

WORKERS' COMPENSATION AND REHABILITATION (ACTS OF TERRORISM) BILL 2001

Second Reading

Resumed from 6 December.

MRS EDWARDES (Kingsley) [4.01 pm]: I support this legislation and I note that there is some urgency to deal with it before Christmas. As of 1 January, insurance policies internationally will withdraw terrorism cover. That is significant for Western Australia, which has a significant amount of reinsurance as a component of its insurance industry. Not all policies will have their terrorism cover withdrawn at that time. However, from 1 January as each policy is renewed, terrorism cover will be withdrawn from insurance policies.

On 11 September, we witnessed some dramatic events take place that we knew would change the world. We thought those changes would occur throughout the world in a number of significant areas including plane travel. We knew that those events would impact on people in New York, and we knew that they would impact on the families of the victims of the World Trade Centre terrorist attacks. Those events have also impacted on the insurance industry and people in Western Australia.

This legislation is an interim measure until a national approach is taken, which I wholeheartedly support. It is critical to put in place a national approach to ensure the risk cover against terrorism attacks because businesses cross state borders. We believe that the risk of a terrorist attack in Western Australia is minimal. Over the past few weeks we have heard reports that Melbourne was allegedly going to be the target of a terrorism attack, although we do not know how true that information is. However, it would be irresponsible for the Government of Western Australia to take no action to cover Western Australians. The Government had three options before it. Firstly, it could ensure that when no insurance cover was provided, the Government would indemnify any of those incidences at any point of time and therefore make an ex gratia payment to anybody who was covered by risk. Shortly, I will refer to some examples that occurred in the United States after the attacks on the World Trade Centre. Secondly, the Government could provide a 90-10 per cent cover, as will be put in place in the United States. That means that the Government would indemnify 90 per cent of the risk of terrorism and the insurance companies would have to reinsure for 10 per cent of the risk. The option to reinsure for 10 per cent of terrorism risk is available worldwide. Thirdly, the insurance companies could take the risk. Given what we know about HIH Insurance's collapse this year, we are aware that that could have led to major business collapses in the event of a terrorism attack. That would also have ensured a consequential impact on everybody else who had a policy with that insurance company. The federal Government has indicated that it will move quickly to put in place some form of national framework. Currently that framework does not have any meat on the bones; therefore, we are not exactly sure what form that cover will take.

I am pleased that this Government has taken immediate steps in an endeavour to cover workers. However, this Bill will cover only workers who are required to be covered under the Workers' Compensation and Rehabilitation Act. In the event of a terrorist attack, all other people are excluded, including businesses, shoppers, small businesses and, to a lesser extent, businesses that are likely to go to the wall. Reference to some of the experiences that have occurred in the United States as a result of the terrorism attack gives an indication of the greater impact that such an event is likely to have. I refer to an article in *The New York Times* on 10 December that reports the ripple effect of the 11 September attack being widened to include small businesses. Small businesses near the World Trade Centre were expected to suffer from the terrorist attack that displaced about 100 000 potential customers from the office buildings in the area and thousands more from their homes in the region. However, everyday businesses are putting up signs to indicate that they are closing. The article states -

Small businesses, including many retail establishments, account for two of every five jobs in New York City and roughly half of all jobs statewide, so the drought among small-business owners presages economic pain that is likely to spread far beyond Lower Manhattan. And while numerous grant and loan programs have sprung up to help small businesses recover from the disaster, business owners have complained . . . that the grants are too small to stem their losses . . .

Businesses are also saying that the loan agencies are far too strict in the interpretation of the criteria to approve loans. It is far too early to tell just how many small businesses are likely to close or end up in the bankruptcy court, but the signs are not very good. Since the disaster, the United States Small Business Administration has approved only one in three applications for disaster loans and there is now strong pressure to have all the rejected loan applications reviewed to determine whether the loan standards are being applied far too rigidly. Most of the loans requested and made have been for economic injury to businesses in the wider geographic area, stretching over the several counties near New York City. Cabbies have also suffered from the attacks on 11 September. That gives an example of the breadth of the impact of a terrorist attack. At one stage, planes were going to be grounded because the airline companies could not get terrorism war risk indemnity cover. The Australian

Government and other Governments around the world extended the war risk indemnity cover to ensure that the airlines were able to fly because insurance companies internationally had withdrawn that risk cover.

