LEGISLATION COMMITTEE

on the

WORKERS' COMPENSATION REFORM BILL 2004

The meeting commenced at 10.30 am.

Advisers: Ms D. Munrowd, Director, WorkCover WA.
Mr K. Gillingham, Acting Legislation Officer, WorkCover WA.
Mr R. Stone, Senior Policy and Legislation Officer, WorkCover WA.
Mr P.A. Brookes, Senior Policy Officer, WorkCover WA.

The committee adjourned on 16 June after clause 113 had been agreed to.

Clause 114 put and passed.

Clause 115: Section 152 amended and transitional provision -

Mrs C.L. EDWARDES: How many applications are received at the moment for the 100 per cent loading by insurance companies? How many complaints are received from employers about premiums? What is the increased number expected that would be received between the 75 per cent and 100 per cent level without the adoption of this provision? How did the minister determine the 75 per cent figure?

Mr J.C. KOBELKE: The precise figures will be provided to the member later. My recollection is that it was in the order of a dozen a few years ago. I understand that the number has grown beyond that in the past few years. The exact numbers will be provided to the member. We do not have them with us.

The 75 per cent figure was seen as a compromise. The changes made by the previous Government moved the figure from 50 per cent to 100 per cent. To ensure a competitive market, applying the 100 per cent loading level was regarded as excessive. As members are aware, discounting can occur on the set average premium and a loading can apply. The Government seeks to narrow that band. Rather than a potential loading of up to 100 per cent above the set average premium rate for an industry, that loading limit is to be reduced to 75 per cent. Also, a subclause will take into account transitional arrangements for premiums already in place at close to the 100 per cent figure.

Clause put and passed.

Clauses 116 and 117 put and passed.

Clause 118: Sections 154A and 154AB inserted -

Mrs C.L. EDWARDES: We discussed this clause in earlier consideration. Proposed section 154A relates to regulations that may provide for insurers to inform employers of specified details of premiums and other charges relating to the policy; that is, information on anything relating to premiums or anything else that could be done under the Act. Is that taking place now? I remember that the previous Government started that process. Although, it did not have the necessary regulations in place or the power, it had started the process. An issue of concern then was that insurance companies had to provide a significant amount of material statewide and federally. The previous Government attempted to synchronise the two to remove duplication. More importantly, extra work was to be avoided. How has that process gone?

Mr J.C. KOBELKE: The member's question does not relate to this proposed section, although I am happy to attempt to answer it. Insurers must meet an upgraded requirement to the Australian Prudential Regulation Authority. I am advised that WorkCover is looking at its extensive requirements to see whether it can harmonise the requirements with those of APRA and remove duplication; therefore, APRA reporting could be used to meet WorkCover requirements. Harmonisation is sought to the fullest extent possible. However, this proposed section is not about that aspect; it relates to the provision of information to employers. Different insurers provide a range of different information to employers who take out policies and pay premiums. The provision is not primarily a standardisation, but designed to ensure that some minimum standards apply. Issues arise with levies. We have removed stamp duty from workers compensation, which has been a huge win for employers. That was a clear initiative taken by this Government. Various matters such as the goods and services tax still apply. Although insurers deny they do it, the potential arises for splitting, as it is called, to insure only for statutory benefits, with extra premiums required to cover common law etc. The complexities of some policies mean that employers are not clear on what is covered. If problems arise in those areas, a head of power under the

regulation-making authority under proposed section 145A will enable a stipulation to employers about premium costs and what is covered.

Mrs C.L. EDWARDES: Will the regulations settle a minimum amount of information that insurers must provide to employers?

Mr J.C. KOBELKE: It gives the power to put that in place.

Mrs C.L. EDWARDES: Are the matters we talked about earlier in proposed section 154AB "Special directions by Minister" to the board different from the retrospective claims? Is this when the retrospectivity will be applied? Proposed subsection (2)(a) is Dutch. That is the retrospectivity.

Mr J.C. KOBELKE: I am double checking with my adviser. I am sure I answered this question earlier. I am making sure that I have the right proposed section. Under another proposed section, the minister can give directions to the governing body, which happens currently. The minister is excluded from giving directions on the setting of premium rates. What we are providing for is special directions so that the minister can give directions on premium rates, but only to the very limited extent in which it relates to those transitional costs; that is, people who are currently in the system and are gaining access to benefits under the new improvements. They are existing incidents under existing policies. Therefore, we are asking that to be taken out of the profits that the insurers have made over the past few years. It is only in that very limited extent, which is set out here, that the minister has that power of direction.

Dr J.M. WOOLLARD: Will proposed section 154AB apply only to people who are currently in the system? Will the deductions automatically come into play for people who enter the system in the future?

Mr J.C. KOBELKE: That is not correct. I will clarify it. The Premium Rates Committee sets the premiums. They are the average premiums for various industry sectors. The premiums are set totally independently of the minister and the minister is advised of them. What we are providing in this Bill is that the minister can direct that when establishing those average premiums the committee may deduct from or fail to factor in the increased costs of the benefits that the insurers will have to pay through the transitional period. That is, we provide additional benefits. Those additional benefits will be available to injured workers who are already in the system. That is an additional cost. That additional cost is not to be factored in. However, the premiums that will be paid on new policies will clearly factor in the ongoing increased costs but not the people who are picked up. That whole premium rate setting and the way in which companies respond to that is a very complex issue. We will give the minister the power to direct only to the specific purpose that the setting of average premiums will not factor in those transitional costs and require insurers, therefore, to cover those costs.

Dr J.M. WOOLLARD: As the minister said, it is transitional. Therefore, proposed section 154AB should be effective for only six months or so. Am I misunderstanding this?

Mr J.C. KOBELKE: Premiums are usually written for a year. The transitional costs might flow on for a year. Basically, we are talking about the bulk of the year.

Clause put and passed.

Clause 119: Part IX replaced -

Mr J.C. KOBELKE: I move -

> Page 120, line 17 - To delete "155B or".

This amendment will remove the insurer's obligation to discharge, when requested by the employer, the employer's obligation under proposed new section 155B to establish an injury management system in accordance with the code. The primary emphasis remains on the insurer to do so if requested by the employer, thereby discharging the employer's responsibility to establish the return to work program. It is considered that the employer should otherwise have the responsibility for injury management, and guidance will be provided on this by the injury management code of practice.

Mrs C.L. EDWARDES: This amendment will replace part IX with a new section on injury management by deleting "rehabilitation". The Rehabilitation Providers Association has raised some concerns about this. Although it fully supports the Government's intentions to improve the regulatory regime, it had believed that Dr Rob Guthrie's recommendations were correct; that is, that the rehabilitation providers were the pre-eminent experts in delivering the services required to assist injured workers to return to work. However, the association believes that the draft Bill makes little reference to rehabilitation but rather limits its involvement to a code that is still, I think, to be seen. The association also says that -

> Rehabilitation providers believe the injury management process requires impartial, professional expertise which is able to help injured workers navigate the maze of legal, medical and personal

> adjustment and occupational challenges and guide them back to meaningful employment as soon as possible following injury. No other party involved in workers' compensation schemes has this expertise or capacity. All other parties tend to have a narrower focus, according to their specific expertise or their role within the schemes. The removal of the term "rehabilitation" from the name of the Act is confusing as the term injury management has a totally different meaning in our industry -

Meaning the rehabilitation providers -

> to the meaning in the legislation. As it stands the draft bill defines "Injury Management" as "the management of workers' injuries in a manner that is directed at enabling injured workers to return to work". For some employers this might be calling a doctor or physiotherapist. Whilst the providers of rehabilitation services support the initiative to maximise employer involvement/management there needs to be an identification process for cases which are beyond their expertise and/or resources.

Essentially, the association is saying that the legislation will create confusion and that although it is acknowledged that rehabilitation is a subset of injury management, it is confusing and may very well be dealt with differently from how employers and employees have dealt with it in the past. It considers also that rehabilitation may not be seen to be a prime focus for getting injured workers back to work. The association is concerned that that level of confusion could be caused among the players in the field.

Mr J.C. KOBELKE: This is a complicated area and one in which my adviser should speak because she has the expertise. It is an area in which a single view is being formed across the jurisdictions of Australia. The prime responsibility for injury management should be left to the employer and the injured worker and together they can address the future and determine how the worker will get back to work and get on with his life. They could then call on a rehabilitation specialist or a specialist from whatever area is required to assist the worker through that process. In her question the member alluded to the fact that there has been a change of view, and this is the strength of the process we have gone through. When the various players pointed out that one of the earlier papers released by Rob Guthrie did not get it right, we corrected it. That is what the member was alluding to when she referred to the change that will help us get the correct focus in what is being attempted.

Mrs C.L. EDWARDES: The issue is that in bringing in a new injury management program, people must understand that rehabilitation, which has a totally different meaning for different people, is still the major focus and emphasis. When injury management starts in the first few weeks, people must understand there is a move on developing the return to work plan and the like, and that that will come about only through a strong education of the stakeholders.

Mr J.C. KOBELKE: I fully accept what the member is saying. A draft code is already out for consultation. I am getting feedback on that. That code will lay down things of the nature the member spoke about.

Dr J.M. WOOLLARD: I am concerned about the terminology "each employer" in proposed sections 155B and 155C. I am thinking about the demands that this provision will place on small business. I am quite happy that the minister is seeking to delete "155B or" from proposed section 155D(3). However, why is the minister not deleting "155C(1) or (3)", which is on line 18? I accept that there should be something like this for big business. However, through proposed section 155C, the minister is placing a heavy burden on small business proprietors who may have only one or two employees. I ask the minister for his views.

Mr J.C. KOBELKE: The way the legislation has been drafted is correct. However, a quick reading of it could give one the impression that small business will have to take on a huge responsibility and that it would not be able to cope with that, or that large costs will be involved. There is no truth to that at all. There is clear responsibility on the employer to establish the injury management system. That will probably be provided to small businesses that want to take it up on a chart or on one or two pieces of paper. They will have a standard injury management system, which they can put up in their office and which will provide clear guidance on working with their injured worker and the approach that should be taken. Larger companies, particularly self-insurers, have far more elaborate systems because they know the benefits they get from them. The guides, which can be provided in a simple form, will educate small businesses and help them down the road to achieving a much better result for their injured worker and, therefore, for their company. An example policy of one to two pages is already available. The issue is that they can also pass that responsibility to the insurer, which is picked up later. An insurer may say that for a certain industry sector or group of people it is insuring it is developing certain material or that it will take over and run the program for the employer. The responsibility is to develop the programs in a more elaborate way and to move to the next step. There are two steps: the first is the injury management program or system and the second is the quite specific return to work program that has to be developed for an individual worker. Again, the employer has a responsibility but the legislation makes it clear that that gets caught up with the conditions of the insurance policy and that the insurer has to help with that. Tens of thousands of small businesses will not make a claim; therefore, we are not going to put them to the

trouble of developing these things if they do not have occasion to use them. The insurer is involved with not only the premiums and selling the policies but also in handling the cases. The insurers have the expertise to step in and support small business with specific return to work programs.

Dr J.M. WOOLLARD: Is the minister saying that the Government or the insurer will provide all small business owners with guidelines that they can keep at the back of their small business at a minimal cost? I am concerned about what the cost will be for small business proprietors. What happens if they do not have these standards? If they are not provided automatically by the Government or the insurer -

Mr J.C. KOBELKE: They will be provided automatically; they will be on our web site and the insurers will also have them.

