARTIN ALDRIDGE: What about when there is an intersection between a pre-existing medical condition and a workers compensation claim? This bill obviously deals with the latter. Someone cannot be required to disclose their workers compensation claim history, but they are being asked about relevant medical conditions. Is there a connection between those two issues, because somebody may have had a claim and is still dealing with a medical condition that may or may not have an impact on the position for which they are applying? We will obviously be prohibiting the claim history, but we are not necessarily prohibiting the health history.

Hon MATTHEW SWINBOURN: I think the member's characterisation is correct. There is a nexus. Obviously, if someone's health condition arose out of their previous employment and is compensable and they made a claim, there is that element. If I can go beyond that, there is only so much the state can do in any event about these issues because it intersects with federal employment law as well. There is a line of authorities in federal employment law—it is probably applicable in state law—about employers being able to terminate employees for failing to disclose a relevant piece of information about their health that later affected their suitability for employment. There is an intersection and a nexus but we are doing quite a discrete thing here with the requirement to disclose a workers compensation claim. I have been in previous employment situations in which I have had to disclose that because I cut my leg when I used to deliver milk 30 years ago. When people ask about that, there is no limitation on that kind of thing, but cutting my leg as a "milko" had no relevance, for example, when I went to work for a lawyer. What we are doing here is defensible. I do not think that the member is arguing against it, by the way, but as I say, there is

a limitation to how far we can go and there will be circumstances in which workers will have to disclose information about some aspect of their health or part of their body that might have been connected to a claim.

Hon MARTIN ALDRIDGE: There will be valid circumstances for particular types of employment. If a person's medical condition will impact on them fulfilling a role, then it is obviously relevant in that pre-employment relationship. The limitation will be that a candidate for employment can be asked about pre-existing health conditions that might impact upon a role, but they cannot be asked about their claims history. That is the distinction.

Hon Matthew Swinbourn: By way of interjection, yes.

Clause put and passed.

Clauses 507 to 537 put and passed.

Clause 538: General maximum and other adjustable amounts —

Hon NICK GOIRAN: The general maximum amount is set at $243 991. A note says that that is the prescribed amount at the date of the introduction of the bill to Parliament. Will it remain the same?

Hon MATTHEW SWINBOURN: I think the answer to the member's question is no. The current amount of $252 724 will continue to change as time progresses. I am advised that there is a clause—I am not sure which clause it is—in the transitional provisions that allows it to continue to be adjusted.

Hon NICK GOIRAN: Is it necessary to adjust the figure set out at page 354, line 10 now?

Hon MATTHEW SWINBOURN: It is not necessary because that will happen. It will become an artefact in the bill. It probably already is that, but it is not necessary to make sure that that amount does not get stuck in time, if I can put it like that—for example, like the legacy amounts in the administration act that were not changed for almost 40 years. We do not have that particular problem. It is a curiosity in one sense, but that was when the bill was introduced in February this year.

Hon NICK GOIRAN: Minister—I have done it as well. It is obviously contagious, parliamentary secretary. Clause 538(2)(h) specifies —

> the maximum damages amount for less than 25% impairment prescribed for the purposes of section 424.

What is that maximum damages amount?

Hon MATTHEW SWINBOURN: I am advised that the current amount is $530 724.

Hon NICK GOIRAN: Minister—no, this is really getting out of control.

Hon Matthew Swinbourn: It has been a long week for you, member.

Hon NICK GOIRAN: It has been a long few weeks for me, parliamentary secretary. Has any consideration been given to the basis upon which that maximum damages amount of more than $500 000 has been calculated? In other words, is the government confident at the present time that the cap of half a million dollars is a fair and reasonable amount for somebody who has up to 24 per cent whole-body impairment?

Hon MATTHEW SWINBOURN: It is not a trap. As the member said, it is fair and reasonable. I am advised that although the amount is indexed, we cannot make a fundamental change to the amount on which that indexation is based. However, the new act will allow this amount to be determined by regulation. The member argued about it being fair and reasonable. Work can be done to make an assessment as to whether or not that amount remains fair and reasonable going into the future, and because it is determined by regulation, a different amount that is not connected to the base rate that has been indexed for probably donkey's years, can be set under the new act.

Hon NICK GOIRAN: That is encouraging and an enhancement to the existing regime. Moving forward, does that greater flexibility also apply to the other adjustable amounts set out at clause 538(2), such as funeral expenses being eligible, a dependent child allowance and the like?

Hon Matthew Swinbourn: By way of interjection, and without going through that, yes.

Hon BEN DAWKINS: Sorry, parliamentary secretary and Hon Nick Goiran. Clause 538(1) refers to an amount of $243 911. Have I got the wrong copy of the bill?

Hon Nick Goiran: That is right.

Hon BEN DAWKINS: I cannot figure out how the member got to $500 000.

Hon Matthew Swinbourn: That is the amount referred to in clause 538(2)(h) on page 355 —

> the maximum damages amount for less than 25% impairment prescribed for the purposes of section 424.

Hon BEN DAWKINS: Thank you.

Hon NICK GOIRAN: To close off on this point, clause 538(2) sets out the eight statutory maximum amounts. The first of those in paragraph (a) is known, because it is specified at clause 538(1). It might be useful for clarity,

if the parliamentary secretary has the information at his disposal, to inform the house what the statutory maximums are for each of the remaining items.

Hon MATTHEW SWINBOURN: I can probably do better and table the current *Indexation of workers' compensation payments 2023/24*. That document includes all those amounts that are referred to.

[See paper 2619.]

Clause put and passed.

Clauses 539 to 543 put and passed.

Clause 544: Transitional regulations —

Hon MATTHEW SWINBOURN: I move —

Page 358, lines 22 and 23 — To delete "in the *Gazette*;" and insert —

in accordance with the *Interpretation Act 1984* section 41;

The amendment is required due to the commencement of the Legislation Act 2021 on 1 July 2023 which, among other things, provides for the publication of certain subsidiary legislation on the WA Legislation website rather than in the *Government Gazette*. Clause 544 provides for transitional regulations to be made and contains a definition of publication day in clause 544(1), which refers to the day of publication in the *Government Gazette*. All regulations must be published on the WA Legislation website. The reference in the definition of "publication day" in clause 544(1) to the date of publication in the *Government Gazette* has to be changed "in accordance with the Interpretation Act 1984, section 41."

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 545 to 550 put and passed.

Clause 551: Pending claims under former Act —

Hon NICK GOIRAN: There was momentary confusion because I seem to recall that the practice of parliamentary counsel—not that I necessarily agree with it—is this curiosity when something like 551A precedes 551. However, in this particular instance I note that it is intended to be inserted after 551. I think this is the better way moving forward, but it is curious.

Hon Matthew Swinbourn: I am guided by the clerks on this one.

