WORKERS' COMPENSATION REFORM BILL 2004

Consideration in Detail

Clause 1: Short title -

Mrs C.L. EDWARDES: The short title is the Workers' Compensation Reform Bill, which is an oxymoron, because the Bill will not achieve reform. Reform means to make good and do better. As was pointed out in the House yesterday, that is exactly the opposite of what this Bill will achieve. I believe that the correct title should be the workers' compensation retrograde Bill, because it will put back the whole of the system. The aim of the Bill, which is to provide extra and improved benefits to workers, will not be achieved. The minister might give workers extra statutory benefits and extra time in which to have their weekly benefits stepped down, and extend the period in which they can elect to go to common law and the like, but overall workers do not want to be injured and, if they are injured, they want to get back to work as quickly as possible. The Bill will simply not achieve that.

The minister, in his response to the second reading debate yesterday, said that the views that I put forward on behalf of organisations and individuals were based on old material. Although some of those letters were written before the Bill was introduced into this House, the statements and the principles under which those letters were written still apply. Yes, the minister has made a couple of changes in response to a couple of the comments that were made. The medical aspect dealing with privilege is one, although the change the minister has put forward is still not clear enough, and there is still concern in respect of clause 205. We will discuss that when we get to that clause. The minister should not dismiss the comments that I made as being based on old and uninformed views, because those comments still apply today. Those comments still relay the concerns of those organisations, whether they be the Australian Plaintiff Lawyers Association, the Law Society of WA, the Australian Medical Association, the Housing Industry Association, the Chamber of Commerce and Industry of Western Australia or the small business associations. Not one group or organisation, except for the one the minister identified - that is, Unions WA - has come out and supported this Bill. However, not all unions are happy with that support, which the minister knows from their march on Parliament House together with the Australian Plaintiff Lawyers Association and the Injured Persons Action and Support Association a couple of weeks ago. The minister might also say that if every group or organisation is opposed to this change, he must have got the balance right. Again, that shows a head-in-the-sand approach.

It appears that the minister will be putting workers compensation premiums into an upward spiral and the ability of workers to get back to work into a downward spiral. That will increase the level of frustration. The impact on the lives of workers will be greater than the impact outlined in the complaints that the minister and I both receive on a daily basis. We know that the system does not always work for individuals; however, it does work for the majority of people. Although some minor changes could be made to the conciliation and review process - I think there should be greater transparency in data exchange and the like - the system does not need wholesale upheaval. The best advice I can give the minister is that if he wishes to proceed down this path, which I think is a disastrous path for everyone concerned, he should do it in stages; he should not do it all at once. He could start by making the amendments relating to the Dutch decision - that is something he should have done a couple of years ago - but he should not go down the path of wholesale change.

Mr B.J. GRYLLS: I do not normally speak on the short title of a Bill, preferring to get into the real meat of a Bill in its substantive clauses. However, I am drawn to comment on this short title because, like the member for Kingsley, with whom I look forward to participating in this consideration in detail debate, I have some concerns that the title of the Bill does not indicate to the community of Western Australia what will be the effects of this legislation should it be passed by both Houses of Parliament. I will foreshadow a couple of options for the name of this legislation that the minister might want to consider. The workers' compensation reform (cost blow-out on premiums) Act is one name that he could consider. I look forward to his comments. Others might be the workers' compensation reform (compliance nightmare for small business) Act or the workers' compensation reform (see insurers exit the market) Act. I raise those possible amendments to the title because of some of the information that we have been given, such as the actuarial analysis by PricewaterhouseCoopers. I have not yet heard the minister comment on this issue, but the information I have received shows that the expected initial cost has risen from $100 million when the Bill was first put out for public consultation to between $140 million and $234 million. That is a massive increase in cost to be borne by the business community of Western Australia. It is a cost that this sector cannot afford to bear. At the moment Western Australia is enjoying a strong economy; however, the small business sector needs to be supported and not challenged at every possible turn. I come from a business background. In the farming and manufacturing industries, as in my business, the percentage rate paid in wages is relatively high compared with that for office-bound industries. The salaries I paid to my staff came

to about five per cent. This is a huge cost burden. I do not believe that we should be considering in Parliament today an increase in the cost burden on small business.

I turn to the compliance nightmare for small businesses. Once again, although big business at the top end of town may not want to engage in more compliance issues, it at least has the staff backup and economies of scale to be able to deal with some of those issues. Small businesses in the electorate of Merredin are busy getting the job done. To require them to spend more time sitting in the office to work through compliance issues with workers compensation would be an extremely difficult burden to place on those businesses. I suggest that we need some way in which the Government can provide assistance to those small businesses. That assistance should be readily available in not only the metropolitan area but also the regions. What always happens is that assistance is provided in the metropolitan area and the regions miss out. Small businesses will need assistance to comply with the focus of this legislation. That could go some way towards helping. I am afraid that, as in many instances, assistance will not be given and small business will once again be burdened with further compliance issues.

The third point I raised when commenting on the short title was that insurers will exit the market. We saw the debacle that surrounded the collapse of HIH Insurance; many insurers left the insurance market not only in the area of public liability, which we have debated in this place on other occasions, but also in the area of workers compensation. We are concerned that the retrospective aspects of this Bill will place increasing burdens on insurance companies. I certainly do not want to be an apologist for insurance companies, but if we are to drive downward cost pressure on insurance premiums, we will need competition in the market; we do not need insurers to leave the industry. If the net effect of this legislation is to cause a blow-out in premiums, a compliance nightmare for small businesses and insurers to leave the market, it will mean that there will be less competition and therefore less downward pressure on premiums. If that is the case, surely this legislation cannot be supported by this Parliament.

Mrs C.L. EDWARDES: I will just pick up on the comments of the member for Merredin on the blow-out in the cost of premiums. I will go through the PricewaterhouseCoopers report that he referred to.

Mr A.D. McRae: How does that relate to this clause?

Mrs C.L. EDWARDES: It relates to the suggested change of the short title to workers' compensation reform (cost blow-out on premiums) Act 2004.

The PricewaterhouseCoopers actuarial assessment of the cost impact of the proposed workers compensation changes identifies that the estimated initial impact of the changes will be nearly $73 million and that the estimated impact of changes after erosion, which is a very important model costing, is $117 million. It has estimated a 20 per cent change in outstanding liabilities. The best-case scenario for the estimated once-off retrospective impact of changes is $41 million. That is on only the enhanced statutory benefits. There is also the summary of the results of the model costing for the estimated impact of the Dutch changes. They will also be a once-off cost component. However, the estimated changes in the outstanding claim liabilities arising as a result of the Dutch decision are enormous. The best-case scenario is a 6.8 per cent change of $73 million, and the worst-case scenario is an 11.1 per cent change of $120 million. We will get to how that has arisen when we get to the Dutch amendments, but these figures highlight the impact of this Bill. If the Bill causes premiums to rise to the extent that has been forecast by PricewaterhouseCoopers, it will not have been a reform Bill but will have seriously undermined the whole of the workers compensation system. Peter Lurie has been undertaking such assessments for a considerable period and has been fairly spot-on. We could look at the actuarial assessment he did of the 1999 amendments. Although we would like to have achieved lower premium costs in a shorter period, it is a very stable system today. None of us understands why the minister is not making just the minor reforms that are needed to the workers compensation system instead of throwing out the baby with the bath water. The minister and every member in this place will be receiving letters from all the community service organisations that will be faced with increased workers compensation premiums. We know that because that is what happened in 1999 when they were faced with a 30 per cent increase and a potential 50 per cent increase, which is what this minister's actuarial assessment of the costing impact of the proposed workers compensation changes now forecast. There will be a 30 per cent increase with a potential worst case scenario of a 50 per cent increase. The minister will get the same headlines, the same letters and the same people talking to him from aged care and the Disability Services Commission. Small businesses will decide that it is no longer worth it in terms of cost. The minister should think about what a 30 per cent increase - the best-case scenario - means on a $100 000 workers compensation premium. People cannot afford it; they literally do not get that sort of money. Has the minister already budgeted in preparation for putting money into the Disability Services Commission to help it pay for the increased workers compensation premiums? The minister already acknowledges in everything he does and says and by his comments in response to the second reading debate yesterday that this legislation will increase workers compensation premiums. The minister has used words to the effect that premiums will not increase

above the rate that was set back in 2000. Goodness me! Does the minister think small businesses and community service organisations will think that that is what the minister meant when they will be paying 30 per cent more in workers compensation premiums? I do not believe so.

Clause put and a division taken with the following result -

Ayes (24)

Mr P.W. Andrews	Dr G.I. Gallop	Ms S.M. McHale	Mr E.S. Ripper
Mr J.J.M. Bowler	Mr S.R. Hill	Mr A.D. McRae	Mrs M.H. Roberts
Mr A.J. Carpenter	Mr J.N. Hyde	Mr M.P. Murray	Mr D.A. Templeman
Mr A.J. Dean	Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr P.B. Watson
Mr J.B. D'Orazio	Mr F.M. Logan	Mr J.R. Quigley	Mr M.P. Whitely
Dr J.M. Edwards	Mr M. McGowan	Ms J.A. Radisich	Ms M.M. Quirk *(Teller)*

Noes (14)

Mr M.J. Birney	Mr J.P.D. Edwards	Mr A.D. Marshall	Mr T.K. Waldron
Mr M.F. Board	Mr B.J. Grylls	Mr P.D. Omodei	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.G. Pendal	
Mrs C.L. Edwardes	Mr R.F. Johnson	Mr M.W. Trenorden	

Pairs

Ms A.J. MacTiernan	Mr W.J. McNee
Mr R.C. Kucera	Mr R.N. Sweetman
Mr C.M. Brown	Ms S.E. Walker

Clause thus passed.

Clause 2: Commencement -

Mrs C.L. EDWARDES: Subclause (1) states -

> This Act comes into operation on a day to be fixed by proclamation.

