WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Committee

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

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon MARTIN ALDRIDGE: Just before the break, the parliamentary secretary and I were having an exchange about the bill and to what extent consideration had been given to the extension of the bill through this very extensive reform—I do not think the parliamentary secretary likes to use the word reform—or through the process that has led us over the best part of the last decade to today, where the bill is now before us. As I understand it, this is not something the government has turned its mind to. In my second reading contribution I made it quite clear that it is not something on which I have a set view about whether it should or should not be, but I simply made the observation that we seem to be perhaps the only jurisdiction in Australia in which its workers compensation laws do not apply in some form to volunteers, or at least volunteers who are delivering critical government functions. Having said that, we also know that the Fire and Emergency Services Act, which is being amended by this bill, inherited many of the workers compensation provisions and offers workers compensation-like protection to volunteers. I guess it could be argued that volunteers, or at least those engaged in our fire and emergency services sector, have workers compensation, albeit by another name.

Before we were interrupted by question time, I was reiterating the parliamentary secretary's comments from the second reading reply that he does not consider this to be a reform bill. This legislation will update and modernise the Workers' Compensation and Injury Management Act without necessarily addressing a number of policy issues. Does that suggest that another tranche of work is coming whereby the government will turn its mind to workers compensation reform?

Hon MATTHEW SWINBOURN: We have not committed to that, member. This work has been highlighted many times by many others. It has been in the pipeline for an incredibly long time. As I said, we have made a series of election commitments. There will be an election in the not-too-distant future. Political parties of all ilks will go to that election, and whether they make commitments on workers comp is a matter for each political party. The government at this stage is focusing on this reform. "Oh, they used the word wrongly—not 'reform'; the 'rewrite'!" Sorry; a bit of theatre there. There is what is happening here and then there will be consequences that will flow from that. Obviously, a generation of new regulations will arise under the new act and those sorts of things, and we will bed down the rewrite of the act going forward. To answer the member as directly as I can, no, another tranche of reforms is not connected with the process that started I think at least in 2009 in relation to what we are doing here today.

Hon MARTIN ALDRIDGE: I hope the reform of an act as significant as this one both in quantity—it is quite a novel—and importance is not primarily done by election commitment or future election commitments. I hope some thought is given to the reforms that might be necessary now and into the future, rather than relying on election cycles and political parties to make piecemeal election commitments around reform. It might be that we have to wait another 10 years to get to the reform, rather than the rewrite. The sooner we start that process, if it is indeed needed, the sooner we will get to that end point.

If I can go back to the application of the workers compensation act to volunteers, strictly speaking the act does not give rise to eligibility for cover for volunteers, but, as I said, the workers compensation act provisions were significantly inherited by the Fire and Emergency Services Act , which provides insurance protection and a duty to insure volunteers. What consultation or engagement has occurred with the fire and emergency services volunteer sector, including the WA Local Government Association and volunteer associations, in this regard?

Hon MATTHEW SWINBOURN: There was no targeted consultation with the groups that the member has mentioned, but I will say that consultation on this legislation was open. It was an open consultation. We received submissions from WALGA and the Local Government Insurance Scheme and they did not address the issue that the member is talking about. To be fair, this issue is one that the member has raised with us; it is not one that has been broadly raised with us through this process. As I said, the consultation process was open, so it was open to people to make a submission on the scope of the bill. In relation to the act that the member is talking about, it looks like there is a lot more going on. We just say that they are consequential to the broader amendments. We are not going to fundamentally change the act. Consequential amendments will arise because we are rewriting and modernising the current act. Therefore, there will be consequential amendments to a number of acts, including the Fire and Emergency Services Act.