Hon NICK GOIRAN: Perhaps the entity that is much spoken of but never present has changed its approach to these things. Nevertheless, we are at clause 551. The parliamentary secretary will recall some time ago—I think we were considering clause 7—that I raised some concerns about the transitional arrangements. It was brought to my attention that if the bill in its current form is not amended, any claim currently before WorkCover that is yet to be determined by an arbitrator would be subject to this new statutory regime. As such, even a claim that has proceeded to a hearing and reserved by the arbitrator might be then caught by the provision and result in the arbitrator reconsidering the dispute. At one point, the parliamentary secretary indicated it might only be a very small number of claims, but I seem to recall that the government indicated that it might be minded to address this situation. Is the proposed amendment for new clause 551A, in the parliamentary secretary's name on the supplementary notice paper, intended to address this concern?

Hon MATTHEW SWINBOURN: Yes, that is our intention.

Clause put and passed.

New clause 551A —

Hon MATTHEW SWINBOURN: I move —

Page 363, after line 16 — To insert —

551A Pending matters exclusion of injury: reasonable administrative action

If a pending matter relates to a disease caused by stress that is not an injury under this Act because of the operation of section 7 —

(a) section 7 does not apply in respect of the pending matter; and

(b) the definition of ***injury*** in section 5 of the former Act continues to apply in respect of the pending matter.

By way of explanation, and as the member alluded to in the matters that he raised some time ago now, this proposed amendment seeks to address the potential retrospective operation of the psychological injury exclusion in clause 7 of the bill, when the bill comes into operation. The government acknowledges there may be a slight extension of

the circumstances in clause 7 of the bill for excluding psychological injury claims on the basis of formal appraisal of performance. It is not the intention of government that this change in the scope of the exclusion will apply retrospectively to claims or proceedings already in train when the bill commences operation. The amendment in Committee of the Whole clarifies this intent by inserting new clause 551A into part 14, "Savings and transitional provisions". New clause 551A will ensure that clause 7 will not apply to any pending matter relating to a disease caused by distress. Instead, the current act's section 5 definition of injury will continue to apply to all pending matters relating to a disease caused by stress. The reference to a disease caused by stress is the term used in the definition of "injury" in section 5 of the current act. The exclusions that apply for stress claims are in subsection (4) and (5) of the current act. The term "pending matter" is already defined in the savings and transitional provisions at clause 542. It means —

> … a claim, assessment, proceeding, dispute or other matter commenced or arising under the former Act before commencement day that is pending, current or continuing under the former Act immediately before commencement day.

I hope that addresses the member's concerns. I thank the member for his advocacy on this particular point. Hon Dr Brad Pettitt is not in the chamber, but he is one to claim that governments will not amend bills or consider amendments. If he were here—and I hope he is listening—it might be instructive for him to take a leaf out of the member's book and perhaps advocate more forcefully and persuasively to make changes.

Hon NICK GOIRAN: I rise briefly to indicate that I support the amendment. I put on the record that I thank the parliamentary secretary, the advisers, and in particular, the minister, for the good faith approach taken to the point that has been raised. I indicate this is most definitely an enhancement to the bill.

Hon MARTIN ALDRIDGE: I take up the point raised by Hon Nick Goiran. I do not know if the parliamentary secretary or perhaps even the deputy chair is able to provide advice on the numbering of clauses. I had a chance to look at the Workers' Compensation and Injury Management Act 1981, of which I have a copy, and certainly the practice is that clauses preceded with a capital letter come before the number of the clause. In the current act, there are a number of sections that precede section 49—sections 49A, 49B, 49C, 49D and 49E. It would be good if we could have some clarification about whether there has been a change of practice or whether this will be resolved by a clerk's amendment.

Hon MATTHEW SWINBOURN: I am sure that the deputy chair will provide to the member some advice via the clerks. I have been told by the advisers at the table that their understanding is that the bill will be renumbered by the clerks. Subsequent to the formal publishing of the bill, the entire bill will be renumbered. I will let the clerks give advice to the deputy chair, and she may be able to pass on additional information. I am in their hands on this matter.

The DEPUTY CHAIR (Hon Dr Sally Talbot): What I am going to give the parliamentary secretary and members is a suggestion about the expressed will of the chamber, because apparently we have had conflicting advice. The suggestion is that perhaps the chamber could contemplate new clause 551A going after clause 551. Does that answer the question?

Hon Matthew Swinbourn: That is what will happen now, but I think the honourable member was seeking some explanation of whether there had been some change of practice from previous matters.

The DEPUTY CHAIR: No. Indeed, I believe that the convention is that it will follow clause 551. Are you happy to take that up using your own channels, member? Okay. That is the advice that I give the chamber. You are entitled to make another decision, but that is the advice. Now I am in the slightly uncomfortable position of not having a question before the chamber.

Hon Matthew Swinbourn: No. There is a question before the chamber—that the new clause be inserted.

The DEPUTY CHAIR: There is not a forum for members to speak to the clerks, so can you just bear with me and put me out of my agony.

Point of Order

Hon NICK GOIRAN: I would like to get confirmation of what question is before the chair and the chamber at the moment. I understand that we are seeking to insert new clause 551A. I certainly have not expressed a vote on that, even though I have already expressed that I will be supporting the insertion of the new clause.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Member, I know that there are times when we do not agree, but on this particular occasion, I will take that advice.

Committee Resumed

The DEPUTY CHAIR: The question before the chamber is that new clause 551A be inserted into the bill.

New clause put and passed.

Clause 552: Firefighters —

Hon MARTIN ALDRIDGE: This is the clause that the parliamentary secretary referred me to when we were dealing with clause 11. I am not sure whether he described it as a transitional provision, because it is not really. It is effectively a commencement provision. I am not sure why it is found at clause 552. It was a savings provision; that is what he described it as. I remember now. This clause relates to clause 11 of the bill and states —

> Section 11 does not apply to an injury by a firefighter disease suffered before 13 November 2013.

The note that appears under that says —

> 13 November 2013 is the day on which the *Workers' Compensation and Injury Management Amendment Act 2013* section 4 came into operation.

Section 4 will obviously be replaced through this bill, but the same commencement day will effectively be applied for the clause 11 cancers. In clause 11, there is a list of some 12 cancers. The government now has a list of another eight in regulations. I think the government has indicated that once this bill is proclaimed, it intends to issue the regulations again pursuant to clause 11. Will the regulations have the same commencement day as that in clause 552?

Hon MATTHEW SWINBOURN: Yes, member.

Hon MARTIN ALDRIDGE: Could they have a different commencement day? Is there power to enable a different commencement day to apply when the regulations are issued or is 13 November 2013 the key date for all firefighter cancer provisions?

Hon MATTHEW SWINBOURN: No; it is locked in for that day.

Hon MARTIN ALDRIDGE: This is my last question on this clause. I think the PTSD presumptive regulations will be issued under clause 10, which is the general disease clause, rather than under clause 11, which specifically deals with firefighter cancers. Does that have any relevance to the November date? What is the date of relevance for PTSD?