Subclause (2) deals with different days being fixed for different provisions. I would like to deal separately with subclauses (1) and (2). Can the minister tell us what needs to be done once the legislation has passed through both Houses of Parliament, if that is the case, in order for the Act to be proclaimed?

Mr J.C. KOBELKE: As with all pieces of legislation, a range of things need to take place. Regulations will be needed and standard forms may have to be put in place as part of those regulations. There is a requirement for approved medical specialists, which we will come to later. Therefore, while there are a small but reasonable number of people in Western Australia who have already done the training, we need a training program to provide us with the doctors who can fill that role. A range of things need to be done, which will become clearer to the member for Kingsley and other members as we go through the provisions of the Bill.

Mrs C.L. EDWARDES: Given the fact that people like Brian Nugawela from the Australian Plaintiff Lawyers Association have continuously asked for those regulations following the Supreme Court decision that said we cannot possibly understand the actual Bill as it is going through the Parliament without reading the regulations at the same time, what work has already been done on the regulations and the standard forms? Will we be able to see in this House a copy of the draft regulations?

Mr J.C. KOBELKE: The member knows quite well, having been a former minister, that that simply never happens. I know a campaign is being run by some people who think that somehow they have some political grunt to request something that never happens. The fact is that the regulations will be developed once the legislation passes through the Parliament.

Mr P.D. Omodei: It does happen.

Mr J.C. KOBELKE: Give an example. Did it happen with the previous Government's Local Government Act? Were its regulations drafted before that legislation went through?

Mr P.D. Omodei: To some extent they were.

Mr J.C. KOBELKE: No, they were not. Let us talk about the truth and deal with an important piece of legislation that has a lot of detailed provisions. I hope members have at least enough understanding of the

important provisions in the Bill to be able to ask intelligent questions rather than drag out red herrings and totally artificial issues that do not exist. The regulations will be developed after the passage of the legislation. We are working on the medical tables used for whole body impairment. I am happy to provide the draft of that. I was hoping to provide the final version but we are still going through the ticking-off process with medical expertise. I do not expect there to be big changes, but that is still under way. Even the draft, as we have it, can be made available. That is one of the many things that have to be done, and it will certainly be done before the legislation gets through the Parliament and we move to proclaim the Bill.

Mr P.D. OMODEI: I cannot let the minister's comments go without challenge. As we well know, the main body of legislation is normally passed and the regulations follow. However, in the recent case of the environmental legislation the regulations have been developed over time and we have ended up with totally unworkable regulations. The minister knows that the regulations have been referred to the community and there is no agreement on them. This is a very complex issue. If this legislation is passed, premiums will rise by 30 per cent. People will be denied access to common law. A range of things will happen at a cost of hundreds of millions of dollars in their impact on the community. The minister should not say that we cannot get any access to the proposed regulations. The community needs to know the direction the Government intends to take. Although it is normal practice that not all regulations are proclaimed, the reason is that until legislation is passed it is not known exactly what will be in the body of legislation. However, there is a clamouring by the community to know more about this very complex legislation. I do not think the request of the member for Kingsley is untoward at all.

Mrs C.L. EDWARDES: I refer to subclause (2), which states -

> Different days may be fixed under subsection (1) for different provisions.

That means the dates upon which the Act is proclaimed; that is, various sections, parts, schedules or divisions for different provisions. The explanatory memorandum does not state which provisions are to be introduced on different dates. Is the minister able to advise?

Mr J.C. KOBELKE: The subclause simply provides flexibility because the amending Bill affects so many parts of the workers compensation system that it may be appropriate that certain things be done before others. For instance, we already have injury management. Within the Bill there are powers to further drive the injury management process. Those things could possibly be done without having other things in place. In which case, if there were a hold up of issues relating to statutory benefits or whatever, injury management provisions could be dealt with before other parts are put in place. It provides flexibility when there are many reforms going to different parts of the system so that they can be implemented as soon as possible cognisant of the fact that it has to be a totally integrated package. We would not want to do one thing that would create a negative impact on another area. To the extent that we need to put in place these reforms, there may be a staging of implementation should that be required.

Mrs C.L. EDWARDES: I will go through the key areas in which the changes will be effected. The minister mentioned statutory benefits. Can the changes to statutory benefits be introduced without the changes to the dispute resolution process or any other changes?

Mr J.C. KOBELKE: It is a complex package. It will depend on the links between the various elements. The specific proposals about which the member is asking have to be taken in the total context. Although it may be possible to implement some of the statutory benefits beforehand, it may be preferable to wait until the dispute resolution procedures are in place. It is a total package. As I have said, subclause (2) gives us the flexibility to do it in different stages if that is judged the most appropriate and beneficial way. I will not give a commitment at this stage because we have to get the total package through. Implementing it will be a huge job. I will seek advice from the advisers at the appropriate time so we have a very smooth transition of all the elements. I have a bit of an idea of what may happen earlier, but it is only an idea. I do not want to go on record as saying that, because the member will throw it back in my face later. On good advice from my officers and WorkCover WA, I may be advised of a better way of doing it. It simply gives flexibility for us to do it in the best possible way.

Mr B.J. GRYLLS: I see that we will be establishing a WorkCover Western Australia Authority. Could it be one of the provisions that will be implemented ahead of the proclamation of the bulk of the Bill?

Mr J.C. KOBELKE: There are many elements and some elements will be done before others. The establishment of the new board is clearly a key element and will help drive it. It may be necessary to do that before certain steps are taken because the board may play a crucial role in the development of some of the regulations. It may be necessary to do that before we do other things. That is the timing and staging of the whole package, which is something that is being considered but is not yet tied down because we have to get the legislation through the Parliament. Subclause (2) gives us the flexibility to do that.

Mrs C.L. EDWARDES: I will explore the statutory benefits further. I acknowledge that some statutory benefits require the dispute resolution process to be in place. Can the increase in weekly payments be introduced without anything else being done?

Mr J.C. Kobelke: I suspect that it can but the issue is the total package. On the surface it appears it would be the case but there may be reasons we would want to hold it up and do the whole lot so the package works together and we have a smooth transition.

Mrs C.L. EDWARDES: Can the step-down provisions be implemented so that the extension from four to 13 weeks occurs straightaway?

Mr J.C. Kobelke: We would seek to do it at the earliest possible date to provide those benefits to injured workers. I will not give a commitment now but we would do it if it meant there were negative implications that did not match with other things. That has to be looked at very carefully.

Mrs C.L. EDWARDES: What about the increases in schedule 2 entitlements? Can those changes be implemented without changes to dispute resolution processes and the establishment of the new authority?

Mr J.C. Kobelke: It is the same answer. I would seek to have the improvements to schedule 2 available to injured workers at the earliest possible date subject to the fact that it is an integrated package and it must fit in with all the other requirements.

Mrs C.L. EDWARDES: I note that the minister keeps saying that it is an integrated package and that everything must flow together. He refers to the earliest possible date. Will the earliest possible date for increases in statutory benefits that can assist injured workers be before the election without every other element of the integrated package being put in place?

Mr J.C. KOBELKE: As much as I would love to have the benefits in place before the next election, I think it is highly unlikely. The key element is ensuring that we have a very stable and viable workers compensation system despite the scaremongering that members opposite are engaged in with totally outlandish expectations of figures and costs. We are very keen to make sure that the whole system works effectively and efficiently. To rush it through to try to provide extra benefits for a political purpose is something that I would not want to do because it is likely to have the potential to undermine all the good planning that has to go into the total package. I do not expect that we will get the legislation through the other place until late in the year. Given all the work that has to be done, I cannot see major elements being put in place until some months after the passage of the legislation through the other place.

Mr B.J. GRYLLS: The minister has just made an important point. There has been some concern that the Workers' Compensation Reform Bill could be used for a political purpose. Under subclause (2) it is important that the minister makes it clear that he will not move to introduce increased benefits before the bulk of the legislation is implemented. That would have some political overtones that would be very concerning to the Opposition and the State. The minister also needs to understand the effect it will have on the insurance industry. As I have said previously, we need to be very careful that these changes do not drive insurers out of the market. Any increased burden on insurance companies may well do that, as it did after what happened with HIH Insurance. We will end up with a far more disrupted and unworkable insurance system than we currently have in Australia.

Mrs C.L. EDWARDES: The other element to that is the effect on businesses, particularly small businesses. How much notice does the minister intend to give them, given the retrospective nature of the increases in some of those statutory benefits, so that they can put their own administrative processes in place? There is an enormous burden on small businesses, and they need a period during which they can put their own wages systems in place to deal appropriately with any of those increased statutory entitlements.

Mr J.C. KOBELKE: An example of the issues that will affect small business directly is the onus we will be placing on them to become involved in injury management. I do not think that will be a net problem for them because it will produce much greater benefits. However, we are seeking to engage them. There are other provisions in the Bill to which we will come later and I am sure members will look at them very closely. There will need to be an advertising campaign to let people know about those things before we can expect them to come on board and assist with injury management. There is a whole range of things required such as that.

Mrs C.L. Edwardes: However, there is the matter of the wages to be paid immediately. If, all of a sudden, the injured workers in a small business are to receive more money than was anticipated under the current system, businesses must put arrangements in place. How much notice will they get about it?

Mr J.C. KOBELKE: That is an issue that involved their annual premiums. Companies pay their premiums at different times during the year. The overwhelming majority - at least three-quarters - pay the premiums in June.

The premium rates round will again be in March, April and May. This Bill will have been passed by the Parliament by then. The rates round will look at what premiums might be set, and by June next year the businesses will be advised of any applicable premium change. There are premium changes every year in different sectors, so that is a normal process. This extra issue is clearly a complication, and people will look at it very closely to determine the implications for costs in different sectors. That all comes through the premium rates round, and then the premiums will be advised to employers, the vast majority of whom will pay their premiums in June 2005.