Dr J.M. WOOLLARD: At no cost?

Mr J.C. KOBELKE: Absolutely.

Mrs C.L. EDWARDES: Proposed section 155A refers to the code of practice. The minister indicated that that had already been circulated. When was that released and to whom has it gone?

Mr J.C. KOBELKE: It has gone to all the key stakeholders.

Mrs C.L. EDWARDES: Does that include the Rehabilitation Providers Association Western Australia?

Mr J.C. KOBELKE: I understand that it was circulated only a week or two ago. I have already personally received feedback. The rehabilitation providers want to provide substantial input because they think it can be substantially improved.

Amendment put and passed.

Mrs C.L. EDWARDES: Given the rehabilitation providers' expertise that has developed over many years and their own input into developing a code, will the minister ensure that they have sufficient time and opportunity to go through that code - there will be time because the Bill has to go before Parliament - and to sit with the minister and work through any issues?

Mr J.C. KOBELKE: The member for Kingsley has my absolute assurance on that. The code has to be ticked off by the board of WorkCover and all the other provisions have to be put in place. It will be months before that is likely to be finalised as part of the new package. Clearly, the role of professional rehabilitation providers is very important. That is often contested by other stakeholders. What is crucial to that is ensuring that we have a transparent process so that we can see the value added to the system by the professional rehabilitation providers. I think they are very anxious to see that happen. That will certainly justify the money that goes into it. We will be able to show we are getting better outcomes for the expenditure.

Mrs C.L. EDWARDES: I refer to proposed section 155D, to which the member for Alfred Cove previously referred. The obligation of the insurer is obviously of great concern and the amendment the minister put forward has deleted "155B or" from proposed subsection (3). Proposed section 155D(3) reads -

> If an insured employer requests the insurer to discharge the employer's obligations . . . the insurer must take such action . . .

I thought the minister told the member for Alfred Cove that under proposed section 155B the insurers will do the work so that a huge responsibility is not placed on employers, particularly small business employers.

Mr J.C. KOBELKE: There are two steps involved: the first is the issue at a general level of an injury management system; that is, a framework, which I have indicated will be one or two pages long. Small businesses will have a copy in their files. They can get it from WorkCover's web site. Insurers might provide it as part of their service. We are removing the obligation of insurers to develop it and give it to employers. We are placing responsibility on small businesses simply to obtain it. The companies that we encourage to take a more proactive role might develop the standard framework into a more elaborate tool that better suits their company or their industry. It will be a simple process of downloading the framework from the web site or requesting that it be posted to the business. Insurers may also provide it but because of the amendment there will not be an obligation on the insurers to do so.

Mrs C.L. EDWARDES: The member for Alfred Cove made the point that it will place a huge burden on small business. The previous Government started the process between the employer and the employee and the doctor but it is simply beyond the capacity of some small business employers to implement an injury management system. The establishment of the return to work program under proposed section 155C and the establishment of an injury management system under proposed section 155B will impose a huge administrative burden on small business people.

Mr J.C. KOBELKE: Not at all. The minimum requirement of proposed section 155B will be met by employers simply downloading the brief document from the web site, reading it and giving an undertaking that they will seek to apply it. That is what we are asking. One of the key reasons for proposed section 155B is the concern that if an obligation is placed on the insurer to provide an injury management system, insurers might, for good purpose or otherwise, believe that they should dictate a much more elaborate framework and build a charge into their premiums for that. That is one of the reasons we are removing that obligation on insurers.

Mrs C.L. EDWARDES: My concern is that an injured worker might slip through the system because the employer does not have a process in place. The proposed penalty of $2 000 is onerous. The minister and I both know that small business people who are very good with their hands often get themselves into financial trouble because they are not very good at paperwork. This proposed section will create an enormous burden. I understand what the minister is saying about insurance companies factoring in a charge if the obligation is placed on them. However, I am concerned about an injured worker slipping through the net. What process does WorkCover have in place to ensure that will not happen? At what stage will action be taken to impose a penalty of $2 000? Will it be immediately that it comes to light that an employer does not implement an injury management system?

Mr J.C. KOBELKE: It is not very likely that a fine of $2 000 will be imposed. The requirement on the employer is not burdensome. Only in very rare circumstances would action be taken under that proposed section. It might be taken if a workplace has a high claims record and, therefore, has become the centre of attention and has refused to establish an injury management system, which simply means having some cognisance of what is already provided by WorkCover and seeking to generally implement it. The legislation will contain the power to impose a fine if the employer refuses to comply. As the member will be well aware, given that the courts generally impose about 10 per cent of a maximum penalty for a first offence, it is likely to be a $200 fine.

Mr P.D. OMODEI: I refer to proposed section 155A, "Code of practice (injury management)". Proposed subsection (4) provides that sections 41, 42, 43 and 44 of the Interpretation Act will apply to the code as if the code were regulations. What are those sections of the Interpretation Act? They could relate to the tabling of regulations. If the code is tabled as a set of regulations, will it be disallowable? I presume the code will come into effect immediately it is tabled and then be subject to disallowance.

Mr J.C. KOBELKE: That is correct. The code must go to Executive Council and to the Joint Standing Committee on Delegated Legislation and will be disallowable.

Mr P.D. OMODEI: Will it come into effect as soon as it is gazetted?

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

Dr J.M. WOOLLARD: I am still unhappy with proposed section 155B, "Establishment of injury management systems for employer's workers". Will the minister consider reviewing this proposed section to make it fairer for small employers? The minister said that employers could download one or two pages from the web site. I do not know about the minister's local shopping centre, but some small employers in my local shopping centre do not have the Internet and probably do not know how to use it. Would it not be fairer to amend proposed paragraph (a) by adding the words "each employer will be provided with"? That would ensure that when businesses renew their registration, the framework will be sent to them. The Government has a list of all the employers. It would cost the Government 50c to post the two pages and a cover sheet stating that the guidelines should be put up in the place of employment. That way everyone would have them and be able to read them. This provision will place too much of a burden on small business owners when there is no need to do that. The Government will produce a lot of material to describe the new workers compensation package to business proprietors. I ask the minister to consider that amendment.

Mr J.C. KOBELKE: I think the member has failed to understand what the Government is trying to do here. We are trying to change the culture and to make sure that injury management is implemented. As I said earlier when I answered the points that were well made by the member for Kingsley, we are seeking to put the injured worker and the employer at the centre of the decisions involved in trying to get the person back to work. We must, therefore, change the culture to one of education so that employers understand the benefit of getting on board. By placing the obligation on the employer, it becomes a light touch. The employer is to read, as a minimum requirement, the one or two pages that are provided as a standard and commit to following that approach. That is the minimum. Large companies and self-insurers go way beyond that because they are already convinced of the advantage of injury management. We are seeking to change the culture in all workplaces by placing an obligation on employers. We are conscious of the demands already placed on employers, which is why the Bill has a light touch.

Dr J.M. WOOLLARD: The business proprietors I know will not consider $2 000 a light touch. The minister could send out 4 000 letters to business proprietors explaining this provision. The standard injury management system could be set out on one or two sheets of paper. The minister is saying that it is unlikely small business proprietors will be hit for $2 000, but the legislation provides for it. I now have concerns not only for workers beware but also employers beware. I know of businesses that have been broken into and have suffered a loss of hundreds of dollars. I know the effect that it has had on them. This legislation will hit those business proprietors for $2 000.

Mr J.C. KOBELKE: That is totally wrong. I have a much more positive view of small business than does the member for Alfred Cove. I do not think that anyone is likely to be fined even a fraction of $2 000. Education will give them some indication of the advantage to be gained from what we want with an injury management system. If they introduce it, they will not suffer a penalty. We hope that they will go beyond regarding it in a passing way and take a greater interest in it. We hope that they will fulfil the requirements of proposed section 155B by having the document and reading it and then indicating that they wish to comply with it. They will then not be in breach of the requirement.

Dr J.M. WOOLLARD: I have read through the Bill and looked for this information, but I am sure the minister's department has a list of the penalties that are set out throughout this Bill, which employers will be hit with if they do not meet their obligations under this Bill. I would like to make sure that I do my best to circulate the information on those penalties to small business proprietors in my electorate.

Mr J.C. KOBELKE: If the member wishes to make that political point, she may do so. There are penalties for employers, for other service providers and for injured workers. The Bill tries to achieve a balance between all those various elements.

Dr J.M. WOOLLARD: May I have that information?

Mr J.C. KOBELKE: The member is not talking about how the Bill works. She is making a political point and seeking to set one group against another. If that is her intention, she can do her own homework. My intention is to get a balance between all the interest groups so that we have a fair system that respects the needs of employers and workers.

Mr P.D. OMODEI: I must pick the minister up on the $2 000 penalty. Why have a $2 000 penalty if the minister is saying that for the first offence it will be only $200? If there is to be a significant penalty, why not make it $20 000? I do not think that the request by the member for Alfred Cove is over the top. What has the Government to fear in providing her with all the penalties involved in this legislation? I would have thought that the Government would gladly volunteer that information because the penalties are obviously there as deterrents to stop people breaching the clauses in the legislation.

Mr J.C. KOBELKE: The general penalty throughout the legislation is $2 000. It applies in the same way as a parking fine. If people do not park in the wrong place, they do not get a penalty. Under a whole range of laws, prosecutions have never been brought and penalties have never been imposed. The penalty indicates that we wish people to comply with the legislation. I think anybody with a reasonable understanding of the legislation who is not trying to beat up a political issue would say that employers will not have any difficulty complying. If the one in 50 000 really wants to make an issue of it, a minor penalty could be applied. The general rule of the courts is to apply a penalty of about 10 per cent, which means a fine of about $200 for someone who flagrantly breaches this legislation and indicates that he is not willing to comply. WorkCover will not be seeking to prosecute people on a technicality for something they have not complied with. WorkCover will educate people and point out that there is a requirement that they put this system in place and that it is quite easy to do. Only people who refuse to comply will be considered for a prosecution. They might get fined $200.

Mrs C.L. EDWARDES: Proposed section 155C imposes a further burden on the employer by requiring him to establish a return to work program. The vast number of employers in Western Australia are small businesspeople. The member for Alfred Cove referred to retailers. People involved in light industrial areas are good with their hands and their heads but often not so good with paperwork. An employer must ensure that a return to work program is established under which a medical practitioner must sign a medical certificate to the effect that the worker has a total or partial capacity to return to work. It does not apply if a worker has total capacity to work or has returned to a position that the worker held immediately before the injury. The proposed subsection reads -

> . . . does not require a return to work program to be established for a worker -
>
> (a) who has returned to the position held by the worker immediately before the injury occurred; and

(b) who has a total capacity to work in that position.

Further on in the Bill reference is made to the four-week program notification by the insurer. Where reference is made to a return to work to the position held "immediately before" the injury, does it refer to days? What will be involved in the return to work? I take it that it is part of the code that is currently circulating.