The DEPUTY CHAIR: While the parliamentary secretary is consulting his advisers, I inform honourable members that Hon Martin Aldridge was correct in his assumption that there had been a change of practice in where new clauses go. Some years ago, the Parliamentary Counsel's Office started inserting them before the numbered clause. It caused so much confusion that the practice has now reverted, except in the case when an amendment has already been made and further amendments are contemplated. I hope that helps. It might save you some time down the track.

Hon MATTHEW SWINBOURN: I am advised that clause 552 has no relevance to the PTSD provisions and that there is no deemed commencement date for the PTSD provisions. We will essentially re-regulate the existing provisions that relate to PTSD on the commencement of this legislation. There will be no change in that regard.

Clause put and passed.

Clauses 553 to 576 put and passed.

Clause 577: Registration of independent agents —

Hon NICK GOIRAN: For better or worse, this is the final clause in this 708-clause monster bill on which I have a question to raise. It deals with the regulation of independent agents. How many independent agents are currently registered?

Hon MATTHEW SWINBOURN: I am advised that five are currently registered.

Hon NICK GOIRAN: Five independent agents are currently registered. Will the registration process set out in clause 577 enable all five currently registered independent agents to continue to be registered?

Hon MATTHEW SWINBOURN: My advice is yes, for the two-year transitional period.

Hon NICK GOIRAN: Has there been any consultation with the five registered independent agents on this new provision, which will effectively limit their existence for two more years?

Hon MATTHEW SWINBOURN: I am advised that extensive consultation has occurred with those five individuals. These provisions arose in 2014, and before that in the 2013 discussion paper, so they have been in the public sphere for some time.

Hon Nick Goiran: Ten years.

Hon MATTHEW SWINBOURN: Yes, and there has been significant engagement with the five individuals concerned.

Hon NICK GOIRAN: I know it is a long time since we considered clause 2, but I recall that the commencement clause allowed for proclamation on different days, perhaps including clause 577. When is it intended for this provision to come into force?

Hon MATTHEW SWINBOURN: As we have previously indicated, our goal is 1 July, but that will obviously depend significantly upon the consultation, the drafting of the regulations and all those sorts of things. That still needs to happen, which we covered off on in early debate. To be clear, there will not be any separate commencement of these provisions from the commencement of the rest of the bill. When this bill commences, hopefully on 1 July, the clock will start ticking for the two-year period for those individuals.

Hon NICK GOIRAN: Let us assume that the provision commences on 1 July 2024. The five independent registered agents will no longer be registered two years after that. In that scenario, will the last day on which they can act as independent registered agents be 30 June 2026 or 1 July 2026?

Hon MATTHEW SWINBOURN: Subject to the Interpretation Act, it will be 30 June of that year.

Hon NICK GOIRAN: So by 30 June 2026 these five independent registered agents will be out of a job. What is the justification for ceasing their existence?

Hon MATTHEW SWINBOURN: I have discussed this in previous iterations. It places an administrative burden upon WorkCover WA to manage this group of individuals. Historically, the lay advocate role was recognised in the industrial sense and the workers compensation sense, but time has moved on. It was a recommendation of the 2014 review that these positions be eliminated, and the government has adopted that recommendation. The member and I are both lawyers. Those agents are providing legal advice without being certificated or admitted practitioners, so although there is a regime that regulates them, they are not under the same degree of scrutiny as legal practitioners. They do not have the same professional and ethical obligations that we have to operate in that space. As a matter of policy, the government is of the view that this space should be occupied by persons who are either legal practitioners or who work for registered trade unions under the Industrial Relations Act, which also has a supervision scheme for people who operate in that space. As the member knows, the workers compensation area, for better or worse, has become more legalised in many respects. Some will disagree with this, but the needs of workers are better met by properly legally trained and admitted people. I am not suggesting that those five individuals do not provide good service to their clients, but as a matter of policy, the government is of the view that that service should be delivered by legal practitioners and those who are employed by trade unions.

Hon NICK GOIRAN: The parliamentary secretary mentioned the administrative burden on WorkCover to continue to administer the registration of the independent registered agents. Is there an indication of what it costs WorkCover each year to manage this regime?

Hon MATTHEW SWINBOURN: I cannot provide the member with an indicative cost; we do not have that calculated out. I am advised that there are staff at WorkCover who spend time managing this cohort of representatives and managing the system that regulates them. Obviously, in time, when that system is no longer in place, those staff will have the capacity to do work in other areas. I do not have a figure for the member, unfortunately.

Hon NICK GOIRAN: Do one or more staff at WorkCover manage this registration process? Let us say the answer is one. How much of their FTE capacity would be spent on this?

Hon MATTHEW SWINBOURN: I cannot give the member an FTE kind of answer because the people who work in this area perform other work as well. It is not just the regulation of the agents, but also supervision of them. They also deal with complaints that come in. When people want to complain about these people, they go to WorkCover to make the complaint rather than to the legal profession complaints committee or the Industrial Relations Commission if it is a union official. They also have to deal with issues such as their level of preparedness and competence when representing clients; client–agent communication; poor record keeping; and noncompliance with the statutory cost scale. That generates work for WorkCover. To be fair to WorkCover, it was not set up to manage representatives in the same way that the Legal Practice Board is. That is obviously a burden. I am sure that the CEO could probably sit down and crunch a number, but we have not done that. He knows that it affects his work.

Hon NICK GOIRAN: In an estimated two and a half years' time, these five independent registered agents will no longer be able to perform this work under their own independent banner. Does the parliamentary secretary have any information as to how long the five independent registered agents have been performing this work?

Hon MATTHEW SWINBOURN: I do not have any statistics to provide the member about that. We are talking about five individuals, so we also have to be careful about the level of information that we provide because it could be associated with a particular individual, and both of us would be wary of doing that. These individuals are working in their profession, if I can call it that, and doing their job. The government has made a policy decision. They are not criminals or anything like that; I would not want anyone to think that that is the kind of people we are dealing with. They are entitled to some degree of privacy about their activities. I am told that some of them have been registered for many, many years. The agents scheme was put in place in 2004, but we do not think that any of the current agents started working as agents in 2004. Certainly one has been there since the 2014 review and a newer one since. They have probably come into the field knowing that it has an expiry date, if I can use that term.

Hon NICK GOIRAN: I think that helps to at least provide a picture of the spectrum of the five independent agents and their experience and longevity in the scheme. I have two further questions. How many complaints have been received on those violations?

Hon MATTHEW SWINBOURN: I do not have any statistics available to me at the table, unfortunately. I am told that the complaints about this group of representatives ebbs and flows over time and that the consequence of the uplift in the number of complaints is that WorkCover has had to increase its regulatory oversight, which has probably seen a drop-off in complaints. I am advised there have not been any recent complaints about the agents in that regard, but I do not have any statistics. If it is something the member needs, I can probably provide it to him behind the chair or I can table it at a later date. As I said, I do not have them here today. We have done work in the past about the number of complaints but we do not have that information with us at the moment.