Mrs C.L. EDWARDES: I thank the minister for his comments about premium setting, because I was about to ask that. However, my question was more about the practical business of paying the workers on a Friday. The extension from four weeks to 13 weeks of the statutory benefits is retrospective, so it will apply to workers who were injured before the proclamation date. That gives rise to the question: does it apply to those workers injured prior to the proclamation date? Will businesses have to pay those workers more than they were anticipating? The step-downs are totally different from the current system, and therefore the practical component of paying wages on a Friday, rather than paying the premiums, will affect businesses far more quickly than injury management or anything else. They need some notice to get their own payroll in order.

Mr J.C. KOBELKE: This Bill will not pose any problem that is greater than those they already have. They must already be aware of the rules about the step-down at four weeks. They will be given notice to make sure that they are aware that that will become 13 weeks. As of tomorrow, a new minimum wage is payable. Employers are informed of that. It is a communication issue that must be taken very seriously, but it happens already on a regular basis. This will be part of that process. WorkCover, I am sure, will take all the steps necessary to make sure that it provides the information and assists in its dissemination, so that people are aware of it in line with what already happens when changes take place, even without this legislation.

Mr B.J. GRYLLS: By clause 2, we have begun to outline some of the serious flaws in this legislation. With subclause (2), which allows for different proclamation dates for different provisions, we are already seeing the creation of uncertainty. Uncertainty in this kind of legislation leads to myriad problems out there in the real world where industry is trying to get on with developing businesses and developing the State. It will be very important for the minister, throughout this process, to try to limit the amount of uncertainty that arises, rather than create more. I hope that right through this process the minister can address the issue of uncertainty, because that is one most critical issues we face with this legislation.

Mrs C.L. EDWARDES: I do not know whether the minister has ever run a small business and has had to pay wages on a Friday, but I can tell him from my experience and from talking with small businesses that they find it very difficult to find extra thousands of dollars. Although the minister says that this happens on a regular basis, with a new minimum wage from tomorrow, increases in awards and so on, it is never easy for them to pay immediately. This is a genuine question: how will it work? If a worker now has gone past the four-week step-down, and the proclamation comes in to extend that period to 13 weeks, so that that worker must now be paid more, will the small businesses be required to pay that? How much notice will they receive to ensure that their injured workers are receiving the correct amount of money?

Mr J.C. KOBELKE: Those matters are already an issue that small businesses must take care of. Of course, the businesses are reimbursed by the insurer for those payments. A company is obviously right on the brink with cash flow if it has one or two injured workers and cannot meet an extra $20 or $30 until it gets that money back from the insurer. I do not see any problem there. There is certainly a real issue of people who may already be on workers compensation who have gone up to the four weeks and then need to be made aware that they have 13 weeks. That is why this clause allows time. We need to make sure that the systems are in place to pick up those people and give them advice. That is an administrative issue, and there are many such issues whenever changes are made. It will be handled very efficiently.

Mrs C.L. Edwardes: Can I get any form of commitment from the minister that businesses can have a period of notice about any increases in statutory payments that have to be made from the date of proclamation?

Mr J.C. KOBELKE: That is the whole point of subclause (2). It gives flexibility, so that different parts can come in on different days. It can be done in a way that makes it as easy as possible for small businesses to meet their responsibilities.

Dr J.M. WOOLLARD: I am sorry that I was late in arriving. I notice that we are considering clause 2, "Commencement". I am not sure whether this was asked during consideration of the short title, or whether now is the appropriate time to ask, but I asked yesterday whether the minister would table the regulations and guides. Before this legislation is proclaimed, we will need to know how it will work with the regulations and guides. Have they been tabled this morning, or will the minister table those regulations and guides, so that we can look at them?

Mr J.C. Kobelke: I dealt with the preparation of those materials during consideration of the previous clause.

Dr J.M. WOOLLARD: Will they be tabled?

Mr J.C. Kobelke: You should have been here. I am not going back over all the questions answered on the previous clause.

Dr J.M. WOOLLARD: Do I take it the answer is no?

Mr J.C. Kobelke: I answered that, and I am not tabling the material today.

Dr J.M. WOOLLARD: If the minister will not table it today, does that mean that he will table it before consideration in detail is resumed next week?

Mr J.C. Kobelke: I have already indicated that during the debate on the previous clause I dealt with the matter of material that had to be prepared.

Mrs C.L. Edwardes: The answer is no.

Dr J.M. WOOLLARD: The answer is no. I am asking the minister whether it will be tabled before next week. Why are we considering the Bill in detail when we do not know how the regulations will work with the Bill? This is purely hiding -

Mr J.C. Kobelke: You are being irrelevant and repetitious.

Dr J.M. WOOLLARD: I am being repetitious because the minister is hiding the facts. He is not putting the facts out there. He is hiding how this Bill will work. This is disgraceful, and people will hold the minister accountable.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Long title amended -

Mrs C.L. EDWARDES: The long title is supposed to give an indication of the provisions of the Bill. The long title of the Workers' Compensation and Rehabilitation Act will be changed to read -

> **An Act to amend and consolidate the law relating to compensation for, and the management of, employment-related injuries, to provide for the WorkCover Western Australia Authority and a Dispute Resolution Directorate, and for related purposes.**

A couple of key issues have been removed from the long title. Will the minister explain, not the reasons for, because, no disrespect, he will give us the political rhetoric about what the Bill will contain, but the practical impact of removing the word "disease" from the long title? I know that it is referred to in the definition of "injury" in the amendments to section 5. Also, why has the minister removed the word "rehabilitation" and replaced it with the word "management", which is a less significant term in relation to injured workers? I have no issue with the Dispute Resolution Directorate and the WorkCover Western Australia Authority. The two critical questions are: why has the word "disease" been removed from the long title, and why has the word "rehabilitation" been changed to the word "management"? I know that the minister indicated in his second reading speech that he wanted to place greater emphasis on injury management. Rehabilitation is a subset of injury management. However, reference to the management of employment-related injuries in the long title makes it sound like paper shuffling. It does not give any significance to what will be done for injured workers. I think the minister is diluting the very important concept that arises in workers compensation and rehabilitation; that is, we want people to go back to work.

Mr J.C. KOBELKE: A change is made to the long title if a reform is proposed that changes the key thrust of what is trying to be achieved. The focus in the long title will be shifted from the rehabilitation of workers suffering a disability to the management of employment-related injuries. The new wording replaces the reference to the Workers' Compensation and Rehabilitation Commission with the WorkCover Western Australia Authority and replaces the reference to dispute resolution bodies with the Dispute Resolution Directorate. The issue is that rehabilitation - the member said this in her contribution - is a subset of injury management. It does not downplay rehabilitation but puts it in a broader context, because rehabilitation may be applied only to some workers. We want to look after all workers. When rehabilitation is part of that process, clearly it will be driven. The concept of injury management is much broader and is already delivering - the member was the minister when it was first formally recognised and introduced, so I thought the member would be supportive of it - and that is recognised in the Bill.

The member's other question was why the word "disease" will be removed. The word "disease" is referred to in the definition of "injury", so injury management will become disease management.

Mrs C.L. Edwardes: Will section 5 have no effect on the long title by incorporating the word "disease"? You want to remove the word "disease", but you are adding it in schedule 2 and are further defining it in the amendments to section 5. Therefore, there will be no impact.

Mr J.C. KOBELKE: No. The issue is disease, and we will come to that. The definition of "injury" on page 6 picks up disease.

Clause put and passed.

Clause 5: Section 1 amended -

Mrs C.L. EDWARDES: This is a significant clause because it seeks to change the title of the Act from the Workers' Compensation and Rehabilitation Act to the Workers' Compensation and Injury Management Act. I support absolutely the concept of injury management. The Liberal Party introduced that concept in 1999 with a code that did not restrain or absolutely codify the way in which the injury management process operated. To all intents and purposes, it has been very successful in getting employers, employees and doctors to sit down at a very early stage and work out exactly what an injured worker can do. Therefore, I do not decry a focus on injury management; I am very supportive of that. However, I am concerned that the Bill undermines injury management by virtue of, for instance, the extension of four weeks to 13 weeks. That will provide an extra safety net for people, injured workers in particular, doctors and employers in that, if the worker has 13 weeks off work, there will be a behavioural change. That will be one of the biggest cost blow-outs, and it has not been properly actuarially assessed. The periods for the step-downs and election dates will be extended. Only two per cent of injured workers go to common law, but these changes will affect 98 per cent of injured workers.

As I have said before in this place, the important thing is that injured workers want to go back to work. Statistics show that the earlier we can intervene and get them back to work, the better off they will be. The longer they stay away from work, the harder it is to get them back to work. The emphasis on injury management is absolutely essential. However, I repeat: although the minister can title this Bill whatever he wants to title it - he can call it the Workers' Compensation and Injury Management Act - the Bill and the process that will be put in place for the workers compensation system will seriously undermine injured workers returning to work. That is the one significant issue in this Bill to which I object. There is no encouragement or incentive for those injured workers. Although the minister can talk about putting in place the injury management system, he is forgetting about ordinary human nature. Solicitors will be reintroduced to the process. The time frames that will be put in place are far too tight. I know that the minister will say that Justice Sheahan in New South Wales has said, "If they're not ready, we'll go without them." That is really good for undermining the whole system. Extensions of time will be encouraged and injured workers will not be encouraged to go back to work. The codification that will be put in place will not be worth the paper it is written on when the rest of the statutory benefits and entitlements, change and time frames are put in place. The Government is creating a mind-set of behavioural change that will extend injured workers' claims. Apart from the impact on cost, the impact on those injured workers will be far worse than anything we have seen in a long time.

Apart from the blow-outs in common law and the increased cost, the reason the system was changed in 1993 was that injured workers were not being supported to get back to work. In this Bill, the Government has not put in place a system that supports that. It has talked about it, it is renaming the Act and putting in a code, but it does not support that.

Dr J.M. WOOLLARD: What a joke! Clause 5 states -

> Section 1 is amended by deleting "Rehabilitation" and inserting instead -
>
> " *Injury Management* ".

I would like to remind the minister of what the American Medical Association states about the guides on which this impairment system is being based. The AMA states -

> Impairment percentages derived from the **Guides** criteria should not be used as direct estimates of disability. Impairment percentages estimate the extent of the impairment on whole person functioning and account for basic activities of daily living, not including work.