Mr J.C. KOBELKE: We are talking about the establishment of a return to work program for each worker who has had time off work. As the member has rightly pointed out in her question, we are not seeking to pick up people who have returned to work or clearly have a total capacity for work. We are talking about those who must be managed back into the system. Through our injury management system, and with the return to work program as part of it, we want to assist them. Because injury management is centred on the employer and the injured worker, they are the ones who must sort it out, make the decisions and implement them. Therefore, quite rightly, the obligation under proposed section 155C rests with the employer. As is indicated under proposed section 155D, we are also very aware that an insured employer might request that the insurer discharge the obligation, and then the insurer would take on the responsibility. Large companies or companies that are self-insured and that seek to manage it themselves will not pass it on to the insurer; they will do it themselves. Clearly we do not expect small businesses to have the expertise or to make the financial commitment to do it themselves. They will pass that on to the insurer who is dealing with this every day of the week in hundreds of thousands of cases, and who will take that responsibility off the employer.

Dr J.M. WOOLLARD: When we were talking about proposed section 155B, the minister said that the insurer might develop a unique program and pass on its costs to the employer. Does the minister not think that the insurer might do the same thing under proposed section 155C if the costs of those provisions fall to the insurer?

Mr J.C. KOBELKE: It is clear, if the member understands what we are talking about. Proposed section 155B refers to an injury management system; that is, one or two pieces of paper and an underlying commitment that fulfils the requirement. That is easily standardised and can be provided to tens of thousands of employers. The minimum level required to meet that commitment does not require any work, but employers may decide that they want a Rolls Royce model and, therefore, they will be charged for it. However, the requirement under proposed section 155C is a return to work program. That must be tailored specifically for each injured worker who requires it. Not every injured worker will require it. However, injured workers who require it under the provisions of the Bill need a return to work program that is tailored to their specific needs. That has to be done and there is therefore some work involved in doing that. As I said, large companies and self-insurers who already conduct programs very well will want to continue doing them because that is where they are best done. Small businesses do not have the expertise and providing the program themselves would be a cost for them. Some may decide to do it for whatever reason because they see a benefit in it; it is open for them to do so. However, the vast majority will simply pass it on to the insurer, because a return to work program has to be developed for the specific worker.

Dr J.M. WOOLLARD: In that case, premiums for those small business proprietors will go up.

Mr J.C. KOBELKE: I do not know why the member makes that assumption.

Dr J.M. WOOLLARD: Does the minister think the insurer will do it at no cost?

Mr J.C. KOBELKE: If insurers get better outcomes, there will be savings to the system; they will have lower costs because workers will be back at work.

Mr J.N. HYDE: Workers working and earning profits.

Mr J.C. KOBELKE: Yes; there will be no weekly payments and no extra medical costs.

Mr P.D. OMODEI: On the same issue, if a small business is not capable of putting in place an injury management system and chooses to go through the insurer to do it, what guarantee is there that the insurer will tailor the rehabilitation or the injury management to the employer, rather than give the employer a Rolls Royce model, which may not be necessary and probably would not apply if the employer managed the injury himself? In other words, if the insurer provides a Rolls Royce model, it will cost more and will place a burden on a person in small business who does not have the ability to manage the injury.

Mr J.C. KOBELKE: The whole system must be monitored and will be monitored to make sure that it is providing effective outcomes. Many factors could detract from the effectiveness and efficiency of the program that is put in place. Overloading of costs is a factor, but it is not the only one; therefore, the whole system must be monitored continually. The initial approach that we are taking under proposed section 155C(3) is that the program must be in accordance with the code. The code will be adjusted if it looks as though people are using it as a milking cow and doing things with other aspects to it rather than the things that can provide the clear outcome required under the code. I will add advice I have just been given. The return to work program is not as

complicated as it may sound. In the first instance it is very simple. It is about getting a commitment from people who are already asking for help. Employers and doctors working with injured workers have been asking for some guidance. That guidance is about the employer and the employee sitting down and talking about when the worker might return to work, on advice from the doctor, what the appropriate duties for the worker might be, and then the employer and employee committing to do that. That could be one injury management plan. Some may be much more elaborate. When an employer and an employee sit down and look at a plan, the employer might say that he does not have a job that the employee can do that fits in with his or her current capacity. Therefore, the employer might have to call in expertise - a rehabilitation provider or whomever - to take it further. The initial step in the injury management plan can be straightforward, such as a talk across the table or in the workshop between the injured worker and the employer to acknowledge what can be done, how to stage the worker's return to work or how to change the duties, given that the worker is still recovering. That could be an injury management plan. The issue then would be if it is not effective or the worker needs extra support, the employer would be given advice on where to go to get that extra support.

Dr J.M. WOOLLARD: In relation to proposed section 155A on injury management, I have discussed this Bill with some rehab providers. They believe that they will have a lot more business after this Bill is passed. Will the minister explain to me whether that extra business will result in cost shifting? I know that rehab providers are funded federally; at least, the ones I spoke to at a conference in Fremantle are federally funded. Will there be an equal number of federal and state providers? Where will these providers come from?

Mr J.C. KOBELKE: This has nothing to do with the federal Government or federal providers. A percentage of a prescribed amount is available for rehab and there is a process through which that is made available. The member's suggestion that there will be a lot more work for rehab providers must be qualified. I am sure that the rehab providers who provide services that show results will get a lot more work. However, the whole system must be monitored to make sure that it is working and providing results that are assisting injured workers and getting them back at work as early as practicable in keeping with their capacity and their condition. The injured workers will be given help from rehab providers to put in place a range of support services. The rehab providers who do that through the processes we are putting in place will get more work. However, I would not necessarily jump to the conclusion that rehab providers will get a lot more work overall if they are not delivering the goods.

Dr J.M. WOOLLARD: To clarify that, will funding for those rehab providers come from state coffers?

Mr J.C. KOBELKE: No.

Dr J.M. WOOLLARD: Will the minister explain that to me?

Mr J.C. KOBELKE: It is fairly basic to our system that it is a privately funded system. Employers pay a premium to an insurer and the insurer meets the costs when they arise. The rehab money comes from the insurers.

Dr J.M. WOOLLARD: I thought that so much of the money came from the federal Government.

Mr J.C. KOBELKE: The federal Government has money for rehab, but it has nothing to do with our workers compensation system.

Dr J.M. WOOLLARD: Is that completely separate from the system?

Mr J.C. KOBELKE: Quite separate.

Dr J.M. WOOLLARD: Will there not be any overlap?

Mr J.C. KOBELKE: That is not what we are dealing with in the Workers' Compensation Reform Bill.

Mr N.R. MARLBOROUGH: There is a growing trend throughout the world for insurance companies to be owners or part owners of rehabilitation centres. Has the minister any evidence of such links in Western Australia?

Mr J.C. KOBELKE: My understanding is that at least one company is linked to an insurer.

Mr N.R. MARLBOROUGH: My very strong personal view is that it is not an appropriate link. Obviously there is a very strong argument of a personal interest. It is a bit like a doctor running a person over with his car and then treating the person's injury that he caused in his surgery an hour later. I am concerned about that link. I am concerned with proposed section 156 and how rehabilitation providers in this State will be selected. I do not think it is satisfactory for simply the WorkCover WA board to select the providers. The Act provides that medical practitioners, by definition, must have qualifications and must be recognised as such. Specialists who sit on appropriate bodies within the workers compensation system are recognised because of their qualifications. Nothing in the Bill convinces me that anybody who runs a rehabilitation company will have any sort of

qualification, other than a shingle that is put up outside the company stating that it provides rehabilitation, and a group will monitor that company and see how it performs. What measures presently exist in the State to allow me to set up a rehabilitation company? If there is no regulation, it is absolutely needed. That does not seem to be reflected in this part of the Bill. I cannot see anything in proposed section 156 that provides that a rehabilitation provider must not be linked to or owned by an insurance company - there is at least one case of that in the State - and/or must have any particular qualification.

Mr J.C. KOBELKE: The matter raised by the member is a genuine one and one that causes concern to many people. However, we are not seeking to preclude that connection between a rehabilitation provider and an insurer in the amendments to the Act. The requirements for the approval of a vocational rehabilitation provider are the same as those in the Act. That does not mean that there will not be change because of the environment in which it sits, and I will come to that in a moment. My understanding is that, under the current arrangements, the principal of the rehabilitation provider service must have appropriate qualifications and five years experience.

Mr N.R. MARLBOROUGH: Is it the principal who does?

Mr J.C. KOBELKE: Yes.

Mr N.R. MARLBOROUGH: However, rehabilitation providers employ many people.

Mr J.C. KOBELKE: That is true of any company. We are not seeking to interfere in how rehabilitation providers allocate the work and the different types of specialists they use. I have visited companies in Perth that employ physiotherapists, occupational therapists, nurses and a range of skilled people. It is their job to ensure that they are using those skills as required in the interests of the injured worker.

I will come to the point that more directly answers the member's question. Clearly, we would have very real concerns if vocational rehabilitation services were being used as claims management. That is not what it is about. It is not about insurers seeking simply to manage claims to minimise costs using a rehabilitation provider. The intent of the rehabilitation provider is to look to the interests of the injured worker and how that worker can be assisted to get back to work or to get on with the best future plan for his life and career. That is what it is about - not claims management. The member's concern, which is a real one, is that the structure we are putting in place will give a legislative base to the injury management code. There will now be a clearer benchmark against which we will be able to measure the outcomes of the rehabilitation providers and the role they play. Although the regulation process that applies to the rehabilitation providers will not be changed in any major way along the lines suggested by the member, the management of the potential problem of too close a connection between a rehabilitation provider and an insurer for the purpose of claims management, rather than what it is supposed to be about, will now be more directly controlled and managed and will be excluded from the process by the code. There will be ongoing monitoring of how the system is working, which will be easier to benchmark as there will be a stronger basis for establishing the code. I accept the point that the member has made. There certainly is potential for this process to go off the rails and not meet the clear objectives that are being laid down if a rehabilitation provider seeks to meet another objective that may relate to the control of costs by an insurer. We are very conscious of that, and we are confident that it can be managed through the provisions in the Bill, even though they do not go directly to excluding that link.

Mr N.R. MARLBOROUGH: Although I do not have an amendment before me, it is a provision of the Bill that we need to look at. Will the minister be in a position to accept an amendment next time the committee sits? This industry suffers from the perception of poor and biased management. It could be argued that a rehabilitation provider, backed by the financial clout of an insurance company, can provide all the services, and better services, that are required. That is a genuine argument. Equally, it could be argued that it is an unnatural and unnecessary link, unless an outcome is to be controlled. There is an opportunity to make it clear in legislation that such a link is not appropriate in Western Australia. I think we could come up with a form of words that would make it clear that that is the intent of this legislation. There is no need for such a link. I know of one such company in the State, and I am happy to accept that there is only one. That tells me that a lot of other companies are not linked to rehabilitation providers, and that is the preferred model. I am suggesting that an amendment could be made to the Bill to reflect that reality. That is my first point.

My second point is that I want to see some form of accreditation for rehabilitation providers. A person cannot simply get a medical degree from the University of Western Australia and set up as a medical practitioner. That doctor must go through certain processes. That does not happen with rehabilitation. Is there an Act that provides that a rehabilitation company must have certain qualifications and must employ personnel with a certain level of skills? Is there a national accreditation program? I will use another example that I know the minister, with his background, will be acutely aware of. The number of private trainers of skilled workers for industry has mushroomed over the past 15 years. The minister and I know that the quality of some of those private trainer providers that are training skilled workers for industry leaves a lot to be desired. Those at the top end are very

good, but those at the bottom end should not be in the business of taking money through the process and providing training. I have no evidence that there are poor providers in the rehabilitation industry, but it is an important part of the workers compensation system. I have evidence from people who have been through rehabilitation programs who have come to see me. They were absolutely dissatisfied with the level and quality of rehabilitation. I support the minister's moves to police that. Before we get to the policing stage, could we not put in regulations or in legislation absolute criteria for national accreditation or whatever it is these people must meet before they can put up their shingle? It should not be left solely to the board to determine whether a provider will operate in the field of rehabilitation without considering its qualifications. I am seeking to make it the jewel in the crown of the workers compensation system. It is too open to allow into the mix all sorts of players without qualification or regulation. We should try to address in the Bill the link between insurers and rehabilitation providers and get rid of it. There is no role for it in the community.