Hon NICK GOIRAN: It is more a case of fulfilling our job as the opposition by holding the government to account for the changes it has put before the Parliament. It is known to those who have been involved in this reform for some time that at least one independent registered agent has made multiple submissions on this point. Whatever people's views are on that matter, we can understand that a Western Australian would feel aggrieved if, to use the colloquial phrase, they believe they are effectively being put out to pasture and will no longer be able to perform their existing function, and they would want the government of the day to provide a comprehensive explanation of that. An explanation has been provided today, certainly about the burden on WorkCover in administering the scheme and the part that included the complaints. I just wanted to interrogate that further to establish whether an actual cost to WorkCover was identifiable. That not being the case, I wanted to interrogate whether the impact on the full-time equivalent staff members who are involved could be identified, but that is unable to be done. There was a suggestion that there have been some complaints. I wanted to know how many complaints there have been, but that has not been provided either. That is now on the record so that those who have a grievance about this matter can at least feel that those matters have been properly ventilated by the house of review. If they want to take that up further with the government, they will have the opportunity to do that.

I conclude by asking whether, during the transitional period and afterwards, a registered independent agent might be able to seek employment with a law firm and then perform those same tasks but under the banner of a law firm rather than as an independent agent.

Hon MATTHEW SWINBOURN: I think we covered this previously. Yes, they can.

Clause put and passed.

Clauses 578 to 627 put and passed.

Clause 628: Act amended —

Hon MARTIN ALDRIDGE: We are now at part 15, division 3, subdivision 3 of the bill, which is a series of amendments to the Fire and Emergency Services Act 1998 that commence at clause 628. I have asked quite politely on a number of occasions whether the parliamentary secretary would consider having Department of Fire and Emergency Services advisers available for this aspect of the bill. Are they available?

Hon MATTHEW SWINBOURN: As I have indicated previously, they will not be made available. No, they are not available.

Hon MARTIN ALDRIDGE: Why not?

Hon MATTHEW SWINBOURN: They will not be made available because this is a workers compensation bill that covers all workers in Western Australia that are not covered by the Comcare system, so we have not sought to have any specialist advice provided to us by any particular agency or employer or other government departments. The bill sits in the portfolio of the Minister for Industrial Relations and I am the Parliamentary Secretary to the Minister for Industrial Relations. The responsible agency is WorkCover and WorkCover advisers are with me here today. We will do our best to deal with the matters the member raises. I might add that this provision sits under the part of the bill that deals with repeals and consequential and related amendments. I know that the member has an amendment on the supplementary notice paper at clause 630. I have already indicated to the member on a number of occasions the government's position on that. In any event, they are the reasons for not having DFES advisers.

Hon MARTIN ALDRIDGE: I will make this point briefly in the interests of progressing this bill. We just spent eight sitting days dealing with abortion reform. I point out to the Council that on multiple occasions we swapped advisers between the Departments of Health and Justice as we dealt with different aspects of the bill. It is unfortunate that when quite considerable notice was given and the supplementary notice paper is evidence enough to suggest there is interest in this aspect of the bill, as inconsequential as the parliamentary secretary might believe it is, the government has not seen fit on this occasion to make available advisers from the department to assist the Legislative Council today.

Clause put and passed.

Clause 629: Section 36ZM amended —

Hon MARTIN ALDRIDGE: This clause will delete a number of definitions, effectively. We have the benefit of a blue bill for the Fire and Emergency Services Act 1998. I want to confine my comments here to the change between a "compensable injury" and a "firefighter disease". We will delete "compensable injury" from section 36ZM and insert in section 36ZM a definition of "firefighter disease", which has the meaning given in section 11(1) of the Workers' Compensation and Injury Management Act. Is there any difference from this change to the definition?

Hon MATTHEW SWINBOURN: There is no material change between what currently exists and what we are proposing.

Hon MARTIN ALDRIDGE: The definition of "compensable injury" is found in section 159 of the Workers' Compensation and Injury Management Act. Might the issue here be that we are narrowing the scope of a claim or the operation of this provision? The definition of "compensable injury", according to the printed form of the act, means "an injury for which an employer is liable". It is fairly general in nature. "Firefighter disease" is defined in clause 11 of the bill as —

> … a disease that is —
>
> (a) listed in column 1 of the Table; or
>
> (b) a cancer prescribed by the regulations to be a firefighter disease;

Are we perhaps, unintentionally even, narrowing the application by the deletion of "compensable injury" in preference to using the definition of "firefighter disease"?

Hon MATTHEW SWINBOURN: This is complex in that we are jumping between legislation, but I can say that the member has referred us to the definition of "injury" in the blue bill of the Fire and Emergency Services Act 1998, which states that it has —

> … the meaning given in the WC&IM Act section 5(1) …

Clause 6 of the bill defines "injury" as "an injury from employment". It then goes on to explain that. That is why we maintain that there is no material change, because the definition in the bill will be the same as the definition of "injury" under the Fire and Emergency Services Act. I think we covered off whether there would be any meaningful change when we debated clause 6 all that time ago, and we made it clear that the government's intention is for there to be no material change other than to ensure the drafting is modern and all that kind of thing. The member does not need me to go over that. There is no change. To be very clear, the government has no intention for there to be any change between what happens currently and what we are proposing. For the purposes of *Hansard* and anyone who is looking back at the debate, if they can take any reassurance from the words of the humble Parliamentary Secretary to the Minister for Industrial Relations about the government's intentions, it is not our intention for it to operate any differently and we are not narrowing the scope. We are not trying to widen the scope for that purpose either. I hope that gives the member some reassurance.

Hon MARTIN ALDRIDGE: That is helpful. Perhaps the mistake was my comparison, and perhaps there is a better comparison between the deletion of "compensable injury" and the inclusion of the definition of "injury", rather than the definition of "firefighter disease", which the parliamentary secretary brought to my attention. I thank him for his reassurance that these changes are in no way intended to narrow the scope of what currently applies. I guess we will have an exchange of views shortly about doing the opposite, but not at clause 629.

I have one last question on clause 629. These clauses will amend the Fire and Emergency Services Act 1998, which is an act that does many things, including providing compensation to fire and emergency services volunteers. In the main, these clauses inherit provisions by reference to the WCIM act. Obviously, with regard to firefighter cancers, there is an ability for that to flow directly through. Recently, the government accepted the arguments of the opposition and added additional cancers by way of regulation. That flowed through automatically to the Fire and Emergency Services Act by reference. Can that occur with other diseases? I referred to a general disease power in the debate on clause 10 of the bill. Is there a mechanism for the same thing to occur for a general disease, other than a cancer, with respect to the FES act?