Although this Bill deals only with workers, there is likely to be a greater impact on the community. The Government must consider what will happen to all the other people who will be affected by such an attack. The workers are not the only ones who are likely to feel the impact. Small businesses, contractors who are contracted to the small businesses, retailers and even the casual shopper who may have been on the premises or in and around the premises of a terrorist attack are also likely to feel the impact. I do not know whether the Government plans to indemnify only workers in the event that such an act occurs or whether it will consider setting up a special fund at the time that could be used to distribute funds to other people who are affected.

After 11 September, the US Government set up a multibillion dollar federal fund that it will distribute to families of the victims. It is estimated that it will equate to approximately \$1 million for each affected family. Interestingly, a very tight time frame has been set. The fund comes into existence on 19 or 20 December, and the Government has 120 days to make a decision on an application. That is a very short time in which to assess the impact that the loss of life or injury is likely to have had on someone. Every single person will need to go through his experiences and explain why he is a victim of the disaster, and the fund administrators will need to compare the families of one victim with those of another. For instance, a stockbroker might have earned far more money than the tea lady, but the tea lady could have worked longer than the stockbroker, who might have burnt out at an earlier age. Those questions of fairness must be considered when distributing those funds. It will not be easy. A great number of personnel will be needed to deal very sensitively with the number of people involved as those people will obviously be grieving and suffering as a result of the impact on their lives of the 11 September attack.

The United Kingdom has had a fund in place for a considerable number of years because of the Irish Republican Army terrorist attacks. Over the past few years those attacks have started to dissipate, and the money in the fund has increased considerably. If there were a further terrorist attack from outside its borders, the United Kingdom would have a considerable pie from which to draw. The UK has vast experience in dealing with terrorist attacks. One of the documents I found on the Internet was a report by the Home Office entitled, "Business as Usual: Maximising business resilience to terrorist bombings". It outlines the impact that such a bomb is likely to have on businesses and the people who have contact with that business. It outlines the sorts of things people must do to ensure that their businesses survive and the contacts they need to make. It also reminds people to check that their insurance covers them for a terrorist attack, and whether they can insure for a terrorist attack. The impact of 11 September on the reinsurance industry, through the withdrawal of that terrorism risk coverage, means that many businesses will have to reconsider their position.

Employers and industry have some concerns about the Bill. I know that a couple of those concerns will be addressed by amendments the Government has circulated today. The maximum amount that insurance agencies will be required to pay out for any one terrorism event will be \$25 million. The insurance industry is concerned about what would happen if there were more than one event. They say they could probably deal with two terrorism events at \$25 million a pop. However, if there were five or more, the companies would have a major cash flow problem, which means the Australian Prudential Regulation Authority would also have a major problem. As a result of the HIH Insurance collapse, people are far more sensitive to the way in which insurance companies operate. The big concern of the insurance industry is that if the Government does not provide assurances about how that \$25 million for any one year will work, and there is more than one \$25 million event in that year, APRA might deal unkindly with this legislation. APRA would be likely to ask if the companies had piggy banks in which funds had been tucked away. Of course, the insurance industry does not have that at all.

The employers are concerned that this legislation covers only statutory benefits, and not common law. The employers will still be exposed at common law. They are also concerned that they cannot reinsure.

There is no definition of "contribution" or "act of terrorism", although I understand they are likely to be in the agreements between the Workers' Compensation and Rehabilitation Commission and the insurance companies. However, it is still an issue of major concern to the employers. The minister in his second reading speech referred to the \$25 million fund in the following terms -

Insurers' contributions will be calculated on a proportionate basis according to the insurer's market share, while self-insurers' contributions will be calculated on a similar basis to the calculation of their annual contributions to the commission's general fund.

The employers are concerned about the way in which their contributions will be calculated or apportioned. They want that reinforced. The employers would prefer that it be explained more fully, perhaps by way of regulation, rather than simply be included in the agreement. They are not sure how broadly the concept of "apportioned to the market share" will be applied. They are concerned that the insurance companies might spend the two or

three years following an event arguing about their apportionment, which would leave the employers wide open in terms of getting their contributions back.

