

WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Committee

The Deputy Chair of Committees (Hon Stephen Pratt) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR: Before we proceed, I draw members' attention to issue 2 of the supplementary notice paper.

Hon MATTHEW SWINBOURN: In my second reading reply, I indicated that we were in a position to table the PricewaterhouseCoopers report, so I table a copy of the *WorkCover WA: Legislation changes costings: November 2022*.

[See paper [2413](#).]

Hon Dr STEVE THOMAS: Thanks for that, minister. Sorry—parliamentary secretary! It has been a week for backflips—you never know what might have happened! I gave the parliamentary secretary a promotion accidentally. Sorry about that. I will be interested to have a read of that report.

Hon Matthew Swinbourn: It is a long report, but I believe it's of the flavour you like.

Hon Dr STEVE THOMAS: That is right; I do like a good report. I like the numbers, so we will have a look at that in the fullness of time, and I suspect we will get back to that in a little more detail later on.

Can I start with a line of questions about the consultation process? The WorkCover WA website lists 86 submissions on the review of the act. A number of those are obviously public. Generally, the major industry bodies have made them public. A number of those are confidential and some of those have potentially been redacted. Can the parliamentary secretary give us an indication of the flavour of the confidential submissions? I imagine that he probably found himself a little inundated with personal stories about experiences with the workers compensation system. Would that be a reasonable summary of a reasonable proportion of the group who did not want their name attached to their submission? I would also be interested in the number who are concerned at being identified while they are within the system, or is there an alternative reason why people would rather not be identified or not have their submissions identified and available for debate? A significant number of submissions were made confidentially and I am interested to see what concerns people had about making their stories or submissions public.

Hon MATTHEW SWINBOURN: We cannot speculate about why some of them decided to make their submissions confidential, but, obviously, as the member indicated, there were 30-odd who did. However, I can indicate that that group does not include individual workers who are currently going through the system, as the member speculated, but it includes medical practitioners who work in this area and rehabilitation providers. We presume that one of the reasons that they would want to make their submissions confidential is that they are putting forward positions they do not necessarily want to be associated with in a public way. Again, when people make a submission and ask for it to be kept confidential, they do not always explain their reasoning, so there is a degree of speculation about that. As I said, I think we can give the member an indication that the 30-odd submissions that fall within that cohort are practitioners in the workers compensation system—not all of them, but some of them. I cannot break it down further than that because we would run the risk of potentially identifying people who do not wish to be identified.

Hon Dr STEVE THOMAS: Thanks, parliamentary secretary. I think that was a pretty reasonable response. We will come back to some of the details about some of those practitioners within the system later. I guess the good thing about reading through the submissions generally is that they are largely pretty positive. I have to say that that is not always the case with legislation. That is probably an understatement this week, but let us concentrate on the positives today. I thought that the government could take some positive reassurance that there is general agreement that the rewrite was necessary and that the government's intention was reasonably well respected by employers and workers. A few unions made submissions on the bill. For example, on the list was a union that is close to the parliamentary secretary's heart, the CFMEU—I think it is only one "M" at the moment —

Hon Matthew Swinbourn: We do not want to get into that debate. I have had that with Hansard. They always want to add the extra "M".

Hon Dr STEVE THOMAS: I am not sure, but there was talk of a split recently, parliamentary secretary.

Also on the list is the State School Teachers' Union of WA and a few others. I imagine that the union movement is interested in the compensation mechanisms for the workers they represent. I guess that is why this is under clause 1 of the bill. Will this bill in any way change the role of advocates, specifically unions, from their role within the existing workers compensation act? Will there be any change in role, representation or function for any of those representative bodies; and, if there will be, can the parliamentary secretary let us know what they will be?

Hon MATTHEW SWINBOURN: No material or other change relates to unions or other groups, except the group that I identified in my reply to the second reading debate—the independent registered agents—that we will phase out two years after the commencement of the bill. There are five of those individuals. Obviously, at the end of that period, they will not be able to operate in the system as independent registered agents. That will not prevent them from working, for example, for a union or firm individually—they will not be personally prohibited. It is just the category of independent registered agent that will be restricted. As I said in my reply, that arose out of the recommendations of the 2014 review. Obviously, some of those agents are not particularly happy about that. However, the bill will not enhance or change the role that unions currently have, so workers will continue to be entitled to be represented by a union if they currently are, or by a lawyer. I think that is pretty much the range of people who can represent them in the system. Obviously, insurers and employers are represented by their own advocates.