I will repeat that for the minister -

> . . . basic activities of daily living, not including work. The complexity of work activities requires individual analyses. Impairment assessment is a necessary first step determining disability.

This whole move from disability to impairment completely ignores the needs of injured workers. The minister can look down at his notes. However, does he have a copy of the AMA guides? Would he like to be provided with a copy? With this Bill, we are talking about people who sustain injuries at work - people who go home from work with a work-related injury and who are disfigured or mutilated. Some people die; others have back injuries.

Point of Order

Mr J.C. KOBELKE: I draw your attention, Mr Acting Speaker, to Standing Order No 97. We are dealing with clause 5, which relates to injury management. The member is talking about the whole of body impairment guides, which we will certainly debate under another clause. However, they are not relevant to clause 5.

The ACTING SPEAKER (Mr D.A. Templeman): The minister's point of order is more specifically related to Standing Order No 179, which states that debate will be confined to the clause or amendment before the Assembly, and no general debate will take place on any clause. I have shown the member some leniency. However, clause 5 is quite specific, and, as has already been indicated, the opportunity to debate the issue about which the member is speaking will be available when we deal with clauses later in the Bill. Therefore, I ask the member to ensure that she restricts her comments to clause 5.

Debate Resumed

Dr J.M. WOOLLARD: Clause 5 states that "Rehabilitation" will be deleted and "Injury Management" will be inserted. I wonder whether the minister will explain to me why "Injury Management" is being inserted when the guides that he is now planning to use to assess injury management are not appropriate in this situation. I cannot see why "Injury Management" is being inserted through this clause when, if anything, the practice will be far from injury management. It will ignore the injury and the effect of the injury on a person's life.

Mr J.C. KOBELKE: Injury management is defined on page 6 of the Bill. The member does not seem to have any concept of what she is talking about.

Mrs C.L. EDWARDES: I wonder whether the minister will respond to the comments I made.

Mr J.C. KOBELKE: Would the member remind me of which aspect?

Mrs C.L. Edwardes: The fact that including "Injury Management" in the title will not equal out the undermining of the whole -

Mr J.C. KOBELKE: Sure. I was not going to respond because I thought the member was so wide of the mark. She has a political point of view. I totally reject it. A range of elements in this Bill will drive injury management. The member is simply looking at things such as the extension of the step-down from four to 13 weeks. She is of the view that that will undermine injury management. I do not accept that. Every other State has 13 weeks or more. Thirteen weeks is the minimum in every other State. There are a range of elements in this system that, if not managed well, could get out of control and drive things in the wrong direction. The integration and management of all the reforms is absolutely crucial. However, the fact is that every other State has 13 weeks. We are coming up to the minimum.

We pick up in the Bill the provisions to have notification at four weeks. Currently, there is a step-down at four weeks. We are providing a notification system at four weeks so that we can make sure that the appropriate form of injury management is applied to people at the earliest possible stage. A range of other things must go in to make sure that we do not go in the wrong direction, which is the member's fear. However, I believe she is trying to hang that fear on one or two little elements that I do not think will have the effect that she suggests. Improved and more effective injury management is a key element in the changes we are making in many different areas. I do not accept the member's position that the overall package somehow undermines injury management and will not make it work better.

Dr J.M. WOOLLARD: The minister pointed out that he thought that I had not read the definition of "injury management". I will clarify that in relation to clause 5, Mr Acting Speaker. The definition of "injury management" states -

> . . . means the management of workers' injuries in a manner that is directed at enabling injured workers to return to work;

If this Bill is passed by this House and the upper House, the assessment of injured people will not be a true and proper assessment of people's work-related injuries. It is purely a check list that will be used, which will not take into account the whole person. The definition of "injury management" states that the management of injuries is directed at enabling injured workers to return to work. However, the definition of "return to work" states that the worker should take a position that the worker is capable of performing. We know from previous High Court decisions that "return to work" means returning to the position the person had previously. It means

an assessment of a person and his or her injuries, and that person then being able to return to a position similar to that which he or she had previously.

The ACTING SPEAKER: Again, I have allowed the member for Alfred Cove some latitude in her remarks. However, I need to highlight to her that she is really speaking to clause 8, which identifies a number of the issues she is raising now. I need to bring the member back to the fact that clause 5 is quite specific. The member is now deviating from that into a clause that is to come. I will need to call the member to order from this point on if she deviates from speaking on this clause.

Dr J.M. WOOLLARD: I am sorry if you felt that it was a deviation, Mr Acting Speaker, and I apologise. It was simply that the minister referred to the section, which is why I clarified that I was aware of it. This clause is totally inappropriate. I will not be supporting it, because it does not deal with injury management. It will mean that, as a result of the introduction of this Bill, people's injuries will be mismanaged. If the minister wishes to change the wording of the amendment to injury mismanagement, I will be happy to support it, because I think that is what it is, but I will certainly not be supporting this clause.

Mr M.W. TRENORDEN: Is the purpose of the clause a change in the skills and operating directions within the commission and a change in the range of people who interact with workers? Is this just a change of image? Is the minister trying to say that injury management is of greater concern or is he trying to say that there will be a structural change, with the commission having different employees with different job descriptions and different instructions?

Mr J.C. KOBELKE: I did try to address the issue earlier in response to the member for Kingsley. I believe that injury management was introduced when the member for Kingsley was minister. It was seen in Western Australia and in most jurisdictions as being the way to go to get better outcomes for injured workers. Although rehabilitation is very important, injury management is a broader concept. The amending Bill provides specific heads of power to drive the present injury management system harder and faster to get better outcomes. We have introduced, within a range of other provisions, matters that we see as supportive of injury management. We will come to those when we debate that part of the Bill. The view of the member for Kingsley is that some of these unrelated matters undermine injury management, but I do not accept that. We will discuss injury management later, but clearly reforms are contained in the Bill. We are signalling up front that we are giving recognition and a greater focus to injury management and, therefore, we are changing the title.

Mr M.W. TRENORDEN: I was trying to dig a little deeper. Is the minister expecting the commission to make changes to its employees because the Bill provides for more than a change of image? Will the commission's employees need different skills and will the commission need different mission statements?

Mr J.C. Kobelke: People are already doing this. Whether the commission needs one or two extra staff is a management decision. It is not envisaged that this will expand into a whole new section.

Mr M.W. TRENORDEN: Is this more of a change of image than a structural change?

Mr J.C. Kobelke: No, the process picks up a large part of how injured workers are dealt with. It will give better outcomes. When we come to the relevant clause, the member will see that it places requirements on employers and insurers to make sure that they use injury management as the approach to get better outcomes for injured workers.

Mr M.W. TRENORDEN: I understand all that. I am trying to find out whether there will be a different direction in the commission.

Mr J.C. Kobelke: From that which exists now?

Mr M.W. TRENORDEN: Yes.

Mr J.C. Kobelke: No, it is driving a process that was started under the last Government, which we see as successful and useful, and which we intend to drive harder and better.

Dr J.M. WOOLLARD: We are discussing clause 5, which deletes the word "rehabilitation" and inserts "injury management". The minister and the members for Darling Range and Roleystone are currently in the Chamber. This clause on injury management will affect many different workers and unions. I would like to see more government members in the Chamber when the Government allows such disastrous legislation to go through. I therefore call your attention to the state of the House, Mr Acting Speaker.

[Quorum formed.]

Clause put and a division taken with the following result -

Ayes (27)

Mr P.W. Andrews	Mrs D.J. Guise	Ms S.M. McHale	Ms J.A. Radisich
Mr J.J.M. Bowler	Mr S.R. Hill	Mr A.D. McRae	Mr E.S. Ripper
Mr A.J. Carpenter	Mr J.N. Hyde	Mr N.R. Marlborough	Mrs M.H. Roberts
Mr A.J. Dean	Mr J.C. Kobelke	Mrs C.A. Martin	Mr P.B. Watson
Mr J.B. D'Orazio	Mr F.M. Logan	Mr M.P. Murray	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Mr A.P. O'Gorman	Ms M.M. Quirk *(Teller)*
Dr G.I. Gallop	Mr M. McGowan	Mr J.R. Quigley	

Noes (17)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr R.F. Johnson	Dr J.M. Woollard
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr P.D. Omodei	Mr A.D. Marshall *(Teller)*
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr P.G. Pendal	
Mr M.J. Birney	Mr B.J. Grylls	Mr M.W. Trenorden	
Mr M.F. Board	Ms K. Hodson-Thomas	Mr T.K. Waldron	

Pairs

Ms A.J. MacTiernan	Mr W.J. McNee
Mr R.C. Kucera	Mr R.N. Sweetman
Mr C.M. Brown	Mr J.L. Bradshaw

Independent Pair

Dr E. Constable

Clause thus passed.

Clause 6: Section 3 amended -

Mrs C.L. EDWARDES: Clause 6 amends section 3 of the Workers' Compensation and Rehabilitation Act, which is the purposes section.

The ACTING SPEAKER (Mr D.A. Templeman): Members, if you wish to carry on conversations, please vacate the Chamber. The member for Kingsley has the call.

Mrs C.L. EDWARDES: Thank you, Mr Acting Speaker. Section 3 deals with the purposes of the Act. The Bill, through the insertion of proposed new paragraph (b), seeks -

> to make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work;

We support what is intended. Proposed paragraph (ba) states -

> to make provision for specialised retraining programs for certain injured workers;

I do not know why that paragraph needs to be included in the purposes section of the Act, as it is just one of the many programs that will be incorporated. A number of key changes are being made to the Act but will not be referred to in the purposes section of the Act; however, the Government seeks to include a new paragraph in this section to make provision for specialised retraining programs for certain injured workers. I ask the minister to tell us why this amendment is being made. It seems to be out of context in that it is a subset of the whole. It does not need to be in this section. The other matter on which the minister might like to comment, as he has not yet done so, is the reason provisions on specialised retraining programs are being brought in when they were not part of the five sets of draft Bills that were put out in January and February.