Mr J.C. KOBELKE: The point of view expressed by the member has some validity, although we are not dealing with that matter in this amending Bill. The member for Alfred Cove alluded to rehabilitation providers who work in a range of areas, such as the Commonwealth etc; that is, they work beyond the workers compensation system. It may be valid that we should have some form of regulation of that profession. It does not exist. Such regulation is not contained in the Bill, and that could not be done without a lot of work drawing the package together. It is not countenanced in this measure.

The Government is very keen to get results. Therefore, the work of the rehabilitation providers will be monitored and supervised. Various people have points of view about whether services provided to workers from rehabilitation providers are top quality or something much less and could be improved. I do not want to judge rehab providers. They should be judged on outcomes produced, not on criteria relating to company structures and the like. A linkage from the rehab provider to the insurer raises an alert, and an eye should be kept on that aspect. However, that should not be the criterion to determine whether the rehab worker should be accredited under proposed section 156. All rehab providers must be considered to ensure the best quality of service. Those at the bottom end in the delivery of required outcomes through the code need to be given a hurry-along or have their accreditation revoked, as provided for in proposed section 156(1)(b).

Mrs C.L. EDWARDES: Proposed section 156 contains the revocation provision. The minister referred to conditions. What conditions might be imposed on rehab providers, and what will be the basis for revoking accreditation? Also, I add to the member for Peel's comments. I understand that a competency standard was established in 1999 to standardise that area. I have a copy on my desk. I do not know where it went from that point.

Mr N.R. MARLBOROUGH: Was that a state or federal standard?

Mrs C.L. EDWARDES: It was a state measure to link to the federal competency standards. I cannot confirm where it went, but it was established in 1999. A number of complaints were made at that time about rehab providers and the consistency in their work and outcomes. That quality of service has improved over the years as I receive fewer complaints in that area. I still receive complaints from workers who must go from one provider to another, often at the request of lawyers. I know the minister's direction statement outlines that the rehab provider is the employee's choice. Can the minister confirm where that resides in the legislation? Also, how does the minister propose to get around the negative outcome for injured workers when they are required by lawyers to go from one rehab provider to another? This is often done on the basis not of the competency of the rehab provider, but in an endeavour to keep the system moving along while dealing with the legal case. It is only a delaying tactic in changing providers. It does not occur in a large number of cases; however, the number is sufficient to cause concern. I have received a number of complaints from injured workers, and I am sure it is more widespread than my experience.

Mr J.C. KOBELKE: The member's question raises three key points. First, proposed section 156(2)(b) refers to the advisory committee to be established for outlined purposes. The advisory committee will establish criteria for performance. This relates to the issue raised by the member for Peel. Criteria will be established with percentages and what is seen as appropriate times concerning returning to work - that sort of matter. The advisory committee with representation from rehab providers will establish the standards.

The second point was employees' choice, which is a well-established policy position. It is in the draft code, not the legislation.

The third point of changing rehab providers for what might be perceived as delaying matters in disputation is dealt with clearly in the dispute resolution procedures. A range of factors are driving the process. Much shorter time lines will be involved. The arbitrators will be alert to changes in rehab providers or other tactics thrown in

as delaying tactics, and will cut through those processes to get on with the job. The Government is putting in place measures in the dispute resolution processes to deal with the tactic if used.

Mrs C.L. EDWARDES: Who is likely to comprise that advisory committee?

Mr J.C. KOBELKE: There would be major representation from the rehab service providers themselves. That will be established by the board. When the advisory committee was previously established, it contained employee, employer and insurer representatives and somebody from rehab providers. The board will determine this point. My view is that a minimum would be an employee, employer and rehab provider representative, and the board will decide on others to be appointed to the committee.

Mr N.R. MARLBOROUGH: I would hate to see an insurance representative included when a rehab provider company is owned by an insurance company. This would be in addition to a rehab person. It would be just crazy stuff.

Mr J.C. KOBELKE: The Government has removed an insurance representative from the board in the new structure.

Dr J.M. WOOLLARD: The member for Peel raised some valid concerns about rehab provision, claims management and empire building with insurance companies' rehabilitation management. The member asked the minister how many insurance companies are currently involved with rehabilitation management, and the minister said one.

Mr J.C. KOBELKE: I think I said that I am advised that we are aware of one.

Dr J.M. WOOLLARD: I stand corrected. However, there could be more.

Mr J.C. KOBELKE: Certainly.

Dr J.M. WOOLLARD: How many insurance companies were there in the market four years ago, and how many will be in the market in four years? Although the minister is currently aware of one of eight in that situation, in two or three years the minister may be aware of one in four; that is, some of the insurance companies may have merged. I hope the member for Peel continues to pursue the matter with the minister. Will this Bill be evaluated and return to the House in 12 months or two years?

Mr J.C. KOBELKE: I am advised that the principal Act does not contain a review clause. There is no statutory requirement for a review. The workers compensation scheme must be continuously reviewed because it is a dynamic system.

Dr J.M. WOOLLARD: I am asking that the minister consider including a review clause in this Bill. Some of the concerns that have been raised about the Bill are very valid. The Bill should be assessed and reported back to Parliament.

Mr J.C. KOBELKE: I am sorry, my answer to the member's last question was incomplete. I momentarily forgot that we have given a very clear commitment to review the changes that are made to the total system after one full year of its operation. A review will be conducted when the financial report has been made after a full year of the new system's operation. We have given a clear undertaking to review the new system on the basis that some people fear that the costs will blow-out and others are very keen for improvements to be made to workers' benefits in a range of areas. We are keen to continue to improve the system. We will not make that improvement - we have given a public commitment - until the system has operated for one full year after which time we can determine what the costs were and how it had operated.

Dr J.M. WOOLLARD: If that review is to occur after one year, maybe there could be an addition to this clause that within two years a report be made to Parliament that a review clause be included in the legislation. That would allow the department two years - one year of operation and one year for the department to put together its report - to assess the changes to the legislation.

Mr J.C. KOBELKE: I am not willing to commit to that because this legislation has had umpteen amendment Bills; it is always under review. We have given a clear commitment to review the amendments we are making in this Bill, which are quite extensive. That review will take place. It is not necessary to have a statutory requirement for that review.

Mr J.N. HYDE: I fully oppose any inclusion of a sunset clause in this Bill because it would have the opposite effect from what we are all seeking.

Mrs C.L. EDWARDES: I refer to proposed section 156B, "Arbitrators' powers in relation to return to work programs". What are the consequences for a worker who does not participate in a return-to-work program after

being ordered to do so by the arbitrator? The consequences applied under the specialised retraining programs in proposed section 158I(2) are far more serious than what has been provided for under proposed section 156B.

Mr J.C. KOBELKE: If a worker does not comply, under proposed section 72B, the employer can apply for a suspension. This could mean that the worker would lose his weekly payments or suffer other consequences.

Mrs C.L. EDWARDES: Proposed section 157A would require a worker whose periods of incapacity during any period of 12 months or less, which the insurer or self-insurer knows to have exceeded four consecutive weeks, must notify WorkCover within seven days. The Bill then lists several requirements about what WorkCover may or may not do. Why did the Government not proceed with a mandatory referral to a rehabilitation provider? In the minister's direction statement, it is clearly pointed out that the minister did not want workers to slip through the net. Everyone is aware of the figures of four weeks. I do not need to go through them again. Some research indicates that the optimum time for rehabilitation is between seven and 14 days. The Bill provides that after four weeks the worker has seven days to notify WorkCover, which will then do something. Does that not increase the time it would take for an injured worker to be referred to a rehabilitation provider? The longer that takes, particularly when the step-down time has now been increased from four weeks to 13 weeks, the longer it will be before an injured worker can be placed into a strong rehabilitation program.

Mr J.C. KOBELKE: The four-week period is a mark, or a flag. The injury management process does not start at four weeks; it starts on day one. We would hope that injury management principles would be applied at the earliest possible time. A return to work program would be started as soon as it is appropriate. The issue is that four weeks is seen as a - I knew the figure but I have forgotten it. We know that of the tens of thousands of cases each year, the vast majority of injured workers - some 85 per cent - resume work within four weeks. We do not want to create a lot of unnecessary bureaucratic work. The 15 per cent of injured workers who do not resume work within four weeks will be flagged and a process will begin to make sure they can return to work. We are hopeful that an injury management program will be in place and will have been ticked off for the vast majority of those 15 per cent of injured workers. That program may or may not be with a rehabilitation provider. We will make sure that we pick up those workers who have not resumed work after four weeks, and who are seen to be falling through the net, and focus on them. We will ask where is the injury management plan for those workers. Four weeks may not be an appropriate amount of time for some injured workers to return to work. A small number of injured workers might still be in hospital, for example. Therefore, we would have to wait for further detail on those cases, including further medical advice. About 15 per cent of injured workers who have not resumed work within four weeks will come into that system in a given year. We want to have that marker in place after four weeks. We are giving the insurer and WorkCover the responsibility to make sure everybody gets on board with an injury management plan.

Mrs C.L. EDWARDES: What will WorkCover do with that information? How long does it take for an injured worker to be referred to a rehabilitation provider currently? The Rehabilitation Providers Association has told me that the current delay is 263 days, which is quite extensive. If an employer runs the return to work program, which happens now, there is some concern that the injured worker would return to work on the advice of a doctor or a physiotherapist etc without a proper rehabilitation provider being incorporated into the return to work management program. When assessing the return to work programs, how will the competency of rehabilitation providers be determined if they are not involved in the program at a very early stage?

Mr J.C. KOBELKE: I will try to cover all the elements of the member's questions. If all cases were referred to a rehabilitation provider at four weeks, it would be very expensive with potentially little or no outcome in many cases. The issue is that there is no automatic referral of an injured worker to a rehabilitation provider. It is the responsibility of the insurer and WorkCover to pick up all those workers at four weeks. The next question was what does WorkCover do with the information it receives? WorkCover will be in touch with the insurer and the employer to receive assurances that they have put in place a return to work program for the injured worker. If they have not, WorkCover will ask why and find out what has been done about it. WorkCover would then turn to the code, which gives very clear indications about specialised programs that are needed and when rehabilitation providers should be engaged. There is also a requirement for doctors and employers to make decisions about the return to work program for the particular workers in those cases. They will make that judgment and use the rehabilitation providers, hopefully when appropriate, and when clear guidance indicates that they should.

One might say that the 265 days is not correct. However, that figure most probably could be arrived at because a whole group of different figures applied, depending on the referral date and the start date. A figure in the order of 265 came out in a very small subsection because it was based on one or two workers who had been injured, gone back to work and been injured again, and four years later were referred to a rehabilitation provider. It was obvious that their case had gone through a number of stages. It was not a matter of a simple delay of four years during which no-one had thought that the person should be referred to a rehabilitation provider. When one or

two numbers of that size were taken over a very small sample, it skewed the average figure. I think it was a matter of someone using a very selective, rather than a full, set of data to arrive at such a huge number. We will provide the member with some details. This was all gathered together when the media was reporting delays about people being referred to rehabilitation providers.