Hon Dr STEVE THOMAS: I thank the parliamentary secretary for that. I am a little cautious, as always. I ask a lot of questions of the government. The wording of the question and the wording of the answer have to be very carefully examined because the government is very good at giving the information that it wants to give. I do not mean that the parliamentary secretary does that; he is obviously a very good parliamentary secretary who attempts to give the information that is required. I want to get this firmly in place, because I am a conservative advocate, if you will, and someone who has been in business. Part of what I want to talk about is supporting the business community to hopefully embrace the workers compensation process ultimately. I think we have that in common. We are working towards the same end in the end. I was very pleased that the parliamentary secretary referenced in his second reading reply the fact that most businesses do the right thing. I think most workers do the right thing. My experience of the system has been reasonably good. I think we need to keep that in mind as we have this debate going forward.

I want to pin down the parliamentary secretary, because as the shadow minister in this area, the question will arise at some point about whether we handed over additional powers to the union movement in this process that is really important for everybody. The parliamentary secretary said that this bill will not substantively change the roles of union representatives. Can I get the parliamentary secretary on the record that there will be no change to the roles of unions and union representatives in relation to workers compensation under the current act and the bills before the house? I am looking for an absolute answer so that I can say that the opposition checked to make sure that there was no change and no empowerment and that this was purely about the workings of workers compensation, which we both agree is very important and should be supported. I am looking to pin down the parliamentary secretary on that wording to make sure that we can move on to the actual functioning of the bill.

Hon MATTHEW SWINBOURN: There is no change, member. I can give the member some context. Trade unions used to do a lot more work directly participating in the workers compensation area. Increasingly, through complexity in the system and unions changing their business models, that work is now predominately being done by firms that are associated with or do work for trade unions. Obviously, the big one used to be Slater and Gordon Lawyers; I do not know whether it still is. There is also Maurice Blackburn and Eureka Lawyers and there are other firms out there. Very few unions actually do much work in this space as their bread-and-butter work. They deal with workers who come to them with questions and to give advice. For what we are doing here, to give the member an assurance about what he put to me, I can agree with the proposition that it does not increase the role of trade unions in the workers compensation system.

Hon Dr STEVE THOMAS: I accept that, thank you.

Hon Matthew Swinbourn: I might have a different argument with you if you asked whether they should, but that is not my argument. The member asked a very direct question about what the act does—I have a particular background, but as I say, it does not enhance the role of trade unions.

Hon Dr STEVE THOMAS: The parliamentary secretary is exactly right. The debate about whether they should and to what extent they should would be a very interesting one, which would be a diversion from the bill before the house, which is 700 clauses long and big enough on its own without us adding in philosophical debate as we go. The parliamentary secretary mentioned a couple of legal representative firms. Funnily enough, Slater and Gordon Lawyers and Maurice Blackburn both made submissions to the review of the bill.

Hon Matthew Swinbourn: I think Eureka Lawyers did as well.

Hon Dr STEVE THOMAS: Yes. Sorry; rather than sit here and scan the whole list to try to work it out, I think that is exactly right. I appreciate that and I appreciate the firmness with which the response was given because it allows us to progress forward into greater substance of the bill.

Before I give somebody else a turn, can I ask some general questions on the costs of workers compensation?

Hon Matthew Swinbourn: Yes.

Hon Dr STEVE THOMAS: On the setting of fees, I understand the various tiers that are applied for workers compensation costs for business. Can the parliamentary secretary give a bit of an outline of how the fees and charges

are currently set? I understand that they are set on the basis of an evaluation of risk. As I said in my contribution to the second reading debate, I got a bit of a shock that the veterinary profession is in one of the most expensive tiers. Looking back at my life as a veterinarian, I should not have been shocked at all because it is an incredibly dangerous occupation. Can the parliamentary secretary give an indication of how those fees are generated and put together?

The DEPUTY CHAIR (Hon Sally Talbot): Parliamentary secretary.