The ACTING SPEAKER: Members to my right, the conversation that you are carrying on is interfering with Hansard's capacity to record the debate. I say again that if you wish to carry on conversations, do so outside.

Mr J.C. KOBELKE: I thank the member for the question, which covers quite important matters. There are many important matters, some of which are quite intricate and which we need to explain. Before I answer that question I ask the member for Kingsley why, given her comment that she supports injury management, in the division she voted against the amendment under the last clause?

Mrs C.L. Edwardes: The issue was that the whole of the Bill does not support what you are calling it. You can call it whatever you like, but the Bill does not support what you are proposing to do.

Mr J.C. KOBELKE: The member for Kingsley supports injury management but did not want it to be reflected in the legislation. That is a strange position for the member to take, because if she takes that negative view rather than dealing with the facts, we will not do justice to this Bill. Her current questions are apt. We should be talking about what is actually in the Bill rather than firing off about things. It would appear to any observer that the member for Kingsley simply does not understand what we are dealing with, but her question reflects that she clearly does.

Proposed new paragraph (b) states -

> to make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work;

We are clearly putting within the purposes section of the Act the need for injured workers to return to work, with injury management being part of that. That clearly reflects what is to be given priority under the purposes of the Act. Under proposed paragraph (ba) we are referring to a specialised retraining program, because that is a new entitlement that we need to recognise in the purposes section. The second part of the member's question concerned why we had come to this point. One of the key promises we made prior to the last election was to get a better balance between statutory benefits and common law. We have continually debated those issues with stakeholders.

One area that was considered to be deficient concerned people who currently have a quite serious injury and are not able to return to their old job. The view was that they were served by common law. I was not convinced of that. The issue was how to find a way for an injured worker to return to work or get on with his life if he could not go back to the job he used to do. We then developed the specialised retraining program, which is reflected here and which we will discuss in more detail when we come to those provisions. In my view it is a bit of an experiment. That is why we have sought to curtail how many people will use it. We will discuss that when we come to those provisions. The member will know and admit that people in that category might have worked in a manual job and have skills in that area but that a back injury could mean that they cannot return to that work. They also might not have a high level of formal education, so finding a meaningful new job is quite difficult. We are trying to put in place a new scheme. In my view, it is a trial. That is why its availability will be limited. I would like to expand it, but we should not put in place something that is new and unproved and perhaps be left open to a huge cost pressure. The Government is seeking to establish this new specialised training as a way to help workers who currently find it near impossible to get back to a good job, given their level of education, their skills and the injury they have suffered, which means that they cannot go back to the work they were doing. That is where it is targeted. I hope it will be successful. If we are re-elected, we will make further improvements. If the program is proved to work and works well, I will look at expanding it.

Mrs C.L. EDWARDES: I thank the minister for his comments. However, from a drafting point of view, I do not think that this new entitlement needs to be outlined in the purposes section of the Act. It is superfluous to have it in this section as it is incorporated in proposed new paragraph (b), which talks about the management of workers' injuries in a manner that is directed at enabling injured workers to return to work. Essentially, if the minister is saying that this new entitlement needs to be included in the purposes section of the Act, a lot of other things could also be incorporated in that section, which would defeat the reason for having a purposes section.

Dr J.M. WOOLLARD: Clause 6 seeks to amend the purposes section of the Act, which currently states in part -

> The purposes of this Act are -
>
> (a) to make provision for the compensation of -
>
> (i) workers who suffer a disability*;* and
>
> (ii) certain dependants of those workers where the death of the worker results from such a disability;

This section talks about disabilities that arise from a work-related injury. The current legislation talks about disability. The guides that are currently being used in the community, which were developed in the 1990s with quite a bit of medical input, are appropriate. We are now changing this part of the Act. The Bill proposes to delete paragraph (b) and insert a new paragraph (b). Proposed new paragraph (b) needs to be considered alongside paragraph (a), which currently concerns workers who suffer a disability. It is all very well to make provision for workers' injuries; however, we know that the new impairment guides will not assess a person's disability but will look just at impairment. I wondered whether this was an omission and whether the minister wanted to change it to cover workers who suffer an impairment? I believe that then the provision might be correct. The impairment measurements in the Red Cross codes contain measures for psychological functioning, depression, stress, anxiety and physical impairment. Had we not just taken the American Medical Association's

guideline of impairment, but looked at how impairment is assessed on a more global level, then it possibly would have been acceptable. However, at the moment the guide is purely a check list that does not consider the injured nurse who hurts her back at work lifting a patient or the transport worker who injures his back lifting up a crate. It does not consider those people as a whole, therefore, this provision does not adequately fit in with what the minister is trying to do. How can the minister make provision for the management of workers' injuries and workers who suffer a disability under section 3(a)(i) of the Workers' Compensation and Rehabilitation Act when we are no longer assessing their disabilities? We will now be using a check list to assess impairment. Perhaps the minister may want to leave this clause and come back to it later when he has spoken to his advisers, because it certainly does not fit in with what he is attempting to do to workers in taking away their rights.

Mr J.C. KOBELKE: I will certainly seek to answer questions but it is not my role to educate the member on the whole workers compensation system. The member's contribution to the debate is quite appalling. She clearly does not understand what she is talking about. The member is asking why we are dealing with disability. Disability is removed from this provision. We are not using the word "disability"; we are using the word "injury". I think the member has it all the wrong way around. The current legislation contains the word "disability", which the member alluded to, but that will be removed. We are now talking about injury; we are not talking about disability.

Dr J.M. WOOLLARD: I apologise if I made a mistake but the clause is headed "Section 3 amended". I thought that meant that the other parts of section 3 currently in existence and not amended, will stay in existence, in which case, section 3(a) of the Workers' Compensation and Rehabilitation Act will stay. This provision deletes paragraph (b); it does not delete paragraph (a). Paragraph (a) of the Act states -

> to make provision for the compensation of -
>
> (i) workers who suffer a disability; . . .

If I have got this wrong and the minister is removing that provision, I accept that, but I do not believe I have it wrong. I am willing to be guided by the minister.

Mr J.C. KOBELKE: Perhaps I owe an apology to the member because she is working from the Act. The Blue Bill provides the changes we are making to the current legislation. We are dealing with clause 6 that amends section 3, and the member quite rightly said that it amends paragraphs (b) and (ba). However, the member is looking to section 3(a) and she has in front of her the Bill that contains the word "disability". If the member refers to the Blue Bill she will see that that word has been changed to "injury", which is done by a general amendment under clause 146 on page 246.

Dr J.M. Woollard: Are we going to come to that later?

Mr J.C. KOBELKE: Yes, but this has the effect of removing throughout the legislation the word "disability".

Dr J.M. Woollard: So we have not come to that.

Mr J.C. KOBELKE: No, that is dealt with in clause 146.

Dr J.M. Woollard: So I was not incorrect and there is still some hope that, with some lobbying from the unions and injured workers, the minister might remove that provision and accept that it is better to have the word "injury" -

Mr J.C. KOBELKE: No, because it is integral to all the things we are doing, which will be explained when we come to that later. Currently, we are dealing with clause 6 and an amendment to section 3. Quite rightly, the member can raise matters on section 3, with which we are dealing. The issue is the worker who suffers an injury. The words "a disability" currently appear in section 3(a) and will be replaced with the words "an injury".

Clause put and passed.

Clause 7: Section 4 amended -

Mrs C.L. EDWARDES: Clause 7 amends section 4, which deals with the general application. Can the minister confirm if the proclaimed date is still the same?

Mr J.C. KOBELKE: In that it has the same meaning as what is used in the earlier -

Mrs C.L. Edwardes: The date is 3 May 1982. Is it still the same date?

Mr J.C. KOBELKE: Yes, that is correct.

Dr J.M. WOOLLARD: I was interested in the question asked by the member for Kingsley. Perhaps she might want to pursue that further -

Mrs C.L. EDWARDES: I thank the member for Alfred Cove for that. This provision adds to section 4(2)(a)(v) after the word "injuries" the words "and impairments from injury". I do not want to get into the debate of injury disability, impairment disability and all the rest of it, because we will have many opportunities to do that later. However, can the minister explain what is an "injury" - its definition is found in clause 8 and the amendment to section 5 - and what is an "impairment from injury" and why has that been include here?

Mr J.C. KOBELKE: The word "injury" is defined on page 20 of the Blue Bill.

Mrs C.L. Edwardes: Why have the words "and impairments from injury" been added to subparagraph (v)? The word "injuries" is defined, and then we have added "and impairments from injury". On page 3 of the Blue Bill under subparagraph (v) it states -

> for injuries and impairments from injury mentioned in Schedule 2, . . .

That is the amendment found under clause 7(1).

Mr J.C. KOBELKE: This is consequential and recognises that later, schedule 2 will use the word "impairment". Therefore, we are mentioning it in this provision as well.

Mrs C.L. EDWARDES: With the definition in clause 8(2) of the word "injury", why do we also need to refer to "and impairments from injury" in schedule 2 under this provision? What is not included in section 5, the definition clause, and the proposed amendments to it, that means we need to add it in as an extra?

Mr J.C. KOBELKE: The impairment is the loss that results from the injury and schedule 2 will now be based on impairment.

Clause put and passed.

Clause 8: Section 5 amended -

Mrs C.L. EDWARDES: This is a very important clause. I want to go through it slowly to deal with the different definitions that now apply. Clause 8(1) deletes a number of definitions, including "approved rehabilitation provider". I will talk about that later. It also deletes the definitions of other terms such as "Commission" and "Committee" etc in line with changes of name and structure and the changes to the programs. A number of new definitions are put in their place. The first is "approved medical specialist". The definition is -

> . . . means a person for the time being designated under section 146F as an approved medical specialist;

That raises the question of appropriate qualifications, which is referred to here. I do not know whether the minister would like to comment on what is meant by an approved medical specialist. When we get to that provision in the legislation I want to talk about who will conduct the approval process and the use of executive power in the process. Is the minister able to comment on the definition?