Mrs C.L. EDWARDES: The figure from WorkCover's documentation for January to December 2001 is 238 days, and the provider data for January to June 2002 is 279 days, which suggests that the figures are already starting to blow out since 2001. I would like the minister to provide the data for the past three years so that we can get an idea of what is happening.

Mr J.C. KOBELKE: We will provide the relevant data for the past three years.

Mrs C.L. EDWARDES: The research shows that rehabilitation intervention is necessary. The minister might believe that mandatory referrals are not necessarily appropriate at four week. However, the ACT legislation does not operate on that basis. It has mandatory referrals at four weeks. It is based on the fact that it is sent to the rehabilitation provider for determination. If someone is still in hospital, WorkCover will take into account how long the worker will be there and what is provided at that early stage in any event. The fact that someone is in hospital does not mean that rehabilitation work cannot begin. I am concerned that the figure will blow out even further. Mandatory referral works well in the ACT.

Mr J.C. KOBELKE: I accept that rehabilitation work can begin on an injured worker while he is still in hospital, although obviously in some cases that will not be productive. I am not denying that some form of mandatory referral at four weeks might in the future be seen as useful. However, it could be a very high-cost option. We would rather implement this and see whether it delivers outcomes. If, on assessment, we find that mandatory reporting of a different nature is required, we will be open to that possibility.

Mrs C.L. EDWARDES: Proposed section 157B deals with mediation and assistance. I referred to this issue when I cross-referenced it during debate on clause 99(3)(c). Under proposed section 157B, WorkCover is to provide mediation and independent guidance on injury management related matters with a view to facilitating an informal resolution of questions and disputes arising from those matters. How does the dispute resolution process fit within this proposed section?

Mr J.C. KOBELKE: This proposed section does not relate to the dispute resolution directorate - and resolution of disputes - of itself. The issue is that WorkCover will have a key role in the injury management process of monitoring it and in educating employers and other key stakeholders on how it can work well and how they can get assistance to make it work well. Under proposed section 157B mediation and guidance can be provided when questions arise between different providers. However, if the assistance of WorkCover under proposed section 157B does not resolve the matter and there is a dispute, that dispute could go to the dispute resolution directorate.

Mrs C.L. EDWARDES: Who will provide that service?

Mr J.C. KOBELKE: WorkCover, under proposed section 157B.

Mrs C.L. EDWARDES: Will the officers be within WorkCover or will the work be contracted out?

Mr J.C. KOBELKE: That is a decision the board will make if WorkCover does not have the expertise in-house. The expectation is that the bulk of that work, if not all of it, will be done from within WorkCover.

Dr J.M. WOOLLARD: Are people available or will a new empire be created?

Mr J.C. KOBELKE: This service is already provided by WorkCover.

Clause, as amended, put and passed.

Clause 120: Part IXA inserted -

Mrs C.L. EDWARDES: The definition of retraining criteria relates to some of the proposed sections that we dealt with earlier. It reads -

> **"retraining criteria"**, in relation to a worker, means the following criteria -
>
> (a) the worker has participated in a return to work program established under section 155C(1) but has not been able to return to work;

How will that be known? Paragraph (b) reads-

> the worker has a capacity for retraining . . .

How will a person be recognised as someone needing to enter the system?

Mr J.C. KOBELKE: The retraining criteria refer to a worker who has participated in a return to work program established under proposed section 155C but has not been able to return to work. That would usually be a rehabilitation provider but that is not stipulated. The worker will have complied with that - endeavoured to get the outcomes and completed it - but, if it has not been successful, the worker will be eligible to meet the retraining criteria. There is much more to it than that, but does that answer the question?

Mrs C.L. EDWARDES: Not really. Rehabilitation of an injury does not necessarily mean an injured worker will meet criterion (c) -

> formal vocational training or study through a technical or tertiary training course appears to be the only course of action that will enable the worker to return to work;

We have often heard of situations in which a rehabilitation provider has asked a worker what else he would like to do, and the worker does not know because he has been a brickie all his life. The rehabilitation provider then asks if he has ever thought about going back to school. What criteria will be used to assess whether the injured worker has the capacity to undertake that formal training or study? It will not be something that every person has the capacity to do. We do not want injured workers set up to fail.

Mr J.C. KOBELKE: This is a judgment for the three-member panel. We are providing under this proposed section the key criteria. Proposed paragraph (a) refers to the participation in a return to work program. Under proposed paragraph (b) the worker must have the capacity for retraining. Again, the worker would have to meet that criterion. Proposed paragraph (c) refers to formal vocational training or study through a technical or tertiary training course when that appears to be the only course of action. It is clearly not a question of somebody saying that they might like to go to university. If other clear options were open to people who did not require this, they would not meet the criteria of proposed paragraph (c). Proposed paragraph (d) provides that it is reasonable to expect that a specialised retraining program will provide the worker with the qualifications or skills necessary to return to work. Proposed paragraph (e) refers to such other criteria as may be prescribed in the regulations. Clearly, proposed paragraphs (b), (c) and (d) are the peak criteria that must form the basis of the judgment made by the panel.

Mrs C.L. EDWARDES: Who will make the referrals to WorkCover and, therefore, provide for the worker to be assessed by the panel? What interim work will be done by WorkCover before the worker is referred to the panel?

Mr J.C. KOBELKE: The employee can make the application. Normally we expect it to come from a rehabilitation provider or maybe the insurer. If the employer does not agree, it is a matter in dispute and, therefore, it could go to an arbitrator. The arbitrator may then refer the matter on to the panel, which makes the decision.

Dr J.M. WOOLLARD: Proposed section 158(1)(c) reads -

> formal vocational training or study through a technical or tertiary training course appears to be the only course of action that will enable the worker to return to work;

If WorkCover and we are genuinely interested in people returning to work, why does this provision refer to a course being the "only course" of action? If people agree to a technical or tertiary training course, they will probably not earn the same amount of money they would be earning if they went back to work in another position. It is not as though it would be a real bonus for them; in fact, it would probably be a hardship for many people. My concern with the words "only course" is that they might act as a barrier for some people for whom it might be more appropriate for that course to be considered right at the beginning rather than when all other options have been looked at. It is a cost, but we are looking at what will be best for workers. Why must the words "only course" be in the proposed section? Surely it should be one of the options available to workers.

Mr J.C. KOBELKE: We are dealing with a specialised retraining program, which we debated at some length on another day when I made fairly clear the objectives of the program. It is envisaged that the program will be available to about 30 people in the first year. It is a trial. We are not aware of any other State that has a system of this nature. Therefore, the criteria have been specifically set to be quite restrictive because we want to know whether it will work. The amounts of money involved could be quite large. We will not open it up to expenditure that will not deliver outcomes. That is why the criteria are laid down in the provision. It is not something that is open to all workers. Rather, it is quite restrictive. We have said that all along.

Dr J.M. WOOLLARD: The minister has refused to allow a sunset or review clause. Therefore, although the minister's intent is to review the legislation and for the legislation to be restrictive, without this Bill coming back to Parliament this provision could be restrictive for the next 10 to 20 years. If the words "only course" are left in

the proposed section and the legislation does not come back to the Parliament for review, they will more than likely act as a barrier to injured workers in the future.

Mr J.C. KOBELKE: My anticipation is that this specialised retraining program will be very useful. I am hoping it will be a great success. I have indicated that if it is a great success, I would certainly want to extend it in a number of ways. Until we see how effective it is and how well it works, we will not extend it. We will assess it. On the basis of an assessment of how successful it is, a decision will be made on how it might be extended. Its extension could be done in a number of ways. The primary limitation at the moment is that it will apply only to people with a whole of person impairment of 10 to 15 per cent. I would certainly like to look at it for, say, people with between 15 and 20 per cent or 15 and 25 per cent whole of person impairment. However, that will not happen until this program is up and running and a proper assessment is made of whether it is effective.

Mr P.D. OMODEI: Excuse my ignorance on this issue, but in the case of retraining - I am thinking of the rural sector - who indicates which type of training or which job will be available? Is it the employer's responsibility to identify another job, and what if there is not another job that the person can undertake?

Mr J.C. KOBELKE: That is seen more clearly in the return to work aspect and not what we are talking about here, although the two connect so it is worthwhile talking about it. There is clearly an emphasis on getting the injured worker to return to work. The first option is clearly for the worker to be back in the same workplace. It may mean undertaking different duties or working in a different way because of the injury. If that option is not available, the next option is to try to find a position with a different employer in a different workplace. When that return to work, which can involve a rehabilitation process, does not produce results, we will put in place a specialised retraining program, as I have indicated, for a limited number of injured workers to see if the more extensive formal training program, which would be quite different from normal work experience or returning to the workplace, will help that person build a new life. The maximum that is currently spent on rehabilitation services is $9 000. We are talking here of the order of $100 000. Therefore, the program is for a limited number of people to try to put them through a training course that will lead to a totally different career path.

Dr J.M. WOOLLARD: Still dealing with proposed section 158(1)(c), the minister has said that he is hoping that in the future he can change the criteria. I believe he said that the limitation is currently a 10 to 15 per cent whole of person impairment and that maybe a 15 to 25 per cent whole of person impairment might be included under new criteria. Surely such a limitation is best placed in guidelines rather than an Act. I believe that this criterion will be very restrictive if it is left in the Bill. The minister has visions of changing things in the future if this reform is successful. Would it then not be more appropriate to have the guidelines state now that there be a limitation, because the minister does not intend to bring this legislation back to the Parliament, and he might not be the minister with this portfolio in two or three years? If the minister wants this to be successful, why not take out that wording and put something in the guidelines? Why not draft this Bill in a positive sense, rather than in a sense that could be restrictive for workers in the future?

Mr J.C. KOBELKE: One often gives consideration to this question as it applies to this provision and many other provisions. If the ability did exist to change key criteria, we would open up a whole range of improvements and benefits. We would also open up substantial cost issues. The view is that if there were the potential to change major aspects of the scheme by regulation or code - heaven forbid a code could ever do it - the insurers would factor in immediately the potential cost of that. Even though we are not providing for it, if the scheme could be changed without going through Parliament, which usually takes considerable time and debate, and if people were aware of the change, potential cost issues would be factored back into premiums fairly quickly. We had to weigh that up. I did not think of doing it in this area because it would be too problematic and would involve all sorts of other difficulties. I have thought that it would be useful to be able to change key criteria by regulation in other areas, but we would run into the problem of potentially opening up a range of new or additional costs, and that is a major factor in the system. All the key stakeholders generally want to know that it has to go through Parliament and whether additional costs are going to flow through to employers.

Dr J.M. WOOLLARD: It needs a sunset clause.

Mr J.C. KOBELKE: A sunset clause would be a nonsense, because it would bring uncertainty to the system and that uncertainty would need to be factored into costs because people would not know in two or three years what the benefits and conditions of the scheme would be. We could never have a sunset clause in the Workers' Compensation Reform Bill; it would create a major cost problem.

Dr J.M. WOOLLARD: Minister, is this Bill for the workers or the insurance companies?

Mr J.C. KOBELKE: It is for the workers. However, the workers will not achieve anything from an unstable system.