Hon MATTHEW SWINBOURN: Hello, deputy chair.

The DEPUTY CHAIR: Hello, parliamentary secretary.

Hon MATTHEW SWINBOURN: It is nice to see you.

The DEPUTY CHAIR: Thank you.

Hon MATTHEW SWINBOURN: It is always a shock when, after concentrating, you look up and the scenery has changed—a pleasant surprise, of course.

The member's question was: how do they set the fees and those sorts of things? The current process involves the actuary setting a recommended rate to begin with and then the insurers are able either to discount from that rate, to go below, or to go 75 per cent and above the recommended rate without having to apply to WorkCover for permission. Under the current system, if they go above 75 per cent of the rate, there is a right of appeal for employers in that process. As Hon Dr Steve Thomas indicated, it is an issue of risk. They use their business model to work out where risk might be. Obviously, for some low-risk industries, the rate is likely to be lower, particularly if there is a competitive insurance market.

Hon Dr Steve Thomas: I can guarantee that clerical is lower than veterinarian.

Hon MATTHEW SWINBOURN: Yes. Construction is a good one. I imagine the risk is never low because injuries in construction are almost always serious. The bill will remove the 75 per cent threshold so that if the insurer proposes a rate above the recommended rate, they do not have to apply to WorkCover to get approval of that rate. It also provides that the employer will have an automatic right to appeal that rate with WorkCover. For example, currently if an insurer proposes an amount that is 74.9 per cent higher than the recommended rate, there is no right of appeal for the employer. There is obviously a bit of a gap there. Insurers have to make an application to go over 75 per cent. The bill will remove the additional bureaucratic burden of making an application and leaving it to employers to decide whether they wish to appeal the rates they have been charged with WorkCover. I am advised that in any given year WorkCover deals with hundreds of appeals from employers about the rates that they are charged for their insurance premium.

Hon Dr STEVE THOMAS: There is a lot to unpack in that. As the parliamentary secretary said, it is a fairly complicated process, but it has a specific impact on the purchase of workers compensation insurance. Effectively, what we are trying to get to is that every employer should be buying the appropriate level of workers compensation insurance.

The parliamentary secretary said that the initial stage involves the actuary setting a standard, as it were. How does the actuary come to the conclusion that this is the standard? Does the actuary work on a spreadsheet of occupations with a standard or a range? If that is the case, is that public knowledge and something that we can look at?

Hon MATTHEW SWINBOURN: The report that is produced is published annually. It is available publicly. We do not have a copy here, but we can bring one tomorrow.

Hon Dr Steve Thomas: If I can download it, that's fine.

Hon MATTHEW SWINBOURN: Yes. That report includes the methodology that is used by the actuary to come up with the particular rate. I think it is better for the member to look at the content of the report, rather than for me to misrepresent it here at the committee table, to get a true understanding of the methodology. If the member wants to go into further detail, we are obviously happy to do that. But, as I say, it is probably a document that the member can look at, and it is right there.

Hon Dr STEVE THOMAS: We will look at that separately and perhaps download it once we have finished this section of the debate. Does that document, therefore, have both how the rate is calculated and the levels at which the actuary has set it?

Hon Matthew Swinbourn: By way of interjection, yes.

Hon Dr STEVE THOMAS: Under the current legislation, does WorkCover provide cover —

Hon Matthew Swinbourn: WorkCover doesn't provide cover.

Hon Dr STEVE THOMAS: No; sorry.

Hon Nick Goiran: RiskCover.

Hon Dr STEVE THOMAS: RiskCover; thank you. Does RiskCover provide cover amongst those six or seven insurers? How many providers of workers compensation insurance are operating in the state at the moment? I think WorkCover should be aware of the numbers and perhaps probably even has a list of them.

Hon MATTHEW SWINBOURN: There are seven current insurers. I am advised that Catholic Church Insurance has recently handed in its licence. The seven insurers are: QBE Insurance Australia; GIO; Allianz Australia Insurance; CGU Workers Compensation; WFI; Zurich Australian Insurance; and the Government Insurance Division, which was formerly the Insurance Commission of WA and more recently RiskCover. I am sure Hon Nick Goiran is impressed by that!

Hon Nick Goiran: Actually, I am.