Hon MARTIN ALDRIDGE: The parliamentary secretary called them consequential amendments. If we look at part 6A or part 6B of the FES act, we see that it protects and insures volunteers. That act effectively inherited,

by reference, provisions from the workers compensation act and applies it to volunteers. In fact, a provision in the FES act states that where the workers compensation act makes reference to "a worker", it should be read as "a volunteer". I guess I was trying to establish the extent to which this very important volunteer fire and emergency services sector is satisfied with the amendments we are making to the workers compensation act, because in many respects they will be inherited by the Fire and Emergency Services Act—that is why we are making amendments to the FES act—and applied to volunteers. I think the government's response was that it was open for public comment and consultation and I guess that is fair, but I am not sure that these volunteer associations, with very limited capacity—they are volunteers—would necessarily be aware that we are debating this legislation in the Legislative Council today and its impact on them, to be quite honest. That is probably not something we are going to progress much further with. It might just be best left as an observation of where we are at clause 1.

In my briefing on this bill, I was told a number of things, but one of them was that a number of provisions date back to 1912. I am wondering whether the parliamentary secretary is able to identify those provisions and how many of them we will replace by way of this bill.

Hon MATTHEW SWINBOURN: It is not so much that the provisions have carried through, as in section X existed in 1912; it is the language. Some of that is quite archaic. I have been given the example of "hereto" and those sorts of things in the definition of "worker". That has been in the drafting for over 100 years. Because those things do not mean much to people these days, they will be rewritten. I am not sure they meant much to people back in 1912 but maybe they did to the Clerks of the Legislative Council in 1912 or whatever the version of the Parliamentary Counsel's Office was in 1912. No provisions, per se, have carried through. There was the 1912 act. There was an additional new act. The member's colleague next to him can probably tell him because he included some of the language in some of the reforms that occurred over the course of the bill, but I do not know whether he went back as far as that. These provisions have also been affected by multiple amendments over many, many years, so the exercise here is to have a broad look at the entire drafting of the act as it currently is and try to lift that up, hopefully successfully—we would say successfully—into the modern era. The amended language should be much better understood by and provide much more clarity to not just the ordinary reader, but also other stakeholders—practitioners, judges and, dare we say it, lawyers. That is what has happened here. As I say, I cannot give the member a comprehensive list of the 1912 ghosts that exist in the act, but apparently they certainly exist.

Hon MARTIN ALDRIDGE: Thanks, parliamentary secretary. I am probably on my last question, I suspect, on clause 1. We had a discussion earlier about the availability of Department of Fire and Emergency Services advisers when we get to the relevant clauses relating to firefighters and the Fire and Emergency Services Act. The government has made it clear that it is not going to make those advisers available, or perhaps DFES is otherwise occupied or too busy to provide expert advice to the Legislative Council on this occasion, but whatever the reason, those advisers will not be available for the consideration of this bill. My concern around clause 11 has grown with regard to the interchange around how we might treat a firefighter who has made a claim between November 2013 and today in respect of one of the eight cancers that from tomorrow will be provided for as a rebuttable presumption. It may be that no claims have been made with regard to those eight cancers over that period, but I suspect that that is probably not information that the parliamentary secretary could provide without notice. However, given that that agency is unable to participate in the consideration of this bill, it would certainly help assuage my concerns about clause 11 if the answer to that question were that there had been no claims finalised over that 10-year period with regard to the eight cancers that will have effect from tomorrow. I hope that question is clear; I am not sure whether it is something that the parliamentary secretary is prepared to take on notice.

Hon MATTHEW SWINBOURN: Member, we will take it on notice. We will get a copy of today's *Hansard*; I am not sure that we will reach clause 11 anytime soon, although I hope it will not be too far away. We will do that. The question the member is asking is actually a legal question rather than a DFES question. I understand the question he is asking about the existence of any particular claims. The insurer is actually more likely than DFES to have that information because it is obviously a process, but we will take steps to investigate that aspect further. But the question of whether a presumption coming into effect tomorrow will affect a claim that has been finalised today is actually a legal question. Again, we will seek further advice, probably from the State Solicitor's Office, regarding that aspect. We may not get that advice tomorrow, but at a later stage we will try to be as clear as we can with that advice for the member.