Mrs C.L. EDWARDES: Proposed section 158A determines that the level of impairment is at least 10 per cent but less than 15 per cent. Will the minister explain how he determined that to be the trial test of the specialised training programs?

Mr J.C. KOBELKE: It is largely arbitrary, but it was based on the fact that we are putting in a range of improvements to statutory benefits. This is an improvement to the statutory benefits and we saw it as an alternative for people who currently go to common law at the lower end. Therefore, because a person is able to access common law from 15 per cent, it seemed that people who are at 15 per cent or just below can seek to access the specialised program. As I have already indicated, it is a trial, and we hope to expand it later. We need to look to one cohort or segment within the system; therefore, it was a fairly arbitrary decision that it should be 10 per cent to 15 per cent whole person impairment as one of the key criteria for access.

Mrs C.L. EDWARDES: When advice was provided to the actuary, was it factored in that in any lump sum redemption, lawyers are likely to factor in the eligibility to participate in this to increase their lump sum compensation?

Mr J.C. KOBELKE: No, it was not factored in by actuary in terms of cost because we are keen that it should not flow on and we will make that clear to the key parties. In my contribution to the debate earlier, I also alluded to the fact that we did not see this as a continuation of rehabilitation, so the rehabilitation sum may be factored into redemptions. This is something quite different for quite a small number of workers. Given the criteria that we have already talked about, which limits the access to the scheme, it is not something that should be factored into what might be the payments made as a redemption.

Mrs C.L. EDWARDES: Best of luck! I refer to proposed sections 158A and 158B. I am trying to get a picture of the time frame in which an injured worker can participate in the program because the longer he is out of work, the harder it will be for him to succeed in a specialised retraining program. One criteria is that the worker has had to complete a return to work program. It may be obvious at an earlier stage that he will not return to the job he had prior to his injury. As such, what is the time frame - and the earliest possible time - by which a worker can participate in this program?

Mr J.C. KOBELKE: There is clearly a deadline; namely, it has to be within two years of the claim for compensation. The program does not have to start then, but they have to have made their application, maybe in dispute resolution or before the panel. They have two years to seek to enter into the specialised retraining program. Basically, the minimum time could be within days, although that is highly unlikely. It may be that a specific type of injury makes it absolutely clear that they cannot return to work. If it is a severe injury, such as an injury that leaves a worker a paraplegic, it would be clear, but the person would fall into the 10 to 15 per cent. We know that a loss of a body part means that they will not be over the 15 per cent, but there is no way they could return to work. There are only certain limited opportunities available to that person and they would meet the criteria. It is not likely that it will be within a few weeks, but it is not precluded if there is a special case of that nature.

Dr J.M. WOOLLARD: I am still trying to persuade the minister about proposed section 158(1)(c). In considering formal vocational training or study through a technical or tertiary training course that will enable a worker to return to work, maybe the number that the minister is happy with could be included and that, depending on the number in this category, workers may have to repay the costs in a way that is similar to the higher education contribution scheme. In that way, we would not be limiting this area; rather, we would be allowing the flexibility for people who prefer to go back to vocational or tertiary training to get some assistance from the Government and to pay the Government back for that assistance. It might help workers move from one employment category to a completely different profession. The minister said before that there has to be some assurance in costs with this system. This would give that assurance. There could be a specified number and if that number were exceeded, workers could be told that that course of action was open to them, but that they would have to repay the costs.

Mr J.C. KOBELKE: I see merit in something of that nature but it is quite complex and would have to be worked up. We are trying to keep this program reasonably simple. It has enough elements to it already. Extra elements would add to the administrative burden. We think it best to leave out those elements from the trial.

Dr J.M. WOOLLARD: When the Bill becomes an Act, it will no longer be a trial. It could be the case for the next 10 years. That is my concern. This Bill may not come back to the Parliament for another 10 years, but a lot of workers may benefit from this provision. It is a good provision, but why restrict it?

Mr J.C. KOBELKE: We do not want to open a huge cost centre if we cannot prove that it will deliver. I am very hopeful that it will, but until it delivers, we will not open a huge cost centre.

The ACTING SPEAKER (Mr A.P. O'Gorman): I remind members that it is 12.30 pm. The committee is due to suspend from 12.30 until 3.00 pm.

Mr J.C. KOBELKE: I do not know whether members think they can complete this part in the next couple of minutes.

Mrs C.L. EDWARDES: I do not think so.

On motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection), resolved -

That the committee do now adjourn.

Sitting suspended from 12.30 to 4.10 pm

Mrs C.L. EDWARDES: I refer the minister to page 128 of the Bill. We were talking about the final day for recording agreed matters and referring disputed matters for determination. The minister said the eligibility to participate in a specialised retraining program will be no more than two years, which is the final day. Will the minister explain how subsections (2) and (3) of proposed section 158B will apply?

Mr J.C. KOBELKE: These provisions are the same as those that apply to the election to go common law in the second gateway; that is, proposed subsection (3) operates if there is a matter of the final day being a question of dispute or undetermined and a matter of arbitration. If that is three months or more, then the worker gets nine months from that time. It does not shorten the time. It is one year and nine months. It can be extended if there is dispute on the accounting day and a worker would get at least the two years. Proposed subsection (4) refers to the extension that could take place if the medical evidence required a worker to see a new consultant that was not thought about before, which might require the worker being put on a waiting list. A worker can get that extension in order to get that evidence. I move -

Page 133, line 21 to page 137, line 19 - To delete the lines and substitute the following -

158F. WorkCover WA to direct payments in relation to specialised retraining programs

(1) As soon as practicable after an agreement under section 158E has been signed by the worker and WorkCover WA, WorkCover WA is to notify the following persons of the agreement -

(a) the worker's employer; and

(b) if the employer is insured against liability to pay compensation under this Act, the employer's insurer.

(2) The total of the amounts payable in respect of a worker's participation in a specialised retraining program is the amount equal to 75% of the prescribed amount calculated as at the date on which the worker signed the agreement.

(3) WorkCover WA may, as it sees fit, but subject to this section and any regulations under subsection (10), give a written direction to the worker's employer or the employer's insurer to make a payment in respect of a worker's participation in a specialised retraining program.

(4) A direction may be for periodic payments or for a particular payment.

(5) A payment may be for, but is not limited to -

(a) reasonable fees for a course;

(b) the cost of books and relevant resource materials reasonably necessary to undertake a course;

(c) subject to subsections (8) and (9), a weekly retraining allowance.

(6) Subject to subsection (7), a payment may be for reasonable expenses incurred in respect of vocational rehabilitation under clause 17(1a) that is requested by the worker if the assistance of an approved vocational rehabilitation provider is necessary to coordinate the specialised retraining program.

(7) If the amount payable under clause 17(1a) is exhausted in respect of a worker, then for the purpose mentioned in subsection (6), WorkCover WA may direct that an additional amount, not exceeding 3% of the amount

referred to in subsection (2), be paid in respect of the worker, as long as the additional amount does not exceed the total amount applicable to the worker under subsection (2).

(8) The worker cannot receive any weekly retraining allowance payments until the total weekly payments under clause 7 have reached the prescribed amount.

(9) Any weekly retraining allowance amount -

(a) is not to be linked to or represent the worker's capacity or otherwise to work; and

(b) is not to exceed the worker's pre-injury weekly earnings.

(10) Subject to subsections (6), (7), (8) and (9), the following matters may be prescribed by the regulations -

(a) the submission of requests for payment and requirement for copies of invoices to be provided to WorkCover WA;

(b) the manner in which funds may be apportioned;

(c) when funds should be directed to be paid;

(d) when funds should be paid;

(e) the rate of any weekly training allowance.

158G. Obligations of employers, insurers

(1) An employer or insurer who receives a direction under section 158F or 158I must comply with the direction within the time specified in the direction, or such longer period as may be subsequently specified by WorkCover WA but not exceeding 30 days.

(2) An employer or insurer must not modify, suspend or cease an amount payable under a direction under section 158F or affected by a direction under section 158I unless WorkCover WA has given the employer or insurer written approval to do so.

(3) A reference in section 174(1)(c) to the obtaining of an award by the worker includes a reference to the receipt by an employer or insurer of a direction under section 158F or 158I.

(4) Nothing in section 174 prevents moneys standing to the credit of the General Fund from being paid in accordance with a direction under section 158F or 158I within 30 days of the direction being received if -

(a) the direction relates to a payment in respect of a particular specialised retraining program; and

(b) moneys have already been paid from the General Fund in respect of that program.

158H. 3 monthly reviews of performance, payments under specialised retraining programs

(1) WorkCover WA is to conduct, at the times set out in subsection (2), a review of -

(a) the performance and cooperation of each worker who is participating in a specialised retraining program; and

(b) the payments directed to be made in respect of each worker who is participating in a specialised retraining program.

(2) The first review in respect of a worker is to be conducted 3 months after the day on which the worker commences participation in the specialised retraining program, and subsequent reviews are to be at 3 monthly intervals.

158I. WorkCover WA may direct modification, suspension, cessation of payments under specialised retraining programs

(1) WorkCover WA may, as it sees fit, but subject to this Part and any regulations in relation to the administration of funds for specialised retraining programs, and having regard to the results of a review under section 158H in relation to a worker, give a written direction to the worker's employer or the employer's insurer to modify, suspend or cease the amounts payable in respect of the worker's participation in the program.

(2) Without affecting subsection (1) WorkCover WA may give a written direction to the worker's employer or the employer's insurer to do any of the following -

(a) suspend any entitlement that a worker has under an agreement under section 158E if WorkCover WA is of the opinion that the worker has not complied, or is not complying, with a provision of the agreement;

(b) cease the entitlement if the worker does not, within one month of being requested in writing by WorkCover WA to do so, comply with the provision;

(c) modify, suspend or cease the amounts payable in respect of the worker's participation in the program if the worker fails a course requirement or does not achieve the results that, in the opinion of WorkCover WA, are required for the course to be successfully completed.

158J. Cessation of payments

Payments in respect of a worker's participation in a specialised retraining program cease from the date on which an event referred to in section 158A(3)(a) to (e) occurs in respect of a claim for the injury concerned.

158K. Directions not open to challenge etc.

A decision of WorkCover WA to direct the payment, modification, suspension or cessation of an amount payable to or in respect of a worker participating in a specialised retraining program is not liable to be challenged, appealed against, reviewed, quashed or called into question under this Act or by any court.

158L. Other effects of participation in specialised retraining program

(1) The amount referred to in section 158F(2) is in addition to and separate from any other compensation that a worker is entitled to under this Act in relation to an injury.

This amendment will insert new sections 158F, 158G, 158H, 158I, 158J, 158K and 158L.

Mrs C.L. EDWARDES: I think the minister went too far.

Mr J.C. KOBELKE: That is the version I have, unless it has changed.

Mrs C.L. EDWARDES: I have version A.

Mr J.C. KOBELKE: Looking at it more closely, we are deleting only up to proposed section 158K(1). When we insert the amendment, we will insert proposed new section 158K, and the remainder of current proposed section 158K will become proposed new section 158L. It makes sense.