The Insurance Council of Australia has prepared a good document that deals with how the insurance industry operates, how it became established, and the impact that a few recent disasters have had on the industry. A survey conducted before 11 September indicates that premium increases in the general industry began 18 months ago following industry losses as a result of flooding and hailstorm events in New South Wales. Both those events have been funded by the reinsurance fund. We in Australia are contributing to a reinsurance fund that will help the victims of the World Trade Centre collapse; but that fund has also helped people living in Australia, even though they were on the east coast. The issue with liability insurance is that there will be an impact on insurance premiums, and they are set to rise. There has been considerable discussion about that in the media of late, and the industry is concerned to let everyone know exactly how the industry works; thus the council has prepared this paper.

I do not propose to go through the paper in detail other than to point out to the House and the people of Western Australia that there has been an impact. Insurance has been withdrawn for community clubs, swimming pools and skateboard ramps in parks. The member for Ningaloo told me the other day that the Carnarvon speedway has been closed because it cannot get liability insurance. That has had a major impact. I hear of such examples on a regular basis. Other members probably have similar concerns. The member for Pilbara has spoken about his concerns. The liability insurance industry has a long tail. It can take many years to determine the final result of policies written in any one year. That is unlike motor vehicle insurance or property insurance, which can often be completed within one year. The industry has given details of costs and the like. It stated that with the increase in premiums comes a windfall for Governments as the insurance industry is subject to government taxes. The insurance industry told the Government that it has an opportunity to do a number of things. One is to reduce taxes in an endeavour to help customers by reducing the overall cost of premiums. Another is to establish a fund and provide subsidies for insurance to some of the community groups I have just spoken about. While local councils can incorporate casual hirers into their liability insurance, they cannot do so if groups regularly use a particular venue. Such groups have to have their own liability insurance. Problems are emerging. While it is good to see the Government taking a lead in Australia on the problems created with workers compensation by the threat of terrorism, it is something that the Government needs to think about in other respects. It needs to think about the impact of an act of terrorism on other people, businesses in the vicinity of an attack and the windfall experienced by the Government because of the increase in premiums. The Government might like to consider either reducing duties and taxes on premiums or providing for a separate fund to help community groups that are struggling to get insurance because of the tightening up of reinsurance for liability risk.

MR TRENORDEN (Avon - Leader of the National Party) [4.23 pm]: I asked the minister for a briefing on this Bill but, unfortunately, the briefing was held after our 7.00 am finish yesterday and I was unable to attend. I make no apologies as I was desirous of getting a few hours sleep. I have received a briefing from my staff about the Bill. The National Party supports the Bill but, prior to the amendments, I had some concerns. I was concerned that a cap on liability was not prescribed in the Bill. Fortunately, the amendments on the Notice Paper will prescribe capping. I will not state the obvious about the attacks on 11 September. A number of issues have arisen since then that are fundamentally important. Members will have read press reports from the United States. There has been great panic about crop-dusting aircraft. When the United States government made a list of potential dangers, crop-dusting aircraft were at the top of the list. It is simple to introduce a biological agent through crop-dusting aircraft. One could fly over New York and obtain a substantial outcome. That situation could be applied to Western Australia. A crop-dusting aircraft could be flown over a home game at Subiaco Oval, and, if it were a Dockers game, it would not hurt anyone! It would have to be an Eagles game.

The ACTING SPEAKER (Mr Dean): That remark is almost unparliamentary!

Mr TRENORDEN: The people who would have a claim against an attack on Subiaco Oval would be those working there, not the patrons. The public liability aspect is a far bigger consideration in the legal sphere than workers compensation. I understand the need for quick action on this Bill because the current Act leaves the commission at risk and that situation cannot be allowed to continue. I support the idea of a one-year tenure. It will not be very difficult for this House to make amendments in the next 12 months. It gives the insurance companies the opportunity to renew this year with the knowledge that there will be a cap on claims in Western Australia of \$50 million. Of that amount, \$25 million will be the State's liability. The obvious question is why \$25 million? The only answer can be, why not? What other figure could be applied? We could choose \$5 million or \$50 million.

Mr Kobelke: It is very hard to pick a figure, but based on all the people in one of the largest workplaces in Western Australia being subject to an act of terrorism, the number of people affected in New York and the

maximum compensation payable to those affected, we ended up with a figure of about \$25 to \$30 million. That is the worst-case scenario based on our best rough estimates.