Hon Dr STEVE THOMAS: Thank you for that comprehensive list, parliamentary secretary. Therefore, those organisations will take the actuary's recommendations, and, currently under the bill, if it is higher than 75 per cent, there will be an appeals process, which will be extended once the bill progresses. I think the parliamentary secretary said that a number of appeal applications went through to WorkCover in relation to that. Can he give us that number again? I am interested in a breakdown of the level of those variations. The parliamentary secretary might be able to give me some information or an example about how high some of those went. I might do this a step at a time. Where I want to get to is this: if there is significant variation, is that specifically for high-risk industries or might it potentially even be for high-risk employers and companies? I am interested to see where that goes, and I think the parliamentary secretary should be able to give us that information, hopefully.

Hon MATTHEW SWINBOURN: I did not tell the member the number of appeals. Before, I said that there were hundreds of them. I do not have a precise figure for the last financial year, but I am told it was about 1 000 appeals.

Hon Dr Steve Thomas: It is a significant number.

Hon MATTHEW SWINBOURN: It is significant, but apparently it is a downward trend from previous years, so there is less of it.

The insurer works out a rate for individual employers. It is not the case that it picks an industry and then puts in a rate for that industry. It determines the rate for a particular employer, and it will be based on its assessment of the risk profile for that employer. Even within high-risk industries, there are employers that operate very well, have low levels of claims and manage their claims well. There are employers that are, unfortunately, not so much like that, so the risk profile for them is different, and we cannot just make a broad assumption about the appeals. If I were to hazard a guess, I suspect that what has happened is that in most of these situations an employer had a particular rate for one year and then the rate suddenly increased the following year; that gives the employer impetus for an appeal because it will ask, "Why did our rate increase? We do not think it is fair".

An appeal to WorkCover is an appeal to the board of WorkCover, which is a tripartite body. Employers, unions and government are on the board, so the board determines appeals. We cannot and will not give the member further details of how WorkCover works out whether the rate is fair or not because that matrix is confidential. If employers knew what it was, they would have access to that.

I am advised that in the 2022–23 financial year, the number of appeals was 862. That was reported in the annual report, which is where that information has come from.

Hon Dr Steve Thomas: We are getting there.

Hon MATTHEW SWINBOURN: I have tried to give the member from the micro point, where an individual employer has applied for its next year's premium for workers compensation and the insurer has come back with an amount that the employer feels is not right for whatever reason. The insurer determined that on the basis of what it thinks is the risk for that particular employer, and I am sure that commercial considerations are in that decision as well. The difference is, of course, between what is the recommended rate—we have just lost one of our lights.

Hon Dr Steve Thomas: It is the blended coal.

Hon MATTHEW SWINBOURN: Yes. The difference can be hundreds of per cent above the recommended rate; it can be really quite significant. The employer can make an application to WorkCover to appeal the rate. WorkCover then gives consideration to the rate. It has its own actuarial model that it uses to determine what is fair, and then the WorkCover board makes the ultimate decision about the appropriate rate.

Hon Dr STEVE THOMAS: I will step aside in a minute and give Hon Nick Goiran a go. He knows this process far better than me and can probably answer all the questions anyway.

Hon Matthew Swinbourn: I do not know about this particular part of it.

Hon Dr STEVE THOMAS: This is the section I am particularly interested in, so if we do not finish it tonight, we will probably finish tomorrow. I think that is critical. There are aspects of that I really like. There is almost an encouragement to maintain a safe workplace to keep the premiums down. I am a big “user pays” fan, so I think that is a reasonable outcome. Where I am interested in going with this is: When the actuary is looking at the setting of a premium range within an industry, do they factor in in any way, shape or form the performance of that industry going forward? Does the actuary consider previous performance of an industry, I presume, when it sets that level of —

Hon Matthew Swinbourn: Yes.

Hon Dr STEVE THOMAS: That would make sense.

Hon Matthew Swinbourn: It is six years, apparently.

Hon Dr STEVE THOMAS: It is a six-year average, or a six-year consideration—okay. An industry that performs well and improves its safety record would generally be rewarded because I presume it is a rolling six years, so the last six years undertaken.

Hon Matthew Swinbourn: Yes.