Hon MARTIN ALDRIDGE: That would be appreciated, parliamentary secretary. My concern arises from a legal question, but of course it will evaporate if there have been no claims, or no claims that have been finalised. Without restating what I have already said, my concern is about whether a person has attempted to argue that, on the balance of probabilities, a particular cancer—one of the eight—was caused by their exposure as a firefighter. That is a task that is near-on impossible, which is why we have rebuttable presumption schemes. I am concerned about a potential situation in which the matter has been finalised, the claim has been denied and retrospectivity will apply from tomorrow back to November 2013, but that person will be treated differently from someone who is making a new claim. I think the parliamentary secretary and I are on the same page on that, and I am hopeful that the answer will

be that no claims of that type have been finalised, so it will not be an issue, or at least we will be able to quantify that it is a small number and whether other legal avenues will be open for those people. Although DFES is not available, might this be information that WorkCover would have access to? I know it was engaged in the development of this bill, but is that the agency —

Hon Matthew Swinbourn: Do you mean RiskCover? The advisers I have at the table, other than the ministerial adviser, are from WorkCover.

Hon MARTIN ALDRIDGE: Okay. Would that information, in terms of claims, be known to WorkCover, or would RiskCover have that detail?

Hon MATTHEW SWINBOURN: WorkCover might have that information and it will interrogate the data it has, but then it will engage with what we have called RiskCover—it is now called the Government Insurance division—to see what information it is able to provide to fill in those details and, if necessary, engage with the agency. There would not be any claim that has proceeded in relation to DFES that has not involved the government insurer and, obviously, the legal firms that represent the government.

Hon NICK GOIRAN: I take up where we left off yesterday evening; the parliamentary secretary will recall the exchange we had about ensuring that no Western Australian worker will be "left behind"—in the language I used—as a result of the government's intention to simply rewrite the act, as the parliamentary secretary has indicated, rather than reform the scheme. The parliamentary secretary indicated that it is not the government's intention to restrict the number of workers who will be able to access the scheme. He said that, in essence, it is intended that all workers who are currently covered under the act will be covered by the proposed legislation and that, if anything, it will potentially clarify that those workers around whom there is some uncertainty will be captured. That at least left me with some confidence that it is not the government's intention that anyone should be left behind. I foreshadow that I intend to take up that matter again when we get to part 1, division 4 of the bill. I do not necessarily intend to spend a long time doing so, but I am as confident as I can be that this is going to be a litigated point at some point. I cannot for the life of me imagine than an insurer's lawyer is not going to take the opportunity to try to reject a worker's claim on the basis that the language has changed in the bill before us. Rather than a worker's lawyers having to trawl through *Hansard* and hopefully find our exchange from yesterday evening on clause 1, I would like to have a statement from the government, through the parliamentary secretary, when we get to part 1, division 4. That is really just to put the parliamentary secretary on notice.

I move to the other item, which is the scope of such claims. Having dealt with who can make a claim, let us touch on the scope of those claims. I acknowledge at the outset that the parliamentary secretary has already put on the record the issue with regard to psychological injuries. Can the parliamentary secretary confirm for the record that, with the exception of psychological injuries, it is not the government's intention that the scope of any worker's claim will be anything less than what is presently available?

Hon MATTHEW SWINBOURN: I appreciate the point the member made in his opening statement and the point he made about insurance lawyers. I have had experience with them myself. I do not want to say that it is an indictment on our profession, but the nature of their role is to find and pursue the interests of their clients, which is to not be roped into the workers compensation scheme if they can avoid it. I want to add at this point—we can explore it more when we get to clause 13—that clause 13 provides a regulation-making power for the minister to prescribe workers to be included in the system. If in the event there was a particular group of workers who we felt should be covered by the scheme but were then found, for whatever reason, to sit outside the scheme, the minister will have the power to prescribe those via regulations and to remedy that situation. I think that should provide, for those who are interested in the impact of this legislation, further assurances that there will be mechanisms for ensuring that everyone stays in the corral, if I can use that term, as is appropriate.