I have already foreshadowed what this is about. This is the issue of the specialised retraining fund. The reason there is so much change is that we are making an amendment to the payment, and that has to be integrated through those relevant sections. The proposal in the Bill as first presented to the House was that the employer, or the insurer on the employer's behalf in most cases, would make payments for the specialised retraining program to WorkCover, which would then administer the whole process, including the funds and the payment of money required for the specialised retraining program. The criticism and suggestion for improvement was that this meant that it would be difficult to return the money if it was not all spent. It would also mean that even if

we found a way of returning it, the chances are that the insurer would hold on its books the total cost against the employer, which could factor into higher premiums in future years. The amendments we propose to insert change that process so that WorkCover is still fully in control of the whole process, but the money will be drawn down or paid by the employer or insurer on more of an as-need basis. That is so that the issue of having to refund is not likely to arise if only a part of the retraining is completed and it comes to an end, as all the money would have been paid to cover the costs. That is the intent of what seems to be a fairly extensive amendment, but it had to be integrated back through those various sections.

Dr J.M. WOOLLARD: Proposed new section 158F(2) states -

> The total of the amounts payable in respect of a worker's participation in a specialised retraining program is the amount equal to 75% of the prescribed amount calculated as at the date on which the worker signed the agreement.

Will the minister explain how that fits in with proposed sections 158A to 158C? It states in the amendment "equal to the prescribed amount calculated as at the date on which the worker signed the agreement". What happens if, under proposed section 158A(1), the agreement was signed and the worker tried one program and it was unsuccessful? That worker may be one of a few who gets into the vocational training program. If he tried one program, can he can still do the vocational training program? Seventy-five per cent of the amount is calculated. When is that calculated and does it cover a worker from A to Z? Can a worker use up so much money trying one area of rehabilitation before moving into another area, possibly educational retraining?

Mr J.C. KOBELKE: Whatever benefits or entitlements are available in other areas, they do not come under proposed section 158F, which determines for proposed part IXA, "Specialised retraining programs", the maximum amount payable for specialised retraining programs. As is common throughout the principal Act and the Bill, the amounts are given as percentages of the prescribed amount, which is increased each year by inflation. That is how costings are applied throughout the Act. Proposed section 158F(2) indicates that the total amount available for a specialised training program is 75 per cent of the prescribed amount, which is currently $135 531. Therefore, 75 per cent is approximately $100 000.

Dr J.M. WOOLLARD: That is $135 000 for the retraining program. Proposed section 158 refers to retraining criteria and what programs might be used. I may have pushed on. Under proposed section 158F(1)(b), if the worker tries a retraining program that is unsuccessful and the worker tries another area, does the money in training in that area come off the $135 000?

Mr J.C. KOBELKE: No. It is 75 per cent of the prescribed amount available for the specialised retraining program. This is in addition to what might have been provided for the standard rehabilitation entitlement or weekly payments.

Dr J.M. WOOLLARD: It would be in addition to the vocational training program.

Mr J.C. KOBELKE: The member is getting confused. She keeps referring to other proposed sections in proposed part IXA. All provisions refer to specialised retraining, not rehabilitation. It may be mentioned as part of the precursor, but rehabilitation is not part of proposed part IXA, "Specialised retraining programs". In all of proposed part XIA, 75 per cent of the prescribed amount is additional to the other benefits.

Dr J.M. WOOLLARD: I am pleased this is on top. This $135 000 is on top of -

Mr J.C. KOBELKE: No; $135 000 is the prescribed amount that is used throughout the Bill and principal Act as a fixed amount used to reference other amounts. The amount available for the specialised retraining program is an additional 75 per cent of the prescribed amount.

Dr J.M. WOOLLARD: Under proposed section 158, "Meaning of "retraining criteria"", what sum of money is available for participation in that area?

Mr J.C. KOBELKE: It is 75 per cent of the prescribed amount; that is, approximately $100 000.

Dr J.M. WOOLLARD: Does that relate to proposed section 158(1)(a), (b), (c) and (d)?

Mr J.C. KOBELKE: This is the fourth time I have said it. All of proposed part IXA, which is proposed section 158 and the following lettered provisions, relates to the same scheme; namely, people have the same one go at the 75 per cent of the prescribed amount in addition to other benefits. It is all for one program. It is not different amounts for different parts of the program.

Dr J.M. WOOLLARD: Would that 75 per cent of the prescribed amount include someone who went into a general training program and then went into a vocational training program?

Mr J.C. KOBELKE: What does the member mean by a general training program?

Dr J.M. WOOLLARD: I refer to proposed section 158(1)(b), including areas that one might count as capacity for retraining. If a worker went into a retraining program that was unsuccessful, and then went into a formal vocational training program, what would happen? If WorkCover agreed that a program was not working, and the worker went into a vocational training program, is the amount set at 75 per cent for the two programs? There is one sum of money. If 25 per cent is expended in one area, 50 per cent would be left to expend in the other area towards the worker's technical or tertiary training course.

Mr J.C. KOBELKE: The member is confused. It makes sense to me; I have explained it. The member is coming back with terms that do not fit with the legislation before us.

Dr J.M. WOOLLARD: Can I have one more go at this, Madam Deputy Speaker?

Mr J.C. KOBELKE: Does the member want me to have another go?

Dr J.M. WOOLLARD: Yes.

Mr J.C. KOBELKE: Proposed section 158 contains the criteria to establish who will be eligible for the program and how eligibility is determined. Proposed section 158F outlines the total money available for the entire specialised retraining program, all conditions for which are set out in proposed part IXA, "Specialised retraining programs". That is how it will work. The member is asking whether people will get one or two goes. People will get one go.

Dr J.M. WOOLLARD: If one go is unsuccessful, and the full amount of 75 per cent has not been used, can the person -

Mr J.C. KOBELKE: I stated this earlier: the 75 per cent is not a bucket of money. The problem is that people chase buckets of money. I am trying to get the best outcome for injured workers, which is a totally different focus. The worker who meets the criteria applies for the program. If he meets the criteria and is granted the special retraining program entry, he will do a program of retraining in accordance with the provisions. That might be at university, a TAFE college or at two or three different training institutions. This would be a coordinated program of training that would clearly lead to an outcome. The focus is on delivery of a successful outcome for the injured worker, not how much money is in the bucket and how many goes people have at accessing it.

The DEPUTY SPEAKER: I might refocus: the committee should be addressing the amendment. If members get that out of the way, they might have time to get their heads around other matters.

Amendment put and passed.

Dr J.M. WOOLLARD: The concerns I have with this part of the Bill result from stories I have heard about what has happened to the ex-forestry workers down south. I have heard that some were sent to several courses but were still unable to find employment. The courses that they were steered into were not the most appropriate courses. My concern is that an injured worker who is encouraged to go into a course could be unsuccessful. When he is unsuccessful, he will get no further support from the Government to try another course. I do not want there to be a pot of money so that people can try one course or another. Ex-forestry workers from down south have been to TAFE courses that have not suited them and they are still out of work. I am concerned with this provision of the Bill. If injured workers were unsuccessful at one training program, I would like to think that the Government would support them in trying another retraining program. Will this Bill allow a worker who has unsuccessfully tried a retraining program in one area to seek government assistance to be retrained in another area?

Mr J.C. KOBELKE: Those workers can seek the Government's assistance but that is not what this Bill about. It is about WorkCover and a privately insured scheme. It is not the Government's intention for those workers to have a go at another training scheme after unsuccessfully undertaking a specialised training program.

Mr N.R. MARLBOROUGH: The Bill is quite specific regarding the selection process for workers getting into those types of schemes. The minister has talked about that protection. The Bill provides a safety net against people repeating training schemes, which have a rigid selection process. A person cannot walk in off the street and into a training program to become a violinist if he has never played the violin in his life. Appropriate mechanisms will be in place that will determine whether a person has the ability and/or whether the training scheme will assist that person to become a violinist.

Mr J.C. KOBELKE: Not everyone is as skilled at playing the violin as is the member for Peel.

Dr J.M. WOOLLARD: What will happen to the former forestry workers from down south? Surely a mechanism should be in place for those people who have gone from one training program to another.

Mr J.C. KOBELKE: It is not relevant to the Bill.

Mr N.R. MARLBOROUGH: The minister has indicated that that issue relates to a different scheme. It is not relevant to workers compensation. In that case, jobs closed down and the former workers were funded in a different way from the workers compensation process.

Mrs C.L. EDWARDES: Proposed new section 158F(8), which is the same as a previous draft of the Bill, states -

> The worker cannot receive any weekly retraining allowance payments until the total weekly payments under clause 7 have reached the prescribed amount.

That provision is obviously to stop double dipping. However, it could stop a worker from considering undergoing special retraining until he had reached his prescribed amount. Although this proposed section is very well meaning, it will work adversely against getting injured workers back to work as quickly as possible.

Mr J.C. KOBELKE: It is not easy to provide an answer to that because so many factors are involved in the system. It would depend on the wage level of the injured worker, for instance. If the injured worker was a miner who had earned more than $100 000 a year, it is not likely that his weekly retraining allowance would last for two years before he had used up his prescribed amount. However, a lower paid worker could receive payments over several years. There is also the issue of whether the worker goes through the process properly. Delaying tactics in which a person might seek to stay on weekly benefits may prejudice the person's chance of being placed into a scheme because those types of delaying tactics might mean that the person's completion of the rehabilitation program is judged as not being done properly. Many factors enter into it. I am not saying that in a small number of cases people might not attempt to maximise their benefits in that way, but I do not consider it to be a major problem.

Mr P.D. OMODEI: What is an example of the prescribed amount under proposed new section 158F(2)?

Mr J.C. KOBELKE: I just said that a moment ago. The whole Bill works on a prescribed amount. Percentages are taken off that prescribed amount for different purposes. The prescribed amount is indexed every year. The prescribed amount is currently $135 531. Seventy-five per cent of that is about $100 000.

Mr P.D. OMODEI: Therefore, could a person spend $100 000 on training?

Mr J.C. KOBELKE: It can also be the person's weekly payments if those payments have been exhausted.

Mr P.D. OMODEI: How is that different from the current situation?

Mr J.C. KOBELKE: This is a totally new scheme in addition to what is already available.

Clause, as amended, put and passed.

Clause 121: Section 160 amended -

Mrs C.L. EDWARDES: This clause makes changes to the indemnity liability and whether an insurance company can cancel a policy of contract of insurance and the way in which the company goes about it. As a matter of convenience, will the minister tell us what is being provided in this provision and what are the changes? Will the minister also explain the reason the Government has made these changes? Have there been any problems?

Mr J.C. KOBELKE: This is another provision to ensure that insurers are better regulated and that they live up to the expected standards. Requirements are placed on insurers that seek to cancel a policy. Currently, if they do not abide by those requirements, it is hard to make them accountable. As I said earlier, there is the big stick approach of cancelling their ability to work in this area. However, that is too big a hurdle to take on if the insurer has a bad practice of cancelling policies, for instance. We have introduced this proposed new section which imposes a $1 000 penalty for those who do not comply with those requirements when they cancel policies.

Dr J.M. WOOLLARD: Clause 121(7) states -

> Where an employer has obtained a policy of insurance from an approved insurance office under this section, the employer shall ensure that a valid certificate of currency issued by the insurance office in respect of the policy is available for inspection at the employer's principal office or place of business in the State.

Is that in the current Act or is it a new penalty?