Mr TRENORDEN: Is that a scenario in which a plane flies into trades hall?

Mr Kobelke: It could be an anthrax attack on a high-rise building or a large workplace like the Burswood Resort Casino.

Mr TRENORDEN: I am not having a go at the minister. We cannot guesstimate what a terrorist will do. He may introduce a disease that affects everybody in the central business district of Perth. We have to pick a figure and it cannot be one that will bankrupt the industry or drive people out of the jurisdiction. I am not arguing about the figure of \$25 million. We could argue about that figure until the cows come home. The truth is that no-one in the United States picked the twin towers of the World Trade Centre as a target for terrorism. They picked thousands of other targets. Hopefully we will never have a terrorism attack here. We cannot guess what an act of terrorism would be. An amount of \$25 million is reasonable considering the size of industry in Western Australia and the state budget. In thinking about this process, people must realise that we are talking about workers compensation. I do not think the public is conscious of that. They are thinking about public liability. The public liability risk is enormous and we all know that is a common law action that must be decided in court. Who knows what the outcome of that would be? The National Party supports the Bill and will support the amendments.

MR KOBELKE (Nollamara - Minister for Consumer and Employment Protection) [4.29 pm]: I thank the Opposition and the National Party for their support for this measure. It is a matter that had to be brought forward urgently. The member for Kingsley briefly covered some of the wide range of issues that affect insurance, both in terms of losses over the past year or two and the acts of terrorism in the United States recently. They have changed the way insurance operates, and have opened up myriad problems. The Leader of the National Party quite rightly alluded to the whole issue of public liability. The Government is seeking, as an interim measure, to provide some certainty for workers compensation in this State. It is an area for which the Government has statutory responsibility, and if it did nothing, a huge range of problems would eventuate, even to the extent that some of our major insurers may withdraw from the market, which would create an ever bigger set of problems. The Government has sought to create certainty in this area in a way in which it could be managed if the unthinkable happened and an act of terrorism affected workplaces in Western Australia.

The legislation will need to be monitored, and a longer term solution will need to be found. The Government wishes to do that in collaboration with the Commonwealth and the other States, because this is a national issue. In Western Australia the State Government has specific responsibility for workers compensation and cannot simply let things ride. The effects on the reinsurance problem will flow from 1 January, and there is therefore some urgency for this measure. More specific details that members require can be provided during the consideration in detail stage, as the Government needs to make some amendments, which have been circulated to the House. Again, I thank members opposite for their assistance in expediting the passage of this measure, and for their support.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Meanings of expressions used in this Act -

Mr KOBELKE: I move -

Page 2, line 10 - To delete "2002" and insert "2003".

Page 2, line 12 - To delete "2002" and insert "2003".

The point of these amendments is the definition of "final day". As indicated, this legislation is an interim measure. It was suggested that it be an interim measure for 12 months. In fact the Government was hoping that, over six months a longer term solution could be found. It may happen that this legislation, or a modification of it, becomes such a long-term solution, but that needs to be reviewed with the Commonwealth and the other States. These amendments do not move away from that aim, but from the practical effect. The difficulty is that if the shut-off date is 31 December 2002 a policy issued in February 2000 would run to February 2003, which would mean it would have to include a let-out clause, so that cover would not extend beyond 31 December 2002. For part of the 12-month term of the premium, the conditions would be different. This adds complexity to the matter, and may mean that insurers opt to simply run all their policies to 31 December 2002, which would create another set of problems. The suggested solution is that the date of the final day be moved to 31 December 2003,

which means that all policies signed up in the first six months of next year - which is the period during which the Government hopes a long-term solution will be found - can run for the full 12 months. If a solution is not brought into the Parliament until the second half of next year, again, it is still covered. The amendments do not change the intent, which is to obtain a clearer picture of the way forward during the first six months of next year, but all policies entered into next year will have the benefit of this legislation. The best way this could be done is to make the final day the end of 2003. The two amendments have exactly that effect.

Mrs EDWARDES: I accept the reasons for the amendments. I know the insurance industry was concerned that the measure was limited to 12 months, and not all insurances expire on 1 January. They will expire at different times throughout the year, and as such, because of clause 4(1), which we will consider shortly, they would not have been allowed to exclude an act of terrorism after the final day. This amendment will allow them to insure for 12 months, even though, at some point of time, the Government may regulate to bring that final day forward.