In answer to the other question about the scope, I think the best way to respond is to endorse the member's point about psychological injuries sans that particular part. There is no lesser scope in relation to claims, with one additional caveat, which we covered before and is related to specialised retraining. As I indicated in my reply, that has never been accessed since it has been in the act. We can debate why that might be the case, but no-one has accessed it. It will not be available to them. For the sake of fullness, the part of the legislation for psychological injury has narrowed and specialised retraining is being removed, but outside of that, many other parts of the legislation for the scope of claims will remain the same.

Hon NICK GOIRAN: I thank the parliamentary secretary. It is good to get that on the record. It seems to me that the scope of claims may increase in some cases. Is the prescribed amount for medical expenses due to increase under this regime?

Hon MATTHEW SWINBOURN: The word "scope" in the terms the member is using it is not defined. We would not say that the legislation will increase the scope of the number of claims that will be made, but for individual claims, increasing the amount from 30 per cent to 60 per cent will obviously increase the size of the bucket of

funds that are available for a worker for medical expenses. Yes, a flow-on cost might come from that. We have talked about those flow-on costs. I am sure that during the member's time when he was practising in this area workers would have come to him who had reached the extent of the cap and had to apply for an additional amount. That is hard, particularly if they are about to face a medical procedure or need surgery and have hit the medical expenses cap. Surgery is not cheap, and a lot of stress and anxiety can come from that. Doubling that cap will obviously provide a greater remedy for the claimant and delay and, hopefully for many, avoid the burden of having to make an application to extend the coverage for medical expenses.

Hon NICK GOIRAN: I refer to the step down for income compensation. The parliamentary secretary made the point that one of the elements that will now come into effect is that rather than the step down taking place after 13 weeks, as is presently the case, it will take place after 26 weeks. That, of course, ought to be welcomed by members, particularly if an injured worker is relying on a fixed income and is not able to return to work three months later and suddenly receive 85 per cent of their income instead of 100 per cent. At least this provision will extend it out to six months. That certainly has my support. However, the parliamentary secretary will appreciate that at the present time that step down does not apply to all workers. At the 13-week mark, some workers have a step down to 85 per cent and other workers are, in my language, immune from the step down. Will those workers who are immune from the step down continue to be immune from the step down at 26 weeks?

Hon MATTHEW SWINBOURN: Yes. To use the member's language, those workers will remain immune from the step down after 26 weeks.

Hon NICK GOIRAN: Excellent. I think we can make some good progress here in those circumstances. I have two further questions on this clause. I will just flag the themes. The first question has to do with workers compensation for those who might have an adverse reaction from a COVID-19 vaccination. The second question is to clarify the transitional provisions in the bill and the extent to which any retrospectivity might apply or how it might apply in particular for a worker whose application is presently before WorkCover but is yet to be determined. We will deal with the first of those questions. Are adverse reactions to a COVID-19 vaccination that results in injury or disease currently covered by workers compensation for those workers who are subject to the mandates; and, if so, will that continue under the new scheme?

Hon MATTHEW SWINBOURN: When it is mandated for that worker, yes, they are currently covered and they will continue to be covered under the workers compensation scheme.

Hon NICK GOIRAN: Thank you very much, parliamentary secretary. I refer to the savings and transitional provisions. Is there any intention that a worker who has suffered an injury under the current act but for whom liability is yet to be determined will be prevented from claiming once the new act comes into place?

Hon MATTHEW SWINBOURN: It would not have the effect of killing off that claim, for want of a better term. It does not extinguish or remove rights. If someone thinks they have suffered a workplace injury or contracted a disease, they make a claim, which is being disputed and that dispute process is underway, when the new act comes into effect, under the savings and transitional provisions, the dispute will continue and it will be determined under the new act but, as we have indicated, the scope of the new act will not change other than those very narrow matters. Therefore, it would continue to be determined and that person could continue to pursue their claim. On the day this legislation comes into effect, nobody will find that their current claim dies a death, if I can put it that way. The only caveat I would put on that would be with respect to the psychological injuries because of the modification, but given the very narrow nature of that, we would not anticipate that any great number of claims would fall under that. I could ask for some statistics but I am not sure whether they would be available. I have just been told that we do not have statistics.