Mr J.C. KOBELKE: As the member quite rightly points out, we will deal with that in more detail when we deal with proposed section 146F. However, it is appropriate to seek comment on it now as it is a new definition to be inserted in section 5. "Approved medical specialist" is the term being proposed - I think it is an appropriate one - for a person providing the medical evidence required using the body impairment tables. It is required for a number of aspects of the Bill. The central issue is that we need to ensure that a person is trained in the guides. It is a two to three-day course. It is already offered in Australia because all other States that have a gateway to common law based on some medical assessment use the whole body impairment model.

Mrs C.L. Edwardes: I thought it was only in New South Wales. Is it elsewhere?

Mr J.C. KOBELKE: Yes, every jurisdiction that has that sort of gateway. I am not sure about South Australia because it does not have any legislative access to common law. Queensland, Victoria and New South Wales use it. We will come to that later but there are issues to ensure that we have a sufficient number of doctors. The approach is to not in any way restrict the number of doctors. The word "specialist" does not mean someone who is a member of a royal college of specialists. However, it needs to be someone who has done the course and has some interest in injury management and works in the area. I cannot speak for country areas but there are many general practitioners whom I know personally who give a fair bit of time to injury management in their general practice. They may be working towards becoming an occupational physician or whatever. Obviously, they would complete the two to three-day course and apply for appointment as an approved medical specialist.

Dr J.M. WOOLLARD: Will some doctors be allowed to undertake the course without having Medicare provider numbers and then work exclusively in this role for WorkCover?

Mr J.C. KOBELKE: That is a flight of fantasy. I do not know why anyone would even suggest such nonsense. The legislation has not even been passed. I know of a dozen or so doctors in Perth who have already completed

the course. Under the current Act, "disability" is a very vague and subjective term. I am advised by doctors who work in this area that they have completed the course so they are well trained in impairment and that assessing impairment is part of the process in determining disability. That is the way some doctors work. There is certainly nowhere near an adequate number of doctors in Perth who have completed the course to ensure that the provisions we seek to put in place will be able to operate. There will be a very clear need to establish the course for doctors in Perth following passage of the Bill. It is another reason it cannot be implemented straightaway; it would take some months. I do not think doctors will do the course just on expectation that the legislation will be passed. Certain parts of the legislation cannot become operative after its passage until a good number of doctors are approved medical specialists. That will require a training course. There is already talk of running courses in Perth. If there is enough demand, they will be offered here as they are currently run in Sydney, Melbourne and other places.

Mrs C.L. Edwardes: Who runs the courses?

Mr J.C. KOBELKE: The guides use American trainers because the system has been in place in America for years. The courses have already been run in Australia. A number of courses may be run in Perth so there will be enough doctors in Western Australia who qualify as approved medical specialists.

The member knows the medical fraternity well. To try to air such an absolute fantasy that somehow -

Dr J.M. Woollard: Is the minister denying that there will be medical specialists working purely for WorkCover in this area? Is the minister denying that will happen?

Mr J.C. KOBELKE: WorkCover does not currently employ doctors to do this work.

Dr J.M. Woollard: Things will change with this Bill.

Mr J.C. KOBELKE: That is not the intention. Perhaps the member is referring to medical panels. Doctors are on a contract of employment and are paid if they sit on a medical assessment panel. We are talking here about approved medical specialists. If someone wants to make an application under common law and is seeking a schedule 2 payment, he will need a medical certificate from an approved medical specialist. I hope that within a short time we will have a couple of hundred or more qualified doctors so the system can work. When we come to common law it is the worker who will choose the approved medical specialist he wants to use. The great strength of the body impairment guides is that they are far more objective, and we will not see a variation between doctors for the same patient. We also have to ensure that the doctors are applying the guides in a standardised way. Therefore, they have to be trained. We have also given a clear undertaking - it is also in the Bill - to establish a medical reference group because there are two key tasks. One is the need to look at the guides and update and improve them. That requires people with medical knowledge and specialisation in various areas to provide that advice. The other task is to ensure that there is sufficient training and availability of doctors to meet the needs. Within the profession there may be some debate whether the training means the guides are being applied in a proper way. Again, we need to go to doctors for that advice. That is why we must have a special advisory group to help ensure that the approved medical specialists are working on guides that are as up to date as possible and that the system is working well.

Mr B.J. GRYLLS: Obviously, this issue will be raised again during consideration of proposed section 146F, which is about approved medical specialists. There will be some requirement to have these approved medical specialists in regional Western Australia. It becomes difficult, after a work injury, for a worker to have to travel back and forth to the metropolitan area. I would like the minister to take this on board. It is important that approved medical specialists be available and also that the training be made available in regional centres rather than just in the metropolitan area, so that doctors can find time to do that training program and get it on their lists of qualifications.

Mr J.C. Kobelke: The member makes a very good point.

Dr J.M. WOOLLARD: The minister gave the House to believe that, with the new impairment guides, we will be moving from a subjective to an objective tool for assessing impairment. That is not the feedback I have had from those using the guides in the eastern States. The feedback I have had is that the guides are very limited. They do not include psychological harm and some aspects of physical harm that can occur post-injury. Currently, the medical panels comprise a general practitioner and, depending on the injury, perhaps an orthopaedic surgeon. There is no guarantee that, under the new system, the medical practitioners who put themselves forward for the course will have the level of expertise in different areas that is currently available to the panels. There is a concern there for injured workers. The minister also seemed to think that people were worrying unnecessarily that WorkCover may in the future, when it cannot get people to do these courses, employ some practitioners who do not have provider numbers and who are accountable only to WorkCover. However,

we will find later in consideration of this Bill that it gives the ability to take away someone's designation as an approved medical specialist. There is a concern that WorkCover is Big Brother, and that it will look at the assessments being done, and if it does not feel that those assessments are being done in a manner that suits what some people might call the hidden agenda behind this Bill, those people who are approved as medical specialists will be told to pull their socks up or they may lose 30 to 40 per cent of their income, depending on how many of these examinations they undertake. There is a big question in the community about the relationship between the Government and WorkCover and what it will do with this new approved medical specialist role that WorkCover seems intent, from this Bill, on controlling.

Mrs C.L. EDWARDES: I move now to the definition of "approved vocational rehabilitation provider", which amends the existing definition by the insertion of the word "vocational". I understand that rehabilitation providers are regarded as successful if they get someone back to work. If, however, the entirety of their role is understood, that should not be the only criterion upon which someone is regarded as being successful. Although the whole aim and emphasis of the legislation and the system should be to return people to work, I know of instances in which the rehabilitation provider has done an absolutely outstanding job with an injured worker who has had major psychological and social problems that rendered him unfit to return to work. The acceptance of that by the injured worker should be regarded as a success, because the work that the rehabilitation provider has done with the injured worker has enabled that injured worker to understand fully that he may not be able to return to work. It has enabled the injured worker to avoid being an increased burden on not only the workers compensation system but also the community. We all know of instances in which the system gets workers down. The whole process gets injured workers down. They do not want to be there, and they do not understand what the system or the process is. Although it is true that the emphasis should be on returning people to work, I am concerned about the insertion of the word "vocational". The rehabilitation providers are a very important link in the whole workers compensation system and should not be regarded as a success only if they return a person to work, when they may have actually save a person's life by preventing suicide. They may save a person's domestic relationships, including the relationship with children, which is often turned totally upside down when the breadwinner of the family is no longer able to bring the money home, because of something he did not do. As such I am concerned that the insertion of the word "vocational" will take away an important though minor part of the role of rehabilitation providers.

Mr J.C. KOBELKE: The definition of "approved vocational rehabilitation provider" makes it clear that when we are talking about rehabilitation providers we are talking about vocational rehabilitation providers; that is, people whose role is to put in place a plan to get that person back to work. That does not mean that vocational rehabilitation providers do not have an important role in putting together a plan knowing that, because of the particular circumstances and condition of that person, the outcome of the plan may not be an immediate return to work, but is rather preparatory to another course or program that will result in a return to work. The role must be orientated to vocational rehabilitation, but is not limited to that by saying that the only outcome can be getting a person into a job. That is clearly the objective, but not the only positive outcome that is possible. A rehabilitation provider might be a physiotherapist whose job is to rehabilitate in a more limited sense, but that person is not picked up under this definition.

Mr P.D. OMODEI: In relation to rehabilitation providers, I note that proposed section 156(1) reads -

> WorkCover WA may, in writing -
>
> (a) subject to such conditions, if any, as it sees fit to impose, approve as a vocational rehabilitation provider any person WorkCover WA considers capable of satisfactorily providing vocational rehabilitation; and
>
> (b) revoke any such approval.

The reference is to the advisory committee under section 100A of the Workers' Compensation and Rehabilitation Act 1981. I understand that, under that section, people who would be vocational rehabilitation providers would have to have some experience. What kind of qualifications would they need? Obviously they would need experience, but what kind of people would be approved to carry out vocational rehabilitation of injured workers?

Mr J.C. KOBELKE: Proposed section 156, to which the member has alluded, already applies. Proposed subsection (3) applies an extra condition relating to the code. We are dealing with an approved vocational rehabilitation provider, which, according to the definition, means a person approved under proposed section 156. The member then alluded to proposed section 156 and asked for the procedures that relate to proposed subsections (1) and (2). Proposed subsections (1) and (2) exist in the current Act. It is not proposed to change them. They are already in operation. The new part is proposed section 156(3), which adds an extra requirement because of the code for injury management.

Dr J.M. WOOLLARD: The term "approved vocational rehabilitation provider" will have massive consequences for workers in all areas. Currently, the minister, three government members and double that number of opposition members are in the Chamber. Mr Acting Speaker, I draw your attention to the state of the House.

[Quorum formed.]

Mrs C.L. EDWARDES: I refer to the term "arbitrator". Again, emphasis has been changed from conciliation, and we will discuss that in more detail. Will the arbitrator have a conciliation role as well?