Amendments put and passed.

Mrs EDWARDES: This clause deals with the definitions. In my speech during the second reading debate, I asked the reason for the lack of a definition of "contribution", as it is used throughout the Bill; and also what would be regarded as an act of terrorism. I understand it will be included in the agreement between the Insurance Commission of Western Australia and the insurance body, but it would be a good idea to have it included somewhere in the Bill itself.

Mr KOBELKE: There is power under this legislation for those matters to be determined by WorkCover, which will determine the contribution. I am happy to make sure that that determination is an open process - it will need to be - and that the definitions are not different for different insurers. They need to be worked through in consultation with the insurers and the broader interest groups, but, under these powers, the commission will determine the exact definition of "contribution". The key issue raised by the member for Kingsley earlier was that some definitional issues may arise about the percentage share of one insurer against another, because this might change if different cut-off dates are used. There may be different definitional issues again for self-insurers. All these issues need to be sorted out, but given that this legislation had to be brought forward very quickly, if the Government attempted to do all that in this Bill, the second-best definition may result. It seemed best to leave that to the commission to establish by proper process, and the definitions can then be applied uniformly and fairly across all insurers and self-insurers.

Mrs Edwardes: The issue, however, is that, in order to give certainty - and I am happy to leave it to the commission to determine - it may be nice to determine the definition publicly, and in advance of any act of terrorism. It has been suggested that a regulation be drafted, so there can be no error or area of complaint by the insurance industry after the event.

Mr KOBELKE: That is a very good point. I am advised that the legislation requires that to be done by 31 December this year, to ensure that it has full effect, and no other problems are encountered.

The second question was the definition of terrorism. The first draft of this Bill, which did not see the light of day, did try to define terrorism, riding off the fact that Queensland, which has taken action on third party motor vehicle insurance, excluding acts of terrorism from coverage, used such a definition. The first draft Bill was developed on that basis, but it was then brought to the attention of the Government that there were some real problems with it. It would have taken some time to work them through, and even then we may have run into difficulties. The drafting approach that we then adopted was to leave it for the commission to establish that after the event. If we have an event, such as the bombing at Lathlain, which assassinated two people, the commission could then make a judgment. In my view, that should not be classed as terrorism for the purpose of this Bill. It could be done in consultation with industry whereby people would come forward with their points of view if they were caught up in a potential claim. We could then judge what was an act of terrorism. That flexibility is very important. Insurers have provided advice based on the exclusion from reinsurers, which they have all signed off on. These reinsurance standards are being accepted nationally and internationally. It will give us that flexibility and also feed into the issue raised by the Leader of the National Party. If something happens that is totally unimaginable and the claim goes beyond the \$25 million that insurers must pay, then we may reconsider the definition. We need to be pragmatic because it is a balancing act between our clear objective to provide certainty for employers and insurers, and that of providing a level of benefit for workers who may be affected. If it means that we bring down the whole insurance system or thousands of jobs in other areas are lost, we may have to reconsider the level of support given to affected workers. That is also seen in the proportioning system that is built into the legislation. We are keeping that flexibility so that we can vary the approach taken, given the events that may happen. We hope that none of these events will occur, in which case, we are providing the certainty that is required. However, if something does happen, we can then tailor the result, to some extent, within the confines of the Act by making sure that the definition can be reassessed in light of an event. As people are aware, there is a 90-day period after the nomination in which estimates of the costs can be obtained.

Mrs Edwardes: If the commission determines that it is not an act of terrorism, what is then the process to ensure that the insurance companies do not use the exclusion clause and avoid a pay out?

Mr KOBELKE: The exemption is to acts of terrorism according to this Bill, which is according to the determination made. If the event was determined not to be an act of terrorism, the insurance companies would not have a let out and would therefore be liable for whatever costs flow from the injuries to workers from a particular incident. Some people in the community may wish to label an event as an act of terrorism, but if it is not, as judged according to the procedures laid down in this Bill and the Worker's Compensation and Rehabilitation Act, then the insurance companies would not have an exemption and would have to meet their liabilities under that provision. Our best advice is that that provision would stand the insurers in good stead with respect to their reinsurers. If the reinsurers sought to use a different definition or some other technicality to avoid their responsibility, our best advice is that this will give support for our insurers with respect to their claim under reinsurance.