Again, in the fullness of answering the question, a very narrow group might be affected by the change because of the slight change in the test that relates to psychological injuries being eligible or ineligible.

Hon NICK GOIRAN: If a worker has lodged a claim and their claim includes psychiatric injury and is presently being determined by WorkCover, when the new act comes into force, will an employer be able to rely on the clause 7 exclusion of psychiatric injury for administrative action to now support their decision to decline the worker's claim?

Hon MATTHEW SWINBOURN: Yes, they could use and rely on that changed test to determine liability and then that would obviously be subject to whatever disputation might follow.

Hon NICK GOIRAN: It would come as no surprise to the parliamentary secretary that I fundamentally object to that. Noting that there is simply no prospect of passing the entire bill in the remaining 35 minutes that we have available to us today, I ask that two things happen.

Firstly, I ask that the government endeavour to undertake some work to identify how many such workers might be impacted by that because these people's existing rights will be removed by a decision of the Legislative Council. I appreciate it may not be a precise figure that we would be holding the government to forever and a day, but I would have thought there would be some general indication. I know that the parliamentary secretary has already

said that it would be a small number but one person's small number is another person's large number. I ask that some consideration be given to that during the adjournment.

Secondly, I ask that the parliamentary secretary give some consideration to what we can do for these people. It is fair to describe the intent of the government and the parliamentary secretary and those involved that no-one be worse off as a result of this legislation. Although I do not necessarily agree with the exclusion of psychiatric injury, I can understand it if the injury arises after the new act comes into force, and everybody is clear about that. Indeed, I might make the point to the member and the parliamentary secretary that under the current regime, employers have been paying premiums to insurers for these workers, including for their psychiatric injury. Those premiums, to the extent that they apply to that psychiatric injury, are being paid for nothing once the new act comes into force because there will be this new exclusion period. I think that is an unjust provision. I would like to give the parliamentary secretary time to consider what we can do when we eventually get to the savings and transitional provisions much later in this 700-clause bill. I guess I am using clause 1 to foreshadow some of these areas of dispute that might occur. My hope is that good-faith negotiations might be undertaken so we can speed up this process a little when we get there.

That said, I just confirm that we have dealt with the scope, the type of workers and the possibility of adverse reactions to the COVID-19 vaccination. If the parliamentary secretary does not mind me doing so, I might quickly ask a question now to save asking it during consideration of clause 2. It relates to the commencement provisions. Many of them will have to wait. I will ask two questions. First, can the parliamentary secretary give me an indication of when the various other provisions are likely to be proclaimed? This is particularly pertinent given what we have just discussed about the psychiatric injuries that could be excluded. Secondly, I refer to clause 2(b). This is just a minor drafting issue. Is there any import in the use of the words "only Divisions 1, 4 and 10" given that the specific provisions are listed immediately thereafter?

Hon MATTHEW SWINBOURN: In terms of the rewrite and the introduction of the modern act—I do not like to use the word "reform" for reasons previously canvassed—we are aiming for 1 July 2024. That is moving from the existing system to the new system. In relation to the member's question about the way clause 2(b) is drafted, the member knows where I am going. From the table, I cannot give any particular insight into the way that has been drafted. In terms of why that section is like that, that particular part and what those specific things relate to will commence from —

Hon Nick Goiran: The day after assent.

Hon MATTHEW SWINBOURN: Yes, and progressively up to the commencement of the entire bill because they relate to the transitional matters and the saving matters that need to be put in place. As WorkCover does that work and those particular instruments are created and put in place, they will come into operation and then the new act will come into effect. As I say, our goal is 1 July 2024, subject to the passage of the bill through Parliament.