Hon Dr STEVE THOMAS: I take by the head nods that that is correct. An industry in itself as well as an individual company can be rewarded as part of that process. Before I sit down and give someone else a turn, the question is the variation within industry averages and the individual companies. I will just check: is it a recommended range that the actuary gives or a recommended average?

Hon Matthew Swinbourn: It is one rate.

Hon Dr STEVE THOMAS: It is one rate. It is a recommended average, okay. What is the biggest variation that has been approved by the board of WorkCover? I know the parliamentary secretary cannot give specific reasons. The parliamentary secretary said hundreds of per cent. If last year’s average bill was \$1 000—30 years ago my veterinary workers compensation bill was higher than that, so I am just picking a number—that might be the clerical level these days. If that is the case, what sort of activity drives that up, and how high can it go, in the view of WorkCover, so that is still a reasonable outcome because it reflects the cost of an individual company? Even if it is a reasonable cost because the company is not looking after the safety of its workers, how high can it go? Is there a cap after which WorkCover just says it becomes pointless?

Hon MATTHEW SWINBOURN: I am not sure I will get entirely what the member wants, but we can still keep working forwards. One of the member’s questions was how high can it go, and the response I got from the advisers was “very high”, which is like a “how long is a piece of string” measurement. An example was given of one instance of up to 20 per cent of the payroll, in terms of the total cost for a business.

Hon Dr Steve Thomas: Twenty per cent of the payroll?

Hon MATTHEW SWINBOURN: Yes, but that is not normal. The member is asking about the extreme. That is an extreme example.

Hon Dr Steve Thomas: That is all I am interested in.

Hon MATTHEW SWINBOURN: The model is mathematical. It is certainly not meant to prevent gouging of insurers, because obviously workers compensation insurance is compulsory. People cannot just leave the system if they are going to continue on in their business practices and employ people. It is a captured market of insurers. Obviously, insurers need to do what they do profitably and sustainably. There is an issue there. In terms of what it might end up with after an appeal, things that are taken into consideration are the frequency or the number of claims and the size of claims, for example. It is not a subjective model; it is an objective model. For example, if a company has a series of many very small claims, it is not likely to justify a significant increase, but if it has a few very large claims, that may drive the premium up. We have to remember that the starting point is what the insurer offers to the employer as the premium to begin with, and then the employer appeals to WorkCover and WorkCover will then go through its iterative process to work out what it thinks is fair based on the individual circumstances of that particular employer in the content of the industry it is in. It is not meant to be a punitive system, but if the risk profile for a particular employer is high because it has a poor history of workplace injuries—it is a bit like if someone crashes their car a lot—their insurance premiums are going to get more and more expensive because insurance companies become less and less inclined to want to provide them with insurance because their actions and behaviours lead to claims. Ultimately, what happens in that situation, because in a sense insurance is a socialised form of risk management, is the burden gets placed further on others because the obligation of insurers to continue to pay out to a particular employer continues notwithstanding the poor risk management behaviour of that employer. I hope that has covered off some of the areas the member wanted me to deal with.

Hon Dr STEVE THOMAS: I will finish with this, because I want to give other members a go. The parliamentary secretary said that some insurers might charge, for example, under the level proposed by the actuary. Does WorkCover actually monitor and assess workers compensation premiums? If I employed five people and I pay my premium with a company, I am not necessarily notifying WorkCover of what my premium is. Will there be a monitoring process or will it simply be done on an appeals process when someone feels aggrieved?

Hon MATTHEW SWINBOURN: WorkCover gets all the information about the premiums that are paid from the insurers. That information is used by the actuary in determining the important things—what the future rate should be, where trends are and all those sorts of things. The actuary uses the data that is provided. It is a lot of data because all those amounts are mandated to be provided to Work Cover in the act currently, and in the bill in future.

Hon Dr Steve Thomas: Does everything go down to individual work level? That is a massive amount of information.

Hon MATTHEW SWINBOURN: Yes. It is a massive amount of information.