Hon MATTHEW SWINBOURN: I think I understand what the member was trying to ask. I missed some of the question because I was slightly distracted, so I hope I am on point. I am advised that, by way of regulation, we can make a presumption for diseases other than cancer for workers. I think, from his amendment, that Hon Martin Aldridge is interested in volunteers. For example, we could think of a disease that is not a cancer that might be affecting firefighters, which is what the member is interested in. It could be some sort of skin disease—psoriasis or something. Can we create a presumptive scenario by regulation? Yes, we can do that, but the person affected has to be a worker under the definition in the Workers' Compensation and Injury Management Act.

Hon MARTIN ALDRIDGE: That is my understanding from looking at the current construction and also the one in this bill. I just wanted to clarify that that was the case.

Clause put and passed.

Clause 630: Section 36ZN replaced —

Hon MARTIN ALDRIDGE: Before we get to the amendments on the supplementary notice paper, I want to ask some general questions about clause 630. I refer to comments I made in the debate on clause 1 or, probably more appropriately, clause 11 about qualifying periods. The operation of the presumption will not be materially changed here, whether it be for workers or volunteers, except that the test for volunteers will be a little different. We have already engaged on the qualifying period in debate on clause 11, when I asked some questions about the fact that the commonwealth Attorney-General's Department's independent scientific report is a lot more fulsome than the one commissioned by the state. The person who authored the report said he could not find any evidence that could justify the arbitrary qualifying periods that apply. The only reference he could find was that it appears that these schemes came out of Canadian provinces and we effectively just did what the Canadians did and adopted schemes throughout Australian jurisdictions. Beyond that, there was not really anything that informs that. This bill will change the qualifying period for oesophageal cancer. Again, that will really just bring things back in line with the maximum qualifying period and is not because there is scientific research that says the qualifying period is 15 years and not 25 years. We had that discussion in debate on clause 11. I accept that there has to be a discriminator, but these are very arbitrary discriminators. We have here further requirements for volunteers. I guess that the important proposed section is 36ZN(2), which states —

> (2) An injury by a firefighter disease suffered by a volunteer is, for the purposes of this Part, taken to be caused to the volunteer while engaged in volunteer activities if all of the requirements for the application of this section to the injury as specified in subsection (3) are satisfied, unless the responsible agency proves that the injury was not caused to the volunteer while engaged in volunteer activities.

That is effectively the presumptive clause, which is rebuttable. Proposed subsection (3) effectively lists three things —

> (3) The requirements for the application of this section to an injury by a firefighter disease suffered by a volunteer are as follows —
>
> (a) when the injury is suffered the volunteer (whether or not still in firefighting service) has been in firefighting service for at least a period of, or periods in aggregate amounting to, the qualifying period for the disease;
>
> (b) the responsible agency is satisfied that when the injury is suffered the volunteer has been in hazardous firefighting service for at least a period of, or periods in aggregate amounting to, the lesser of the following —
>
> (i) 5 years;
>
> (ii) the qualifying period for the disease;
>
> (c) in the case of a cancer prescribed by regulations under the WCIM Act to be a firefighter disease, the conditions, if any, prescribed by the regulations for the cancer are satisfied.

My first question is: do all three proposed subsections (3)(a), (b) and (c) need to be met for the protection in subsection (2) to be applied to a volunteer?

Hon MATTHEW SWINBOURN: Yes, member.

Hon MARTIN ALDRIDGE: I note that, if we look at the blue bill, we see a subtle change. At 36ZN(2)(a) to (c) in the current Fire and Emergency Services Act, after each of those limbs is the word "and". That word has been deleted in proposed subsections (3)(a) to (c) in the bill. Will that have any material impact on how the section will be applied?

Hon MATTHEW SWINBOURN: I am advised that it will not. To be honest, I am curious why the practice has changed, but that would be a question for the Parliamentary Counsel's Office. I think, in the absence of there being a conjunctive or disjunctive, the conjunctive would apply; that is, you could read "and" into the provision, and its absence does not change the effect. I would probably need a strong cup of tea for a conversation with the drafters about why they have dropped the word "and". It is obviously the convention they have adopted, but the advice from the table is that it has no material effect on what exists in the current act, what is in the bill and what will apply on the commencement of the new act.

Hon MARTIN ALDRIDGE: When I first read this provision, I would have thought that the word "and" would make it simpler for the reader to interpret this proposed section. If somebody were contemplating making a claim against a cancer that is prescribed by the regulations, proposed section 36ZN(3)(c) states —

> in the case of a cancer prescribed by regulations under the WCIM Act to be a firefighter disease, the conditions, if any, prescribed by the regulations for the cancer are satisfied.

If I make a claim for a cancer that is prescribed by the regulations under the Workers Compensation and Injury Management Act, will the five-year requirement contained in proposed subsection (b)(i) apply?

Hon MATTHEW SWINBOURN: I might be a little bit at cross-purposes with the member here, so I hope my answer answers what he asked. Proposed paragraph (b) reads —

> … the lesser of the following —
>
> (i) 5 years;

It is probably "or" —

> (ii) the qualifying period for the disease.

If the qualifying period for the disease is less than five years, it would apply then.

Hon Martin Aldridge: No, I don't believe that's the case.

Hon MATTHEW SWINBOURN: It is "5 years" and then "the qualifying period for the disease"; it is the lesser of the two. That is the work that that does. If there was a disjunctive after five years, it would say "or" between those two elements. It is five years. I do not think there are any diseases currently for which the qualifying period is less than five years in any event, so in practical terms, five years is the minimum qualifying period. In the table in clause 11, there is no period less than five years.

Hon MARTIN ALDRIDGE: I am just trying to recall whether it is consistent. I was just looking back at clause 11. Clause 11(3)(b) states —

> the employer is satisfied that when the injury is suffered the worker has been in hazardous firefighting employment for at least a period of, or periods in aggregate amounting to, the lesser of the following —
>
> (i) 5 years;
>
> (ii) the qualifying period for the disease.

I thought I asked a question at clause 11 about whether there could be a qualifying period of less than five years, and if there could, how it would interact with the five-year requirement here. I thought the answer that was given to me then was that it could not. At the moment, we do not have a qualifying period below five years, but the point I was making was if some evolving scientific evidence showed that three years was the appropriate number for a particular disease. I thought we had got to the point at which we understood that there was no capacity for that to be operative because of this five-year requirement.

Hon MATTHEW SWINBOURN: This is probably where we are at cross-purposes. The ones that are prescribed in the act are prescribed for that particular period before other diseases. The member asked a question earlier about whether there could be diseases that were not cancers and whether they could be prescribed in terms of the presumption and things of that kind. We acknowledged that there could be other diseases and I gave the example of psoriasis. It may be the case that the presumption could apply for a period less than five years. If my previous comment was misleading, it was not intended to be; I apologise for that. The table in clause 11 provides those qualifying periods. They cannot be adjusted lower under these provisions, but other diseases can. Does that make sense?