Mr TRENORDEN: I agree with the position of the minister. However, what happened at Lathlain was definitely an act of terrorism; there is no question about that. That just highlights the problem with the definition. I support an open process for the moment because it will take more than two years to legally sort out this legislation. This is an issue of great consequence in the commercial world and it will bounce around for a long time. I support the original amendment to change the date in the definition of "final day" to 2003, and I support the commission's opportunity because there is no question whatsoever that we will be revisiting this Bill.

Clause, as amended, put and passed.

Clause 4: Permitting exclusion of cover for acts of terrorism -

Mrs EDWARDES: I refer to the interlink between subclauses (1) and (2). Subclause (2) states -

Before permitting the exclusion of liability,

Which is referred to in subclause (1) -

the Commission has to be satisfied that it would be reasonable to characterise the liability as being attributable to an act of terrorism.

Subclause (2) appears to deal with the event after it has happened and subclause (1) appears to deal with it beforehand. Will the minister elaborate on the link between these two subclauses?

Mr KOBELKE: The problem is that insurance companies in the current international regime cannot write comprehensive workers compensation insurance on any area involving terrorism. That is the problem. We are saying that we will provide an exclusion on the liability attributed to an act of terrorism. In subclause (1) it is given up-front by agreement. The issue then arises when a claim is laid against the insurer in which it is proposed to be recognised as an act of terrorism. We come back to an answer I gave a little earlier on dealing with the previous clause; that is, in those circumstances, if the commission judged that it was not an act of terrorism, the insurance company would have to pick up that claim and be liable under the existing system. However, if the event is judged to be an act of terrorism, the exclusion applies. The claim would then come back to the commission. The liabilities that occurred due to the act of terrorism, would be paid out from the supplementation fund. The commission would then recoup from the insurers to cover that payment up to a maximum of \$25 million per incident.

Mrs Edwardes: I understand and accept that. I think it is a drafting issue. Subclause (1) states -

permission in writing to exclude certain liability

Whereas subclause (2) states -

Before permitting the exclusion of liability,

The difference must be characterised. I would suspect that it is just poor drafting with regard to the links between subclause (1) and (2).

Mr KOBELKE: I am not sure from the point the member is making what she has a difficulty with -

Mrs Edwardes: Subclause (2) states -

Before permitting the exclusion of liability,

Which is what subclause (1) does. Although that is not the case, that is how it reads.

Mr KOBELKE: Subclause (1) grants permission to write a policy -

Mrs Edwardes: And subclause (2) says before permitting that exclusion -

Mr KOBELKE: Yes, but that is the exclusion of liability.

Mrs Edwardes: That is what I am saying. It is possibly poor drafting.

Mr KOBELKE: The difference is that subclause (1) is about the issuing of the insurance policy, which has the means to then exclude the writing into that policy of certain liabilities, whereas I am interpreting subclause (2) to be dealing with a claim when one wishes to exclude the liability of a particular claim.

Clause put and passed.

Clauses 5 to 7 put and passed.

Clause 8: Participating employer's liability to worker may be reduced -

Mr KOBELKE: In this instance, the situation drawn to our attention was that the upper limit on any particular incident being set at \$25 million was not contained within the legislation. We were going to do that through the procedures set up for the exclusion. However, it was seen to open up difficulties and uncertainty and therefore, we have accepted the advice that we should include the limit of \$25 million per incident, or act of terrorism, into the legislation. Subclauses (3) and (4) introduce the actual amount. The other technical issue is that because we have a proportioning arrangement, if a claim for any particular incident goes beyond \$25 million, the wording makes it clear that the proportion relates to the \$25 million. Having \$25 million in the legislation specifically helps clarify the proportioning arrangements that would apply should there be a series of claims related to one incident that exceed the \$25 million limit. I move -

Page 5, lines 1 to 14 - To delete the lines and substitute insert the following -

- (3) As soon as practicable after the period of 90 days under subsection (1)(c) elapses, the Commission is required to determine, on the advice of an actuary -
 - (a) the total amount that would, if subsection (4) did not apply, be expected to be payable by all participating employers in respect of their liability for all workers that is attributable to the act specified in the order; and
 - (b) if that amount exceeds \$25 million, the reduction factor by which that amount would need to be multiplied to limit it to \$25 million.
- (4) If the Commission determines a reduction factor, an amount that a participating employer would, if this subsection did not apply, be required to pay in satisfaction of any liability attributable to the act specified in the order is reduced by multiplying the amount by the reduction factor.