Hon NICK GOIRAN: I might start with the concerns raised by stakeholders in the parliamentary secretary's response to the second reading debate. I thank him for his comprehensive response and the way he went through each of the concerns raised by members. The parliamentary secretary indicated that some particular consultation took place in August 2021 and, according to my notes, it resulted in some 86 submissions being provided to WorkCover, which I understand was handling the consultation process on behalf of the government. Of those submissions, 54 are publicly available. The parliamentary secretary has already indicated the reasons the other 32 are not presently publicly available. The parliamentary secretary subsequently mentioned three organisations or individuals who corresponded with the government—the Australian Lawyers Alliance, Chapmans, and Peter Parker, the independent registered agent. Is the parliamentary secretary able to table the communications between those three—the agency, firm and individual?

Hon MATTHEW SWINBOURN: Yes. I can table that correspondence. I can also table the minister's response.

I have a series of documents to table, deputy chair. I will tell you what each of them are. The first is correspondence from the Australian Lawyers Alliance to the Minister for Mines and Petroleum; Energy; Industrial Relations; Hydrogen Industry, which also happens to be addressed to Hon Dr Steve Thomas, MLC, dated 13 June, and the minister's response to that document dated 29 July 2023. I have correspondence addressed to Hon Mr R.H. Cook, who was then the Deputy Premier, from Chapmans Barristers and Solicitors dated 28 April 2023, and I have the minister's response, dated 24 May 2023. I have correspondence from a Mr Peter Parker, Work Injury Consultancy, dated 27 February 2023, simply addressed to "Dear Sir/Madam"—I presume it was sent to the minister—and I have the minister's response to Mr Parker, which is dated 14 July 2023.

[See papers [2414](#) to [2416](#).]

Hon MATTHEW SWINBOURN: I qualify that the correspondence with Mr Parker may not be complete; we may have had some further correspondence with him, but we do not have that at the table. We will investigate that overnight and come back to that when we debate this tomorrow. If we are able to, we will table that additional correspondence.

Hon NICK GOIRAN: Just to round that out, perhaps more of a curiosity: is there any obvious explanation why Chapmans wrote to the Deputy Premier rather than to the minister in the correspondence dated 28 April?

Hon MATTHEW SWINBOURN: I cannot necessarily explain why we have the correspondence specifically to Minister Cook, now the Premier. Chapmans wrote to multiple members of Parliament, including myself in my personal capacity. We are not 100 per cent sure, it may have been written directly to the minister, but the minister responded on behalf of the government, and, as far as we can tell, all correspondence was identical.

Hon NICK GOIRAN: I thank the parliamentary secretary. That sufficiently explains that curiosity. Is it fair to say that the concerns of those three organisations and individuals remain?

Hon MATTHEW SWINBOURN: Obviously, each one is subject to its own particular concerns, although there are some thematic issues particularly amongst Chapmans and the Australian Lawyers Alliance. When the member sees the minister's response, the concerns they have raised will probably be self-explanatory. I could not tell the member whether those organisations and individuals are satisfied with the minister's response, because we do not know. With the Australian Lawyers Alliance, I am advised that although the correspondence is dated late July, it was sent last week, and we have not had further correspondence on the reply that was sent. The Chapmans response was sent some months ago and we have not had any further correspondence that I am aware of with Chapmans. Certainly, Mr Parker is not satisfied and his concerns are not allayed because we are continuing to do what he does not want us to do, which is to phase out his particular role.

Hon NICK GOIRAN: With respect to Mr Parker, the concerns remain. The government has not heard back from the Australian Lawyers Alliance and Chapmans. They may have been dissuaded by the minister's response. We

do not know that and the parliamentary secretary does not know that, and that is fair. If those organisations—the Australian Lawyers Alliance and Chapmans—continue to have concerns, it is really up to them to express them. With regard to Mr Parker, certainly those concerns still exist. Is it also fair to say that those three organisations and individuals are part of the 86 who responded to the August 2021 consultations?

Hon MATTHEW SWINBOURN: I can confirm that neither Chapmans nor Mr Parker were part of that 86. The Australian Lawyers Alliance was part of that consultation, but we did not receive submissions from Mr Parker or from Chapmans.