Hon MARTIN ALDRIDGE: Yes. It is satisfying to get that response but it begs the question: what is the relevance of five years?

Hon MATTHEW SWINBOURN: I am advised it is just about consistency because of what is in this legislation and what will be imported into the Fire and Emergency Services Act 1998. Also, obviously, at some stage a policy decision was made that five years was appropriate, but I cannot take it much further about why it is five years and not six or seven years. I do not want to guess but five years is the minimum for leukaemia, so that is obviously a benchmark for that one. That would be guesstimating and I do not want to do that.

Hon MARTIN ALDRIDGE: The only thing I could think of on the run now is that the parliamentary secretary could provide by regulations for a disease without a qualifying period and, therefore, the five years would then apply, but I think the intent is that when we gazette a disease, it would have a qualifying period. That is the way we would ordinarily expect it to occur. That is probably as far as we can go on that.

I never really quite understood a clear answer in this respect. It is useful that we are dealing with both bills at the same time in that I want to understand how a person would be treated if they were a volunteer who became an employee, or an employee who became a volunteer, or indeed an employee and a volunteer at the same time. Obviously, there are different tests here. For workers, they are simply diagnosed with a disease, the qualifying period is met and that is it. Actually, there are three thresholds. For the Department of Biodiversity, Conservation and Attractions firefighters, it is five hazardous fires for five years, which is effectively the same as volunteers. Those two apply to workers. Then we have volunteers: five hazardous fires for five years, plus the qualifying period, plus the disease applies to them. My understanding is that someone could make a claim based on volunteer service and career service. I think we talked about this because say if someone was a volunteer in the local government service, their claim would be against the local government and its insurer, which is the Local Government Insurance Scheme. I think in all cases now in Western Australia, LGIS is the insurer for local government. In the state's case

it would probably be against the Department of Fire and Emergency Services and its insurer, which is—I cannot remember the acronym—the KGB or whatever.

Hon Matthew Swinbourn: Government insurance division.

Hon MARTIN ALDRIDGE: It is the GID—government insurance division. It is not exactly clear to me how we would bring together both career and service but there would be two claims to two levels of government and two different insurers.

Hon MATTHEW SWINBOURN: I might get to the technical parts of it, but, essentially, as a matter of practice, the bill will allow for a reform—I do not like using that word in respect to this one. The rewrite will permit the volunteer service and the professional career service to be joined, whichever order that they might be in or regardless of whether someone is both a volunteer and a career firefighter. It obviously does not work with local government. We had that debate at an earlier clause about the presumption because the local government firefighters are not covered by the presumption. The way the member is looking at me there —

Hon Martin Aldridge: Some are; not all of them.

Hon MATTHEW SWINBOURN: The local government ones? Yes. We had the debate about how they are excluded, and without getting down to the brass tacks of that, that does not change there. We had an earlier debate about third parties and their liability. With respect to those local government employees who might not be covered—the part which they are covered—and then they become a career firefighter, if there is a dispute regarding liability, the dispute will be between the insurers about who is liable. Obviously, if they meet the qualifying periods for the presumption, they will be entitled to do that. As I say, we have had the debate about that group of LG people who are outside of that. The member has made his position clear about that. To come back to the main point, the whole purpose of this is to bring together people's volunteer service and their career service where those things happen so they can rely on their benefit to get the presumption.

Hon MARTIN ALDRIDGE: I think the distinction we made earlier was that we established that local government–employed firefighters are not covered. Local government volunteer firefighters are covered. There is that cohort of, I think, about 27 staff in local government who strangely fall outside this regime. I have had the opportunity since we had that discussion to alert them to that fact and they are not very happy about it, but it has existed since 2013. It is not a new problem, but it is a problem that needs to be fixed. It is unfortunate that we are not fixing it in this bill. That was not necessarily the motivation for asking the question. When we first talked about this, I think the parliamentary secretary said there was some limitation or inability for liability to a claim to be split or apportioned to different parties and, therefore, it would be more logical that someone would make one claim. That would be the rational or reasonable approach if somebody's service had combined both volunteer and career service. I think it would be quite common—it is not uncommon at least to have career firefighters who are often volunteers before they become career firefighters. I know plenty of career firefighters who, even in their retirement, continue to volunteer in their communities, or even throughout their service as an employee. Would there be any advantages or disadvantages to whether someone would progress a claim through their employment as opposed to their volunteer service? Would they be treated any differently with respect to the claim compensation limits, payment types or benefits generally, whether it was a volunteer claim or an employee claim under this bill?

Hon MATTHEW SWINBOURN: It is really hard to say whether it would be more advantageous or beneficial to make a claim under one or the other because it will largely depend on the individual circumstances of the particular worker, or the person if they are no longer a worker. As the member knows, the scheme for volunteers is not a workers compensation scheme per se; it is a general insurance scheme that provides for its own amounts and those sorts of things. We were discussing it at the table and it became obvious that it will really depend on individual circumstances. For example, if someone were a career firefighter for 30 years and then had a period in which they were a volunteer, but then was no longer a volunteer but developed one of those diseases post that time, what would they do? Would they make a claim as a volunteer because that was their last service or would they make the claim in relation to their 30 years?

I suspect it would not be controversial to say that the workers compensation scheme is probably a fuller scheme than that provided under the Department of Fire and Emergency Services provisions in the general insurance for volunteers, and for obvious reasons. It is a statutory scheme that is "this big", so that would be a decision that that person might make. If a person is volunteering at the time and no longer working, they might make the claim as a volunteer, but disputations might follow, for example, about who might be liable. That often happens behind the scenes because the beneficiary does not have to get involved in debates between insurers about where the liability sits. It is a no-fault system. Unless a person is making a common-law claim, we do not want the people who are covered by the workers compensation part of it to be bothered with arguments between insurers when all they know is that they have a disease or an injury and it is connected to either their volunteering or their work.

Hon MARTIN ALDRIDGE: I do not want to use this choice of words, but there is probably no other way of describing it: is it possible that a claimant could effectively double dip? A person might progress a claim based

on their employment. After that claim is settled, they might advance a separate claim in respect of their volunteer service via the local government insurance scheme, for example.

Hon MATTHEW SWINBOURN: There is no real prospect of double dipping. As I say, if there is an apportionment of liability between insurers because 80 per cent of the person's disease is attributable to insurer X and 20 per cent to insurer Y, that is an argument to be had between those insurers. The worker is the beneficiary. As I said, earlier we dealt with third-party provisions in the Workers' Compensation and Injury Management Act that allow for things to be resolved to avoid any double dipping and those sorts of things.

Hon MARTIN ALDRIDGE: How would an insurer or an employer necessarily know that I have made a claim and that the claim has been settled? On the workers compensation claim form is there a question that asks if the person has made a previous claim for their condition? Is there something like that where I might have to disclose that I have previously made a claim and that claim has been settled, agreed upon or otherwise—something that identifies that to the other party?