Mrs EDWARDES: Will the minister explain clause 8. I had problems understanding the meaning of the subclauses he is deleting. These ones are even better! Subclause (3)(b) of the amendment states -

if that amount exceeds \$25 million, the reduction factor by which that amount would need to be multiplied to limit it to \$25 million.

The contribution is further reduced when the amount is multiplied by the reduction factor. I am not a maths expert; therefore, the minister will have to explain what this means. I am sure he will be able to do that because he is an ex-schoolteacher.

Mr KOBELKE: The member for Kingsley has certainly challenged me because I do not have a blackboard and I feel like a fish out of water!

Under the amendment, subclause (3)(b) relates to the fact that as soon as practical, after a period of 90 days, the commission is required to determine on advice of an actuary the total amount that is expected to be payable for all participating employers in respect of their liability for all workers that is attributed to an act specified as an act of terrorism under these provisions. We looked at how the situation would be handled if the amount was above that. For example, the total amount might come to \$30 million. That means we are \$5 million over. Twenty-five thirtieths equals five-sixths and that is what will be paid, or there will be a reduction of one-sixth. The member should not hold me to these exact figures because I am just trying to illustrate how we expect this to work. That would mean that the reduction factor in this case would be one-sixth, so all the claims coming forward would be reduced by one-sixth. The total cost of all claims is then capped at \$25 million. If a worker was off work for some time as a result of trauma and his or her total payment was anticipated to be \$6 000, that would be reduced by the multiplier. If I use my rough mathematics, the figure payable to that individual worker would be reduced to \$5 000. The reduction factor is worked out as a multiplier that reduces the payment to each individual based on what has been the total amount claimed exceeding \$25 million. Under amended subclause (3)(b), having gathered the best estimate it can of all the claims, the commission is required to work out if the

claim is over \$25 million and, if so, by how much. On those global figures it then has to work out a reduction factor and apply that back through the insurers and the employers to each case that comes forward.

Mrs Edwardes: In this case, the order, that is the amount to be paid to satisfy the liability, is reduced by the reduction factor of one-sixth. Why do we need to multiply the amount by the reduction factor?

Mr KOBELKE: The member for Kingsley is trying to ensure that the wording is right and is looking at the structure of the sentence. I am sure there is another way of doing it; there may even be a simpler way. However, amended subclause (4) states -

... be required to pay in satisfaction of any liability attributable to the act specified in the order is reduced by multiplying the amount by the reduction factor.

In the preceding clause the commission is required to establish the reduction factor. I am not sure how the commission will do this technically, but it might be based on a percentage. Therefore, the reduction factor might be that they pay 85 per cent of all claims. That is a multiplier of 0.85 which means that they then go back to each claim that must be paid and multiply that by the 0.85 and that would give the amount that has to be paid under this system.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 9: Indemnity for liability attributable to terrorism -

Mrs EDWARDES: This clause brings in the employer by providing that -

... the employer may make a claim against the Insurance Commission for payment or reimbursement, as the case requires ...

Subclause (3)(a) states -

... the extent to which the employer's liability is attributable to an act of terrorism is to be regarded as being the same as the extent to which the employer's liability is excluded as permitted under section 4;

This is not linked backed to the agreement between the insurance companies and the commission. Consequently, the employers seem to be left out on their own. They can apply to the commission, but there is no link to the insurance body and yet it is the employers who have the agreement with the commission and they are able to write the insurance policy excluding the liability. They are also responsible for putting in the \$25 million. They can make application outside the supplementation fund, but the position is not quite clear.