Hon NICK GOIRAN: Is it fair to say that a total of 88 stakeholders have communicated with the government on the reforms as at August 2021 and thereafter, the 86 where the information is publicly available, and then of course we have the documents that were just tabled this evening. As the parliamentary secretary said, the Australian Lawyers Alliance was already captured in the original round of consultations. If the parliamentary secretary can accept what I am saying about that total of 88 stakeholders, is it also the case that the only three who have concerns that remain unresolved, with the caveat of what the parliamentary secretary said earlier, if the minister has responded to somebody and they have not replied back, we cannot necessarily ensure that their concerns have been allayed. I guess I am trying to ascertain that the 88 will have written to the minister. If they have raised concerns and no changes were made to the legislation before then, I would prefer at this time to err on the side of caution and assume that those concerns remain unresolved. I take the point that it is really up to them to communicate that to members.

Are the ALA, Chapmans and Peter Parker the only ones that have concerns that remain outstanding or are there others in the bundle of 86?

Hon MATTHEW SWINBOURN: I do not want to speak for the 86 people in specific terms. We are both experienced legislators; the member is a bit more experienced than I am. We know that through these sorts of processes, particularly a rewrite as large as this, sometimes governments make a choice to go down one path and then another path. At the time, stakeholders may have not been happy about that or disagreed with that, but, ultimately, they get to a position in which they accept that the government has chosen a particular path and they are in favour of the overall reform. Therefore, they stop lobbying or engaging with the government, saying, “Well, it’s not what we would do, but we made an assessment about the overall changes and we are happy to continue.” I do not want to overstate that, because some groups will write in and say, “Well, we still don’t like this particular element of it.” Amongst those stakeholders, are there elements of the bill that they do not like? Yes, I think I recognised that in the reply I provided to the second reading debate. The government has made a particular choice, but in terms of the contact that either WorkCover or the minister are receiving, we are not receiving representations from groups other than the ones that we have identified to members that have asked us to make further changes to the bill as presented. As the member said, there was a consultation process at the end of 2021 and I think a green bill was released about this matter. Technical consultation was also undertaken with specific stakeholders, during which some of the more specific concerns that I know Hon Nick Goiran is often particularly interested in were either addressed in full or partly addressed.

Perhaps the one remaining sore point, particularly amongst the trade union movement and UnionsWA, relates to the psychiatric exclusion, if I can call it that. They remain unsatisfied, and I do not want to speak on their behalf, but, obviously in respect of the broader reform, I think they want the government to proceed and get on with it and get it done. They will fight with us on that issue on another day, but we do not have people storming the ramparts saying, “This is a terrible thing that you are doing”, “We’ve been telling you this is all wrong”, and all those sorts of things. There is only Chapmans Barristers and Solicitors, the Australian Lawyers Alliance and Mr Parker who are battling on, if I can use that term.

Hon NICK GOIRAN: It is not quite in the league of the Aboriginal Cultural Heritage Bill 2021, in which we might pass and then see the government bring in a repeal bill a few months later; I can understand that. To move forward, we have fairly identified 88 stakeholders. There appear to be three, in particular, who have very recently knocked on the door and raised concerns. With regard to the other 85 stakeholders, just for the sake of the record, I would say to them, “Speak now or for ever hold your peace, because this is the house of review and this reform has been a long time coming. If we do not hear from you, then with all due respect, we cannot help at this time.” I am of a mind to interrogate a little further the concerns of Chapmans, the Australian Lawyers Alliance and Mr Parker. I hope that at some time the documents that the parliamentary secretary tabled will be made available to members, because that will certainly be of assistance after consideration is adjourned in about 10 or 15 minutes.

The parliamentary secretary will have heard me saying during the second reading debate that I wanted to be clear as to whether any Western Australian worker might be worse off as a result of the massive bill presently before us—this rewrite of the legislation. Can the parliamentary secretary confirm whether every person who is presently eligible to make a workers compensation claim in our state will still be able to do so under the new act?

Hon MATTHEW SWINBOURN: To answer the member directly, the answer is: yes, there are workers who will be potentially worse off. We have been up-front about who they are and that is in relation to the psychological

exclusion that we have put in the legislation, but we have also predicated that on the basis that we think a very small number of people will be affected by that concern. I said in my second reading speech and my reply that we have been clear about that.

Hon Nick Goiran: I accept the parliamentary secretary raised that.