Hon MATTHEW SWINBOURN: There is no tick-a-box thing, but I am told that as a matter of course, insurers and employers will often ask workers, particularly when there is the potential for a claim with somebody else being liable, whether they have made any other claims or that sort of thing. If a worker was to essentially lie about that, that would be fraud and they could potentially be prosecuted for deliberately double dipping.

Hon MARTIN ALDRIDGE: The requirement to provide that information would not be captured by clause 506. One aspect of that provision was about pre-employment screening, but I think there were some earlier subclauses that related to it more generally.

Hon Matthew Swinbourn: I think that applied to employers rather than insurers who are processing a claim made by a worker. It was about a prospective employer asking whether or not a person had previously made a claim as opposed to when a worker is making and pursuing a claim and the insurer says, "Have you made any other claims with respect to this injury?"

Hon MARTIN ALDRIDGE: Yes, the parliamentary secretary is right. Clause 506(1) states —

> A person must not disclose information about a worker's claim for compensation to another person for the purpose of providing information to that person about the worker's suitability for employment …

They are limited provisions. Before we move on from the general questions on this clause, I want to be clear about the application of the qualifying period when somebody has served in both a volunteer and an employment capacity. If a person has volunteered for three years and they have attended the requisite five hazardous fires a year and then they join DFES and become a career firefighter and do three years' service—so they have done six years cumulatively—and then that person is diagnosed with leukaemia, would that person's combined service be treated as six years or three years? Therefore, if they are currently an employee making a claim under the workers compensation legislation, not the DFES act, would their three years' volunteer service leading up to their career service contribute to the qualifying period of five years?

Hon MATTHEW SWINBOURN: Yes, member.

Hon MARTIN ALDRIDGE: Therefore, for the three years of volunteer service to count, would a person have to meet the threshold of five hazardous fires a year?

Hon Matthew Swinbourn: Yes, by way of interjection.

Hon MARTIN ALDRIDGE: I know the parliamentary secretary is not excited about my amendment that is foreshadowed on the supplementary notice paper, but I think it is probably time to turn to that. In the second reading response that the parliamentary secretary provided, I quote from *Hansard* of 8 August when he said —

> As I said, we were of the view that, based on historical data and DFES's current mental health support program, there was adequate and appropriate protection for volunteers who suffer PTSD as a result of carrying out volunteer activities.

That was only a one sentence response in the second reading reply. Does the parliamentary secretary have any information available to expand on that historical data and the current programs that are available to support volunteers with PTSD?

Hon MATTHEW SWINBOURN: I cannot expand further on that by providing the member with historical data for the programs. That position was informed by advice that we received from the Minister for Emergency Services. Obviously, that is the government's position. I am sure that the member will tell me that I should have DFES advisers who could provide all that sort of stuff here, but that is an argument that I hope that we have had. The member has made his position clear, and I have my position. I do not have the data, so I cannot take it any further than that, member.

Hon MARTIN ALDRIDGE: Initially, I have been trying to establish: why are we treating paramedics and ambulance workers any differently from other frontline first responders with respect to PTSD? Not to diminish

their claims and experience, but why are we treating them differently? Then, obviously, the government acted. Interestingly, when I started asking about this—I have lost track of how many questions I have asked about this issue—I had plenty of different reasons. Initially, it was an election commitment—so we are now dealing with people's work health and safety by election commitment, which I am not sure is necessarily the best approach, but that was the justification initially. Then it was that we were dealing with these bills, and the appropriate time to deal with these matters would be after the passage of this bill, which of course was not what history now shows because the government has now acted with respect to PTSD presumption for career firefighters.

The other thing that I was told was that the government is doing a whole-of-government review—maybe "review" is not the right word—to consider this issue with a whole-of-government approach, notwithstanding that the government has already acted with respect to career paramedics, ambulance officers and career firefighters. Who is doing that whole-of-government work to assess and understand this issue?

Hon MATTHEW SWINBOURN: The member might actually have an advantage over me because the advisers that I am talking to are not aware of the whole-of-government thing that he referred to. He might be able to provide some more information to us that might give it a bit more context. As far as I am aware, I have been told that the federal government was reviewing or looking at first responders. There was some sort of approach there in that there was some sense that we were waiting on that process. We do not think there has been an outcome yet from the federal government about first responders. As I said, I do not have any information available to me via the minister's office or WorkCover WA about the other thing that the member referred to. I am sorry; I do not have anything.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary. If it is the case that that work is being done, it is an understandable position. I guess the problem is when we start to carve pieces off the employment and volunteer worlds regarding how we treat them, that would probably deny the experiences of many others, whether in the corrections or health systems. Indeed, my initial thoughts were about public sector roles in which trauma might be experienced, such as the child protection system. A range of public sector employees potentially face trauma to varying degrees throughout their careers. Some of that might lead to some mental health diagnoses or challenges, some might not. It depends on their experience and other factors. Nevertheless, we have now acted upon two cohorts. It has not necessarily been explained to me why we will treat career and volunteer firefighters who do exactly the same job, often together, differently under the law. That is the motivation for the amendment. The other thing that I wanted to address before I move the amendment is that I am sure the advice the parliamentary secretary gave me in his second reading reply speech was based on advice from the Department of Fire and Emergency Services that contained historical data and data on current mental health support programs. I want to address both those issues.

I have been able to ascertain through parliamentary questions that the historical data contains no claims by volunteers for PTSD-related conditions. The Western Australian Local Government Association tells a different story. It has told me that it has had three claims in the last seven years and that two have been approved by the Local Government Insurance Scheme. I do not dispute the facts, but I think there are probably factors and reasons for that. Volunteers who have some challenges that might lead to a diagnosis of PTSD might have more options available to them than someone who is an employee—namely, the option to stop doing it, disengage and no longer volunteer. More often than not, the volunteer service that they are honourably providing does not pay their mortgage or put food on the table and is not their career. In my experience, volunteers simply walk away from their service. That presents other challenges. It may well distance themselves from further exposure to trauma, but it also means that they are disengaged from the network, whether it be other volunteers or the organisations and support systems that are in place to help them through that. It is very simple to come to the assumption that because there have been no claims, there is no need. I think that argument cannot be sustained. That is why I am inclined to move an amendment.

The other thing that I want to touch on is mental health support programs. I know that this is not the parliamentary secretary's portfolio, but he is the government messenger today.

Hon Matthew Swinbourn: The government punching bag.