Mr KOBELKE: The member for Kingsley has had responsibility in this area so she is aware that under the Workers' Compensation and Rehabilitation Act 1981 the liability is primarily on the employer. However, the employer is required to have insurance and, therefore, the liability is passed on through a registered insurer. It is the employer who has that responsibility. That is why we talk about employers' liability and how it is handled in this clause. The way that workers compensation commonly works is that the employer simply works through the insurer and the insurer pays the amount that is due to the injured worker. We are using the supplementation fund. This clause gives clear protection to the employer and it also provides part of the mechanism in that the claim is made on the supplementation fund, which WorkCover will manage. If it is a big matter it might be contracted out through the insurers. However, it has the ability to control it should disputes need resolution. These issues might be definitional matters or people might be protecting their position by taking a stand where one is at variance with the other. Instead of getting involved in that disputation, it is easier to bypass it by the commission accepting the claim by the employer who has the liability and makes the payment, and WorkCover, using the supplementation fund, gathering the money back from the insurers. When the insurers enter into the agreement there is a clear arrangement that they get exclusion from liability on the basis that they sign up to make the appropriate payment to the supplementation fund should there be a designated act of terrorism from which liabilities arise. Put another way, because the insurers' liability is reduced through these provisions, we reduce the employers' liability by the same amount.

Mrs Edwardes: Sorry?

Mr KOBELKE: The provisions in the Bill allow an insurer to reduce its liability in relation to terrorism. This clause says that that reduction in liability is passed over in a full and equal amount to the employer.

Mrs EDWARDES: For the record, I want to clarify that there will be no extra costs to employers as a result of this Bill, the fund will not require an extra levy, there will be no liability on the fund and any liability arising out of an act of terrorism will be covered by the collective insurance companies to the extent of \$25 million for any one act.

Mr KOBELKE: The provisions contained in the Bill directly place no additional cost on insurers by way of levy or any other form. Similarly, the provisions do not place any additional cost on employers either directly or through insurers. My concern was that insurers, because of uncertainty about their liability or reinsurance costs, might have a basis for increasing their premiums indirectly. I queried that because I was concerned about it. The advice I have been given is that that will not happen. One might even say that if we do not do this, we might find that premiums increase, because we are creating uncertainty and a real problem for insurers. In that area of uncertainty and potential inability to cover, one never knows what provisions might come forward which would feed back into increased premiums. There is a suspicion that if we did nothing, risks might be created that lead to that situation. These provisions will ensure there is no longer a liability on insurers and employers for potential acts of terrorism. This puts in place a maximum cap on the amount that can be paid for any one act. The insurers will handle the potential for such a payment by leaving it until there has been an act of terrorism, as determined under the specific provisions in the Bill. When the claims are handled and passed through, the insurers will seek to take prudential action to meet the costs from there on. There would be a flow through into additional costs, which would be quantifiable to a large extent - they are still only estimates - following a designated act. That is the advice I have received and it was certainly very heartening. My concern was that any potential risk that might occur in the future sometimes immediately factors into premium increases. I am advised by people in the insurance industry that it gives them a greater degree of certainty and protects against that potential to factor in premium increases because of the provisions within this legislation.

Mrs Edwardes: Did the minister get advice from the Australian Prudential Regulation Authority? The concern is that there is no secret piggy bank from which the insurance companies can keep drawing \$20 million if there were more than one act of terrorism in any one year?

Mr KOBELKE: Two points were raised by the member. Given that the legislation has been rushed, we have worked with the insurance industry, but we have not had time to consult with APRA. In fact, other States have contacted us, because they are trying to work out what to do. We are taking the lead on this issue, so other States are looking closely to see whether they will follow in a similar vein. The second point relates to piggy banks. I am not sure what the member means by that.

Mrs Edwardes: The insurers may not have a large enough amount of cash tucked away from which they can draw maybe more than \$50 million.

Mr KOBELKE: That leads us to a very good point. I am very impressed with the people who have put this legislation together, and I recognise Mr Harry Neesham for the contribution he has made to driving this. There are many problems. When we have tried to address them in this legislation, I have been very impressed with how often there has been a good solution. That is exactly what the member has done. She has looked at a potential problem and therefore what happens. It is quite right that members do that. I will address specifically how that is effected in the legislation. If we take into account that there are 12 registered insurers for workers compensation in the State, leaving aside the self-insurers which are a big part of the market, as a ballpark average figure, a \$25 million claim would mean about \$2 million per insurer in a \$700 million a year market in Western Australia. Even if there were five acts costing \$25 million each, the average would be about \$10 million per insurer, which is certainly manageable.

Clause put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by Mr Kobelke (Minister for Consumer and Employment Protection), and transmitted to the Council.