Mr J.C. KOBELKE: Currently, there are conciliators and review officers. They will be rolled into one under the new definition of "arbitrator".

Mr M.W. TRENORDEN: I have been out of the Chamber, so if this question has been asked, I am happy to be told that. Paragraph (a) under the definition of "injury" refers to the employer's instructions. I would like some clarification of the meaning of the employer's instructions, particularly if those instructions are to apply to social and sporting activities.

Mr J.C. Kobelke: I just want to make sure that I understand your question.

Mr M.W. TRENORDEN: Is it intended that the meaning of employer's instructions will be expanded? Some cases have been highlighted in the media in the past 12 months. Paragraph (a) of the definition of "injury" refers to the worker acting under the employer's instructions. Is there any intention to expand the application of those instructions to sporting events other than that which is provided for in the current definition?

Mr J.C. KOBELKE: It is certainly not the intent, but I will try to get a more detailed answer for the member.

Mr M.W. Trenorden: It is an important question, as the minister will understand.

Mr J.C. KOBELKE: The current term is "disability", which the member will find in the blue copy of the Bill, and that will be changed. The definition of "disability" means a personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer's instructions. The wording will not change.

Mr M.W. Trenorden: Clearly there is no intention to change.

Mr J.C. KOBELKE: No, there is no such intent. We are seeking to remove the word "disability" throughout the Act. For years medical practitioners have told me that disability is too loose a concept. They like to take a scientific approach in the care of their patients. The care of their patients comes first, but they like to know that they are working on a sound scientific and logical basis, and disability does not provide them with that. Many doctors and other people have said that disability is a major problem for them. There are some advocates of the concept of disability, because they like the fact that it is rubbery. However, we are moving from disability to injury in a range of definitions, and therefore we must change those definitions. The member's concern is that the definition of "injury" states "whilst the worker is acting under the employer's instructions". The definition of "disability" states "whilst the worker is acting under the employer's instructions". The operative phrase in our changes is exactly the same as it is now.

Mrs C.L. EDWARDES: After paragraph (e) of the definition of "injury" the Bill states -

> but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in subsection (4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable and harsh on the part of the employer;

I know that the same words are in the definition of "disease". However, one of the changes that will be made in the context of the whole Bill is that psychological overlay will be removed.

Mr J.C. Kobelke: However, only as a test at the gateway to common law.

Mrs C.L. EDWARDES: Yes, for assessment. The question then is: will subsequent changes that are not made today impact on the way in which it has been defined?

Mr J.C. KOBELKE: We are dealing with injury. Injury is a fundamental concept for entry into the scheme. The member's question alludes to the test at the gateway to common law - obviously we will deal with that later - in which what is generally called psychological overlay will not be allowed. That is quite separate from what we are dealing with now and I do not see how that would impact on it.

Dr J.M. WOOLLARD: Under the definition of "injury", it is stated -

> (c) a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree;

Will the minister tell me why smoking is still allowed in enclosed public places? This paragraph seems to focus directly on workers in pubs, clubs and hotels. We know from recent evidence that New South Wales has identified how many workers are dying on a regular basis from passive smoking, yet the minister has kept this provision in the Bill. Why has it been left in the Bill and why have the needs of those workers been completely ignored?

Mr J.C. KOBELKE: Although some aspects of the amending Bill connect back to health and safety and WorkSafe, and seek the prevention of injury, most of the provisions and the clear thrust of the Act and the amending Bill go to dealing with those workers who are already injured and providing support for them. That is why we are not dealing with that in this Bill. That is a health and safety issue. It is not relevant to this clause. In particular, paragraph (c), which the member hooked the question onto, is no different from what is in the Act currently.

Mr M.W. TRENORDEN: On my previous question, lines 24 and 25 of the definition of "injury" on page 6 of the Bill refer to subsection (4) and to a matter that is "unreasonable and harsh on the part of the employer". This question is the same as my last question: will there be any change from the old Act to the new Act?

Mr J.C. Kobelke: It is exactly the same in the current Act.

Mr M.W. TRENORDEN: The intention and the outcome are the same.

Mr J.C. Kobelke: The whole intention is to replace disability with injury. The parts to which the Leader of the National Party has drawn attention are in the current Act. They have just been lifted out and they remain the same.

Mrs C.L. EDWARDES: I move to the definition of "medical report", which includes a medical opinion. That could incorporate an oral opinion. Is that intended?

Mr J.C. KOBELKE: Neither I nor my advisers can foresee a circumstance in which that would be the case. Clearly, the system must follow due process and proper legal procedures. It operates on the basis of standard forms and medical opinions. I believe this is simply to cover a written document that gives a medical opinion, which might be attached. We do not want to open up arguments that it cannot be treated as a medical report. However, clearly, it must be something prepared by an appropriately recognised medical practitioner that is in writing or part of a standard form that may be required by regulation.

Mrs C.L. EDWARDES: I move to the definitions of "participate" and "return to work". They are significantly joined, so I believe they can be referred to together. In my view, the word "participate" requires a greater level of clarification. The Bill states -

> **"participate"**, in relation to a return to work program -

That is defined later -

> . . . means to participate in the program in a cooperative manner including attending appointments as required under the program;

A person may return to work activities without the qualifications or skills to perform the position, but that person may gain the necessary qualifications or skills through the process of a return to work in that position. What is meant by participate in a cooperative manner as required under the program? I know the minister is referring to proposed section 155C, which we will deal with later. However, I believe there is a real link with paragraph (b) of the definition of "return to work", which refers to the worker taking a position that he is qualified for and capable of performing. The Bill deals with qualifications and capacity later, but it does not necessarily link up with what is intended under the definition of "participate".

Mr J.C. KOBELKE: The definition of "participate" is intended to clarify a worker's injury management obligations. We are placing obligations on employers and insurers, and also on the injured worker; that is, the worker needs to participate in a program in a cooperative manner. That is a new provision. That will be more clearly established as it is put in place. However, there is an obligation on the employee, as the injured worker, to make sure that he or she takes up the opportunities available to him or her through injury management in order to get back to work. Does that answer the member's question?

Mrs C.L. Edwardes: No. How does it fit in with the return to work program? The definition of "participate" refers to a return to work program. "Return to work" is then defined, and paragraph (b) refers to the worker being qualified for and capable of performing the position.

Mr J.C. KOBELKE: Is the member referring to proposed section 155C?

Mrs C.L. Edwardes: No. I am referring to the definitions of "participate" and "return to work". The definition of "participate" refers to a return to work program. "Return to work" is then defined. Paragraph (b)(i) and (ii) refers to qualification and capacity. A person may very well have no capacity or no qualification to return to work, but may gain that through the return to work program. I am concerned that the definition of "participate" needs a greater level of clarification because of its link to the "return to work" definition, particularly paragraph (b)(i) and (ii).

Mr J.C. KOBELKE: The system has a lot of components that must come together. With the definition of "participate", we are seeking to clearly establish that there is an obligation on the injured worker to cooperate in attending an injury management program. It establishes that. The member is correct; it will work in. However, I do not see that it will not be a very workable model with regard to the "return to work" definition.

Mrs C.L. Edwardes: You do not see a conflict between the two definitions. You see the two working very closely together.

Mr J.C. KOBELKE: There is a need for them to work closely together. We are providing these definitions as a basis for making that happen.

Dr J.M. WOOLLARD: I would like clarification of the definition of "return to work". In roughly 1990, in the Supreme Court case of Department of Education v Kenworthy, "return to work" was summarised as meaning returning to work with the same employer and performing substantially the same duties as before the accident or injury. On a reading of this Bill, my understanding is that the minister is now saying that although that may have been relevant for the past 10 or 15 years, it will now be thrown out the window. My understanding of paragraph (b)(ii) of the definition of "return to work" is that the worker will return to any type of work that he or she is capable of performing. A person may have been, say, the manager of a Coles supermarket but, because of an injury, he cannot now return to work in that position. However, he will now be classified as being able to return to work if he is able to return to work at the cash register. The minister is no longer using what has been accepted as the definition of "return to work", which is returning to work and doing substantially the same duties that the person has performed in the past. Did the minister mean to make that change in this legislation?

Mr J.C. KOBELKE: The definition of "return to work" clarifies the aim of injury management, partly reflects the existing words in section 84AA and provides that a return to work may be with the original employer or another employer. Therefore, it picks up what is already in section 84AA, and it adds "another employer". That is available also. This level of specificity will ensure that every attempt is made to return an injured worker to appropriate employment. Clearly, it is appropriate employment. The first preference is the job the person was doing previously.

Dr J.M. Woollard: If the person cannot do that, it is any job.

Mr J.C. KOBELKE: It has to be based on a worker's ability to return to work and the degree to which he or she is restricted or limited by an injury.

Dr J.M. Woollard: I am asking because of the entitlements that workers may get as a result of an injury, and when the entitlements may stop, because those workers may not be able to go back to their previous work, which may have involved heavy lifting duties. They might be offered a job as a car park attendant, for example, and therefore the argument would be that a job is available, that they can return to work and that they are not entitled to receive the benefits they have been receiving.

Mr J.C. KOBELKE: This is an issue with the current system, and will always be an issue. We are seeking through these provisions to make sure it is better managed. The real issue is that 50-year-old workers have potentially another 15 years working life. Some of those workers who are injured get a bit of a payout and then fall back onto social security payments, sickness benefits or whatever. The quality of life and the future of such people are far inferior to those of a person who goes back to work. Of course, there is no comparison with a young worker of 20 years of age who has his whole life ahead of him. Whatever he might get in payment will simply not give him the life he would have if he could get back into some sort of employment. It is a matter of looking at specific cases and working out the optimum that can be obtained for an injured worker. It is a complex issue, which obviously rests on doctors, vocation and rehabilitation advice and a whole range of services that need to be in place. It also requires a commitment on the part of the injured workers, and they need to be given the hope and the vision that they can achieve results. This is also picked up in many of the changes that we are making to try to get people back to work more quickly and to give them support. We are clearly seeking to obtain that through these provisions. We are dealing with a fundamental part of that whole structure.