Hon MARTIN ALDRIDGE: Yes. I am going to allow him to relay this to the relevant ministers. The investment in those support services and programs within our fire and emergency services space is underdone in the extreme. Currently, there are six full-time staff members in the Department of Fire and Emergency Services wellness team. In the 2022–23 financial year, the team's total budget was $1.11 million. It has a district officer, three wellness officers, a critical incident coordinator and a wellness chaplain. In the fire and emergency services space based on last year's annual report—not the one that was tabled today—there are 26 643 firefighters and other emergency service responders, whether they be career or volunteer, and 578 public service officers. If I were to draw a comparison with the WA Police Force, in 2021 its health welfare and safety division had 42.92 full-time equivalent staff—nearly 43 staff—and of those, 11 were in the psychological services sub-branch. I understand that they are effectively clinicians. Based on the 2022 annual report, it has 7 357 officers and 2 276 staff. Another comparison that I might make is with the DFES media and corporate communications area. The DFES media and corporate communications area has a budget of $8.9 million and employs 24 staff. Four times the number of people work in media and they have nine times the budget of those who work in the DFES wellness team.

I think it is not fair to say that the current mental health support programs are operating at a level at which there are literally no volunteers who have health issues related to their exposure to trauma. That is why I move —

Page 401, after line 31 — To insert —

36ZNA. When post-traumatic stress disorder taken to be injury caused while engaged in volunteer activities

(1) In this section —

DSM-5 means the Diagnostic and Statistical Manual of Mental Disorders, 5th edition, published by the American Psychiatric Association in 2013.

(2) An injury by contracting post-traumatic stress disorder suffered by a volunteer is, for the purposes of this Part, taken to be caused to the volunteer while engaged in volunteer activities if all of the requirements for the application of this section to the injury as specified in subsection (3) are satisfied, unless the responsible agency proves that the injury was not caused to the volunteer while engaged in volunteer activities.

(3) The requirements for the application of this section to an injury by post-traumatic stress disorder contracted by a volunteer are as follows —

(a) the volunteer is diagnosed as having post-traumatic stress disorder by a psychiatrist in accordance with the diagnostic criteria in DSM-5 for post-traumatic stress disorder;

(b) the volunteer is first diagnosed as having post-traumatic stress disorder (whether in accordance with paragraph (a) or otherwise) on or after 6 May 2023.

Hon MATTHEW SWINBOURN: Our position has been consistently communicated to the member. I am not going to suggest that it has been well communicated to him, as he might not agree, but it has been consistently communicated to him. We do not support his amendment. I want to make it clear that the government supports volunteer firefighters—all volunteers for that matter. I also want to make it clear that I do not take issue with what the member said about trauma for volunteer firefighters, particularly the volunteer fire and emergency service firefighters who attend the same jobs that career firefighters attend. There is a fire service in my patch of the world—the Roleystone Volunteer Fire and Rescue Service. Its volunteers attend a lot of car accidents and those sorts of things. We are not suggesting there is no merit to any arguments or points that the member is putting forward. We simply hold the view that the amendment the member proposes is not appropriately dealt with under the workers compensation rewrite that we are currently undertaking. The advocacy that the member is talking about does not stop because we have not adopted it in this legislation. It can continue, and those who are invested in that area are more than welcome to continue with that advocacy. I am absolutely certain the member will continue with his advocacy of these points, but we are not going to agree to amend our bill to incorporate the amendment.

Hon MARTIN ALDRIDGE: I appreciate the response of the parliamentary secretary, but I am disappointed that we were unable to find some common ground on this issue. Earlier in the consideration of this clause, we established that the extension of the PTSD presumption for volunteers cannot be done by regulation. It can for workers; we can deal with the child protection workers, the doctors and the nurses, but we cannot deal with volunteers.

Earlier in the debate, I identified the differences between jurisdictions. We are a bit of an outlier in that other jurisdictions provide for workers compensation, or the inclusion of workers compensation protection to volunteers delivering government functions. Other states treat them as workers for the purposes of workers compensation rather than creating an insurance-like scheme.

I have touched on some examples from my experience. I have served in both volunteer and career service. I know not everyone's experience is the same, but I can assure the parliamentary secretary that, from my experience, the exposure to trauma was far greater in volunteer service than I ever experienced in my career service. Notwithstanding that, as a former career firefighter, I would be covered under a claim for presumptive PTSD protection, but as a volunteer I would not. That is a position that is not acceptable to me and it should not be acceptable to any of us. This is our opportunity to fix this because we will probably not deal with amendments to the Workers Compensation and Injury Management Bill 2023 or the Fire and Emergency Services Act 1998 in this respect anytime soon. Yesterday we heard that the Attorney General is busily drafting 81 bills for the Parliament to consider. The government has not given any indication that this is a live issue for it. There will be an opportunity for members to draw their own conclusions on this shortly.

Research shows that 20 per cent of firefighters and other first responders passed the diagnostic threshold for PTSD at some point in their career, in comparison with six per cent of the general population. Higher numbers of first responders experience symptoms that do not meet full diagnostic criteria for PTSD and other consequences of cumulative trauma exposure, including depression, anxiety, substance abuse and suicide, all of which are more common in firefighters and other first responders than in the general population. A recent US study found that more firefighters

and police officers die by suicide than in the line of duty. Beyond Blue's nationwide Answering the Call study involved 21 104 police and emergency services personnel and found that they report suicidal thoughts more than twice as often as adults in the general population and are three times more than likely to have a suicide plan.

This is something that has been well considered. The amendment was drafted by parliamentary counsel. It effectively adopts the regulations the government has now provided to people working as employees in the ambulance service or in the fire services, and adopts the regulations and provides a statutory provision in the Fire and Emergency Services Act that seeks to treat volunteers in the same way. It is illogical for 000 call centre call-takers to be provided with PTSD-presumptive protections when the volunteers that they dispatch to the scene are not. That is why I am moving this amendment. I have engaged extensively, both formally and informally, with all the volunteer associations in Western Australia and they have all indicated their support for this amendment. I also draw the attention of government members to paragraph 310 of the *2022 WA Labor platform*, which states —

> WA Labor will ensure presumptive legislation protections for PTSD illness for Police, Fire and Emergency Service personnel.

Not only is it supported by the volunteer associations, this amendment is supported by WA Labor's own platform. We ask our volunteers to do a lot and to experience a lot, and it is only fair that we give them the same protection that we afford those who we pay to do the same job.

Division

Amendment put and a division taken with the following result —

Ayes (10)

Hon Martin Aldridge	Hon Donna Faragher	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*
Hon Peter Collier	Hon Nick Goiran	Hon Wilson Tucker	
Hon Ben Dawkins	Hon Steve Martin	Hon Dr Brian Walker	

Noes (19)

Hon Klara Andric	Hon Lorna Harper	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Darren West
Hon Sandra Carr	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Shelley Payne	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Sue Ellery	Hon Dr Brad Pettitt	Hon Matthew Swinbourn	

Pairs

Hon Neil Thomson	Hon Kate Doust
Hon Tjorn Sibma	Hon Kyle McGinn

Amendment thus negatived.

Clause put and passed.

Clauses 631 to 708 put and passed.

Title put and passed.