Hon MATTHEW SWINBOURN: In relation to people who may be eligible—this comes to the definitions of “worker” and “contractor”—I make it clear the government’s intention is that everybody, apart from that group I have just identified, who should be covered by the act will continue to be covered by the act. That goes to our intention about why we are trying to provide greater certainty and clarity as to what that group is. The experience of WorkCover and others is that, on the margins, there is uncertainty about a group of contractors, if I can use that term. It is not clear, on the face of it, whether they do or do not fall into the system. The consequence of that, of course, is that they are either not provided with insurance because their employer is not insuring them or alternatively they are not covered and insurance is being provided when that is not necessary because they are not covered by the act.

Of course, the only time that we can get certainty about this group of contractors, because that is essentially what they are, is through disputation. We are trying to get away from the resolution of those matters by disputation by providing clearer drafting to say who should be covered by this legislation. Some people might say our drafting is not good enough to achieve that end, but when it comes to our intention and the specific nature of the member’s question, which is about workers who are presently eligible and will not be, our intention is that there are no such workers apart from the one example.

Hon NICK GOIRAN: I think it is good that we are getting this on the record. It is very important. But I want to make a distinction between a worker being eligible to lodge a claim and then the scope of the claim. I really want to park for the time being this issue with the agreed—I am not necessarily saying I agree with the intent, but I accept this is what the bill will do—group of people who put in a claim for a psychiatric injury. To me, that is in respect of the scope of a person’s capacity to put in a claim and what type of injury they are claiming for and so on. Before we get to that stage, I again emphasise that I acknowledge that the government had been up-front about that, and the parliamentary secretary outlined that in his second reading speech. I want to be clear that no Western Australian worker who is able to put in a claim for workers compensation under the existing scheme will suddenly find that when we pass this legislation and they are in identical circumstances to those at the moment, however so described, they will suddenly miss out. That is what I want to avoid. I am hearing from the parliamentary secretary that it is absolutely not the intention that that would occur. We are intending to embrace and capture every Western Australian worker in the same way that we do at the moment. There will not be one, shall I say, Western Australian worker left behind.

Hon MATTHEW SWINBOURN: The member has invited me to give a very—what is the word?—concrete assurance —

Hon Dr Steve Thomas: An absolute.

Hon MATTHEW SWINBOURN: An absolute —

Hon Nick Goiran: But assurance about the intent.

Hon MATTHEW SWINBOURN: Yes, the intent is there. It is the government’s intention that people who are currently eligible to be covered by the workers compensation system, wherever that margin may fall, should be covered under the changes. We are not trying to narrow the number of people. The intention is to make it clearer for others. In my discussions with the advisers, I talked about a group of workers or contractors—they will become workers under the definition in here; it is not employee of course, but worker—who currently receive insurance coverage because their employer thinks that they are covered. The clarity that the member has provided might make it clear. It is within the realms of things that are possible that there is a group of workers, but what is more likely is the opposite; that is, there is a group of workers who are not currently insured, but it will become clear that they ought to be insured and have access to the system.

Having said that, anybody will still have the opportunity to make an application to dispute whether they are covered by the system and have that dispute conciliated, arbitrated and determined by the courts in that regard. Access to that process is not being removed from them. We are trying to get fewer people in the category of those who must use the legal system to find out whether they have coverage and fewer employers sitting in a zone of uncertainty so that we do not end up with that situation. That is the worst part of the system in everyone’s experience, and the member knows that as he has dealt with workers in that particular area who have to live with the prospect that they do not have any income protection or coverage for their medical expenses other than Medicare and those sorts of things because what they thought was their employer did not have insurance for them and who then end up in a system in which they have to pay somebody to represent them and have all the risks associated with that.

Hon NICK GOIRAN: Noting that we are very close to the end of our time, I will make a closing remark on this point. I thank the parliamentary secretary for taking the time to get this on the record. It is very important. I think the government's intention is clear. On the basis that, in due course, this chamber will pass not only this clause, but also the bill as a whole, the intention of Parliament is clear. I personally have a concern about tampering with the definitions, because, inevitably, this will end up, as the parliamentary secretary says, being disputed and subject to interpretation. That is where the risk lies, but at the very least if that dispute occurs, whether someone is an insurer or a worker, the intention of Parliament and the government is very clear at this point. I think it is good to have that on the record.

Progress reported and leave granted to sit again, pursuant to standing orders.