Mr J.C. KOBELKE: It is a new requirement and a penalty is attached to that for non-compliance. This provision has been debated in the House in past years, particularly when we were in opposition. It was very much to the fore when very high premiums were paid in the late 1990s. Lots of people were having difficulty. I refer to a simple example that I have put on the record in the House. I once visited a major fabricating workshop

in the member for Peel's electorate. That company had had a good record for many years. However, it claimed that a competitor further down the Kwinana strip was undercutting its prices. It believed that the other company had a competitive edge because it was not fully insuring its workers for workers compensation. That information is very difficult to get hold of. Roughly half a dozen officers in WorkCover are engaged in examining compliance. Their job is mainly to check that a new company is registered and takes out a workers compensation policy, and that a company that drops out of the system and does not renew is no longer operating. It is very difficult to detect whether a well-established company is covering only half its staff or wages Bill. The particular businessman in the example I gave was very frank with me. I asked how he knew his competitor was not compliant and he said that it was a pretty good hunch, but he could not do the same because he did it a few years ago and he had been caught. We catch offenders sometimes. If there is a major claim and, as a result, that company is investigated, we might find that it is underinsured.

We are seeking to make it easy by having a valid certificate of currency. That will assist with inspection and might make people aware that they do not have a valid certificate of currency for a workers compensation policy. It is a new requirement with a penalty attached if companies do not comply.

Dr J.M. WOOLLARD: I would prefer something like this to be sent out to businesses by WorkCover advising them that it should be in their place of business, rather than small employers being hit with a penalty when they might not have realised that it must be in their principal place of work.

I assumed - I could be incorrect - that proposed subsection (8) would apply to lorry drivers. Who will it apply to?

Mr J.C. KOBELKE: It will apply to the employer's principal office or place of business. Employers have a choice. If an employer owns a truck and his office is at his home or place of business, it will be available at his home or place of business.

Dr J.M. WOOLLARD: Why can an employer not be given a number of days to produce his certificate of insurance rather than receive a fine if he does not have it at his place of business? Would that not be fairer on small business owners?

Mr J.C. KOBELKE: The member is either jumping at shadows or reflecting the fact that she has no understanding of how the law works. If an inspector called and an employer did not have a certificate, he would be asked to supply it. People are not prosecuted in the first instance because it does not justify all the paperwork. The legislation contains the power to take action if people do not comply. I do not think the member was listening when I said earlier that businesses want to trade fairly. Those who are paying correct and proper workers compensation premiums are not happy when some of their competitors get away with not doing so. We want to make sure that all players are competing on a level playing field.

Dr J.M. WOOLLARD: Proposed subsection (7) reads -

> Where an employer has obtained a policy of insurance from an approved insurance office under this section, the employer shall ensure that a valid certificate of currency issued by the insurance office in respect of the policy is available for inspection at the employer's principal office or place of business in the State.

It does not state that the penalty of $2 000 will not apply the first time and employers will be given some time in which to provide the certificate. It provides for a penalty of $2 000. I am very pleased that the minister has now put on the record that employers will be given leeway if they do not have a certificate of insurance the first time an inspector calls at their business and they will be given time to produce it. I would like the minister to say that it will not apply for the second time either because a business person might be facing a family crisis. However, that is not the way the Bill is drafted.

Clause put and passed.

Clause 122 put and passed.

Clause 123: Section 164 amended -

Mrs C.L. EDWARDES: Clauses 123 and 124 are related. This clause amends the section by deleting "deposited at the Treasury". It is referring to the securities approved by WorkCover for an exempt employer - self-insured employers. The words to be substituted are "given to the State". Clause 124 reads as follows -

> (5) Where an employer or group of employers fails to deposit at the Treasury, within 21 days after the . . .

The amending words "given to the State" in section 164 have not been applied to section 165 to replace "deposit at the Treasury". Why the inconsistency?

Mr J.C. KOBELKE: The draftsman thought this was most appropriate. We will get back to the member.

Mrs C.L. EDWARDES: It looks as though it might be a drafting error.

Mr J.C. KOBELKE: I am taking it on face value; there appears to be a reason for the wording. I will not say what I think is the reason for it; I am not the expert. We will get the draftsman to provide the exact reasons. If it turns out that they are not good reasons, obviously we will seek to fix it.

Clause put and passed.

Clauses 124 and 125 put and passed.

Clause 126: Section 174 amended -

Mrs C.L. EDWARDES: Proposed subsection (9) reads -

> Where by reason of section 175 more than one person is liable as an employer to pay compensation under this Act to a worker, the reference in subsection (8) to the employer is to be read as a reference to each person so liable, and the judgment may be enforced against those persons jointly and severally.

This relates to court cases and changes being made to working directors and the like. I think the minister will have enormous problems with the interpretation of this. I refer to section 10A and new subsections 162(1a), 93B(5) and 174(9). I think there are inconsistencies and the courts will not interpret correctly what the minister wants to achieve.

Mr J.C. KOBELKE: It is obviously a complex legal point so I do not expect I can answer it. If the member can couch the question as accurately as possible, it will help us get that legal advice. The amendment to section 174 will enable WorkCover WA to exercise the rights of the employer in relation to payment of an award regarding an insured employer. It also reinstates the previously repealed provisions in the legislation to allow WorkCover WA to recover money paid from the general fund in relation to an uninsured employer. If it means that WorkCover must come in and exercise the right of the employer - it may be because the person who was working was perceived as a director, or for some other reason, and the principal did not cover it. This provision will allow WorkCover to exercise the right of the employer in relation to the payments and to seek to recover those moneys, which would be paid out of the general fund.

Mrs C.L. EDWARDES: I might come back to that privately with the minister - I do not need to defer this clause - in terms of the flowthrough of all those subsections. I know the minister wants to overcome the Benale precedent and sections 10A and 175 will achieve that, but the legal profession is expressing sincere concern about that. In any event, I think the minister was going to get some legal advice on those other sections.

Mr J.C. KOBELKE: I appreciate the comment made by the member. This is a very complex legal area. That complexity or difficulty is compounded by the fact that we are amending discrete parts of the Act, which then have to interrelate, and only a person who is well versed in this area of law is likely to be able to make sure we have got it right. People we have spoken to have confirmed to me that they have confidence in it. However, if there are any questions about it or there is a loophole or some problem with it, we certainly would want that drawn to our attention before the legislation completes its passage through the Parliament.

Clause put and passed.

Clauses 127 and 128 put and passed.

Clause 129: Part XA inserted -

Mrs C.L. EDWARDES: This clause deals with infringement notices and modified penalties. The concern is that on-the-spot fines will arise through these infringement notices. That is not supported whatsoever. Although it may be more convenient, no guidelines have apparently been established or at least circulated about how WorkCover WA will issue these on-the-spot fines. Of course, when a person is issued with an infringement notice, he will not have the ability to argue his case. I wonder whether the minister would like to explain what is being proposed in these provisions, how he sees it operating, what guidelines are being put in place and whether a test for issuing on-the-spot fines will be developed.

Mr J.C. KOBELKE: Proposed part XA, "Infringement notices and modified penalties", provides for WorkCover WA to issue infringement notices and modified penalties, clearly to be prescribed by regulation, for offences under the Act that relate to the performance of insurers and self-insurers. This reflects the intent to enable WorkCover WA to influence the performance of insurers and self-insurers with fines and penalties. Given the absence of strict monetary penalties that can be easily applied to insurers and self-insurers and the complexities involved in prosecution, the only existing avenue is for WorkCover WA to record breaches and present them to the current Workers' Compensation and Rehabilitation Commission as part of the annual review of the performance of insurers and self-insurers.

Although the minister has discretion to remove the approval status of an insurer or self-insurer on the basis of its not having adequate resources in the State to fulfil its obligations under the Act, such acts would create a substantial economic cost for the disapproved entity far in excess of any of the existing financial penalties listed in the Act. There could also be serious repercussions for the competition in the workers compensation insurance market and inconvenience to the insured employers who would need to obtain an insurance policy from a different insurer. The ability of WorkCover WA to issue infringement notices with modified penalties for specified insurer or self-insurer breaches of the Act offers a more practical alternative. WorkCover WA will still retain the option of referring matters for appropriate court proceedings.

Mrs C.L. EDWARDES: Proposed section 175J deals with the withdrawal of notice. What is the review process that would lead to a withdrawal of notice and why the period of 60 days?

Mr J.C. KOBELKE: We have run into this problem in other areas. I am sure when the member was Attorney General she came across it. When a notice of a modified penalty is issued there are difficulties with withdrawing it. There must be a provision enabling it to be withdrawn if there has been an administrative error or it has been based on evidence that has quickly been shown to be unsubstantiated. The easiest way to deal with it would simply be to withdraw it. The issue then becomes whether it should be an open-ended matter so that it could be withdrawn at any time. The advice is that it would be best if there were a limit on the time in which it could be withdrawn. It is assumed that within 60 days or nearly three months a person would be aware of it and have made a protest if he or she thought it to be unreasonable. That is the limit being set on the time in which the notice can be withdrawn.

Mrs C.L. EDWARDES: There are 28 days in which to pay, and there can be an extension of 28 days, which makes 56 days as the period of time in which a notice could be withdrawn. There is no power to extend the limit past 56 days.

Mr J.C. KOBELKE: The issue then would be whether it is still open to prosecute. I suppose another element of the 60 days is that it then hangs over the recipients of the modified penalty. If they can come to an accommodation either by payment or a settlement of the penalty within 60 days, or the 50-odd days the member is suggesting, it will all be done. If they go beyond that, they know that after 60 days the notice cannot be withdrawn.

Mrs C.L. EDWARDES: Does the minister not see an issue with having to pay the penalty within 28 days and then within 56 days and the notice then possibly being withdrawn up to 60 days? The requirement is for the penalty to be paid within 58 days, but surely it should be consistent - at least 58 days to 58 days if the extension of time is to be allowed.

Mr J.C. KOBELKE: I do not know whether the periods should be the same or not.

The DEPUTY SPEAKER: The members on my right are making it difficult for the Hansard reporter to hear.

Mr J.C. KOBELKE: The fact is that 60 days is clearly used here and is often used as the period. The periods of 30 days and 60 days are often used.

Mrs C.L. EDWARDES: I think there is an inconsistency. The modified penalty that may be prescribed for an offence is not to exceed 20 per cent of the maximum penalty that could be imposed for the offence. I would like to see some form of encouragement in the guidelines to be developed for WorkCover, so that the penalty does not automatically become 20 per cent of the penalty for infringement notices, because the modified penalties seem to be no more than 20 per cent of the maximum.

Mr J.C. KOBELKE: I will ask WorkCover to take that on board. It is a matter that will be developed under this new process. I will ask officers to make sure that it is noted.

Clause put and passed.

Clause 130: Part XI replaced by Parts XI to XVIII -

The DEPUTY SPEAKER: I am open to direction about what members want to do considering the time.

Mrs C.L. EDWARDES: It is a quite extensive clause. It starts with the dispute resolution system.

The DEPUTY SPEAKER: I am aware that the minister has three amendments. Does the minister wish to seek leave to move the three amendments en block?

Mrs C.L. EDWARDES: I can read only one amendment.

Mr J.C. KOBELKE: I can read only one amendment.

The DEPUTY SPEAKER: There are three amendments.

Mrs C.L. EDWARDES: Not to the same clause; they are to different clauses.

Mr J.C. KOBELKE: I will not persist with this now, given the time. The time taken to clarify this will take us beyond the time.

The DEPUTY SPEAKER: There are three separate amendments to different provisions in clause 130. That is where the confusion arose. They are quite separate in the Bill. Does the minister wish to move them en block?

Mr J.C. KOBELKE: I can do that when we resume next week.

Debate adjourned, on motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection).

Committee adjourned at 5.02 pm