Dr J.M. WOOLLARD: I accept that there are problems with the current legislation and the stage at which a person can return to work. However, under the current legislation, injured workers have more access to common law. The High Court has ruled a return to work to mean substantially a return to the same work. This legislation

will override what injured workers have been able to argue in the High Court. It will limit the ability of seriously injured workers to receive damages when they move from a high-income to a low-income bracket. This legislation will not help the situation. For example, some manual workers in the mining industry are on high incomes. Their lifestyle and family situation may be based on that income. As a result of this legislation, if they are injured, damages would not be awarded on the basis of the work they currently do. It would be a matter of their returning to work, and previous economic factors would not be taken into account. Does the minister agree?

Mr J.C. KOBELKE: The member and I have totally different perspectives on workers compensation and how it works. I tried to say in my earlier response that many injured workers, I might estimate the majority, currently go to common law. They are far worse off by going to common law. It does not help them; it leaves them worse off. That is my real concern. Their return to work looks after their long-term future and makes sure that they are better off. Common law leaves many of them worse off because they are discouraged from returning to work. They might get a payout of $50 000, $60 000 or $90 000, but that will not last them for the rest of their life. Because of what they have gone through to get that payment under common law, they are less likely to get back into a decent job to earn money. What is a $100 000 payment if workers can go back to work and earn $30 000 or $40 000 for the next 20 years?

The problem with the member's approach is that many workers are worse off by going to common law, but lawyers make a lot of money out of it. I do not want to put money in the pockets of lawyers. I want to look after injured workers. If the member talks to anyone in Australia, except a few biased lawyers, she will be told that this is the best thing that we can do to look after injured workers. A few biased lawyers do not want people to return to work because they are making money out of the system. I suggest the member look hard at the scheme and not pay too much attention to what has been poured into her ear by one or two lawyers who do not have very high standing in this city. They are making lots of money out of injured workers. We want to look after injured workers and not put money into the pockets of that small number of lawyers who have a very biased and jaundiced view of the workers compensation system. Return to work is recognised almost universally, except for that very small number of lawyers, as being of huge benefit to injured workers.

The Government is not worried about a small payment of $50 000 or $100 000 to last injured workers for the rest of their life; we want them to have a future full of promise and hope. We will do that by their returning to work and our looking after them; we will not do it by encouraging them down the road to common law with the promise of a pot of gold, when they get very little. A recent survey we conducted showed that over two-thirds of injured workers who currently go to common law in the second gateway get $90 000 or less. That will not last them a lifetime. The lawyers do well out of it, but those workers do not get enough under the current system. No current system will do that under common law, so the answer for those injured workers is to look after them and get them back to work. Everyone knows that. I suggest that the member not be prejudiced by a small number of lawyers who are interested only in what goes into their pocket.

Dr J.M. WOOLLARD: I appreciate the assistance I have had from some lawyers when considering this Bill, which was only introduced into this Parliament a few weeks ago. I assure the minister that the reason I started to look into this area was the contact I had with people who had been injured at work. I was in front of Parliament House when the rally was held the other week. I listened to wives whose husbands had died. I saw photographs of family members who had been disfigured. I know of workers in my electorate who have committed suicide because of their work-related injuries. The minister talks about systems generally. People in Queensland have open access to common law, their premiums are lower than those in Western Australia and there is a positive return to Treasury. The minister says that at the moment the only thing happening is money going into lawyers' pockets at the expense of workers. I am willing to be persuaded. Why does the minister not table those figures? Maybe I will change my stand on this Bill. I would like to see those figures. I want to know what is going to whom and at what level. There is currently a sliding scale for 16 to 30 per cent disability and then uncapped benefits for 30 per cent plus. That sliding scale for workers is being taken away. Step 1 is being taken away; the Government is moving just to step 2. I am willing to be persuaded. I know that the minister is not going to supply the regulations and the guidelines. We cannot see how this Bill will really work. I know that is not generally done with legislation, but this legislation will have such a big effect on workers in so many areas that I think an exception should have been made in this case. I ask the minister whether he will table, perhaps later today, the information on which he has based his statements. During my briefing I was given the same advice from his advisers.

Mr J.C. Kobelke: I have just made the statement. When we get to the provision on common law, I will be happy to provide more detailed figures. We are not currently dealing with that.

Dr J.M. WOOLLARD: Will the minister table that information at a later stage?

Mr J.C. Kobelke: I will not table it, but I will give you the data and the information.

The ACTING SPEAKER (Mr J.P.D. Edwards): Member for Alfred Cove, I have given a fair bit of latitude. I am not laying the blame entirely at your feet, because I think the minister also brought up the issue of common law. I ask that the member and the minister come back to the clause we are speaking to, rather than go off at some divergent angle at this point.

Mr B.J. GRYLLS: I draw the minister's attention to the approved medical specialist panels, and follow up the comment on access to approved medical specialists in regional Western Australia. Should the minister be successful in getting this Bill through both Houses of Parliament, I ask him to consider the opportunity to use the teleconferencing facilities that are available at regional telecentres to provide some of the specialist panels. Once again, I am quite confident that we can get doctors into the regions who will become approved medical specialists. However, I am concerned that we might not be able to get a full, approved medical specialist panel to regional Western Australia. There are 100 telecentres throughout regional Western Australia that provide videoconferencing facilities. There may well be an opportunity to use those resources to enable people who are based in regional Western Australia to appear before an approved medical specialist panel.

Mr J.C. Kobelke: The medical assessment panels are being renamed, and will have a more restricted use under the new scheme. They have always met in Perth. It is unlikely that enough medical specialists will be available in regional areas to form a panel. I cannot provide any promise that we will be able to change the arrangements that have existed for years. Those medical panels will meet in Perth. However, the issue has relevance to dispute resolution. Disputes on the degree of impairment that cannot be settled end up before a medical panel. Dispute resolution will be freed up, so that a lot more can be done through the use of teleconferencing etc. When we come to the provisions on dispute resolution, you will see how we are making radical changes in that area. We are mindful that we need to make better access available to people from country and regional Western Australia.

Mr B.J. GRYLLS: I just wanted the minister to be aware that this facility is available. The opportunity is there to be used. It would be good for that facility to be used if it could be.

Mr P.D. OMODEI: I understand that the member for Merredin has some further questions and I would like to hear those questions.

Mr B.J. GRYLLS: I refer to the definition of "return to work" on page 7 of the Bill. The definition refers in part to a position -

(i) for which the worker is qualified; and

(ii) that the worker is capable of performing,

I ask the minister to provide some explanation of those subparagraphs, which are obviously quite important.

Mr J.C. KOBELKE: The subparagraphs reflect the current provisions in section 84AA of the Act. This definition just makes sure that the return to work is safe for the worker. I think that was in part what the member for Alfred Cove was alluding to. There is always a balance. Workers should be encouraged and should have an obligation to take on opportunities, but we do not want them to be forced back to work before they are ready and at the risk of incurring other injuries. That balance requires fairness. That is reflected in that definition and it is contained in the existing Act.

Mr B.J. GRYLLS: I refer to the part of the definition on the position that a worker is capable of performing. There is also the possibility for workers to be put back to work in tasks that are far below their ability. We also want some clarification that that will not occur.

Mr J.C. Kobelke: That is the balance we need to get.

Mr P.D. OMODEI: The definition of "specialised retraining program" refers to enabling -

. . . a worker to return to work by assisting the worker to undertake formal vocational training . . .

Will travel and accommodation costs be covered under the legislation if a training facility is not available in a person's country town or local area?

Mr J.C. KOBELKE: I have already indicated that the specialised retraining program will be provided to only a limited number of people. We need to make sure that it works. It will be aimed at those people who find it difficult to get back to work. A fair bit of money is involved for each person. We need to make sure that this scheme will prove useful and get people back to work.

Mr P.D. Omodei: Who pays?

Mr J.C. KOBELKE: The insurer pays. We will come to that in a second. The scheme will use registered training organisations. They are scattered throughout the State. It would need to be appropriate. It might be provided by a technical and further education college or private provider. The course or program would have to have a good chance of success in getting a worker back to work when his injury means that he cannot go back to the work he was previously doing. The issue is not one of an injured worker who would perhaps like to get a better job. The program will be available to injured workers who cannot go back to the type of work they were doing because of the impairment they now have. That requires more than just a rehabilitation program, which provides a maximum of $9 000.

Mr P.D. Omodei: Is it a total of $9 000 over three years?

Mr J.C. KOBELKE: That is the current amount allowable. It is pegged by the prescribed amount, so that if the prescribed amount goes up, it goes up. It is a percentage of the prescribed amount. Currently, it is around $9 000. We are talking about considerably more than that. We will come to it later. There is a specific set of injured workers to whom we would like to give far more substantial help. That may involve a 12-month TAFE course. For example, a person working in the building industry might hurt his back and be unable to do that sort of work any more; however, he might be able to become a building inspector. That will involve doing a TAFE course. Such a person might want to get his ticket to become a builder and supervise work. We are putting in place a whole new scheme to provide workers with that opportunity. The training will be provided through registered training organisations.

Dr J.M. WOOLLARD: The minister may perhaps not have considered, but may be willing to consider, my next point. It appears unfair that someone may undergo a retraining program and that the retraining may not work; that is, the person may not be able to find employment or may develop post-injury complications. Currently under the Bill, it is a choice of either doing the retraining program or electing to pursue the issue under common law. If people have undergone retraining, they cannot then access common law. I accept that the Government will pay for the retraining programs. However, thousands of university students must currently pay back the cost of their educational program when they have finished their course. It is again seen as WorkCover pushing an injured person in one direction or another rather than giving him an option. Is the minister willing to consider that if someone started a retraining program and -

Mr J.C. Kobelke: As I indicated, I totally reject the member's premise. I think she has it totally wrong. I have also had guidance from the Acting Speaker that to explain it we will get into the area of common law.

Debate interrupted, pursuant to standing orders.

[Continued on page 3539.]