The other point that the member raised, which was the first part of the question before he moved on to the second part, was in relation to consideration. We will take that under advisement. I take in good faith what the member is saying about those things. I cannot give any commitments in terms of an outcome, but we will have discussions with the minister and see where we go. We may speak to the member behind the chair as well going forward.

Hon Dr STEVE THOMAS: Now I am a little bit confused because I was going to ask about the various components of the commencement date, too. I might have to come back and look at the parliamentary secretary's answer because I think we will finish on clause 1 this afternoon and report progress. I need to work out whether that is enough of an answer to make it clear to everybody. I understood from what the parliamentary secretary said that despite it looking messy, the intent is generally to have the entirety of the legislation operational by 1 July 2024.

Hon Matthew Swinbourn: Yes.

Hon Dr STEVE THOMAS: But it will perhaps be a tad messy in the interim.

Hon Matthew Swinbourn: There is work to be done leading up to that date and the way the clause is drafted permits that to happen, but it will take effect as a new act on 1 July 2024.

Hon Dr STEVE THOMAS: I think that is okay. Under those circumstances I think we can bypass the debate on clause 2. It did look a little confusing.

I will ask a few last questions on clause 1 just to get the basics down. Regulations are yet to be written in a number of places. Has the parliamentary secretary listed the regulations that need to be written? I would have thought he would have that in some sort of list without having the regulations themselves. One of the concerns in the various submissions that the government received was the fact that much is still to come in terms of regulations. If we have learnt anything from things like the Aboriginal Cultural Heritage Act, it is that regulations can make or break you at the end of day. What regulations are yet to be written? It would be nice if we could get that in tabular form

with an indication of when they are expected to be done by. I presume that the parliamentary secretary thinks they will all be ready by 1 July 2024.

Hon MATTHEW SWINBOURN: I do not have a table at the table, but I am advised that we will probably be able to provide one to the member tomorrow. This is not a mystery in relation to this particular bill because we are obviously not starting from scratch. We will provide that to the member tomorrow. We have the draft instructions ready to go to Parliamentary Counsel's Office at the right time, but, more importantly, we will engage in consultation with stakeholders about the nature of those regulations. A body of work has already been done in preparation for that consultation process as well. I think that WorkCover is primed and ready to go once the bill has passed. The regulations are not drafted to be clear, and they cannot be. As I indicated previously, this bill is not a paradigm shift from the previous one, so there is not necessarily a need to reinvent the wheel along the way. It should not be quite as problematic perhaps the other legislation that the member mentioned, which can perhaps more appropriately be described as a paradigm shift. We are also dealing with very mature and sophisticated stakeholders largely in this area who have the resources and the capacity to engage with government and provide very strong and clear views to us so that we can try to make progress as expeditiously as possible.

Hon Dr STEVE THOMAS: I might describe that other legislation as something other than a paradigm shift, but I might have the opportunity to do that tomorrow. We do not need to defer our debate to that now. I appreciate that offer. If it is not done tomorrow, it is not urgent. Obviously, it will take a little while for these regulations to be formed up, but I am interested to know whether there is an overall list of the regulations that need to be formed. I do not mind whether it is done next week, to be honest. It is a useful tool for us to have as we progress through and finish off the job. I presume that with at least some of those regulations there will be a full and open consultation process all over again—so open to everybody. It does not necessarily have to happen with every regulation, but at least with some of the more contentious ones perhaps.

Hon MATTHEW SWINBOURN: The consultation will not be open as such. It will be targeted consultation, which is more consistent with what happens with these kinds of things. The regulations have to be within the four walls of the act that we plan to pass at some point; therefore, we are not talking about the policy in the same sort of way. We are not going to necessarily have the degree of general interest. I can probably list the stakeholders that are likely to be engaged. Others will be aware that that process is happening and are able to make representations to government if they feel that they need to, but it will not be an open consultation process.

To be honest with the member, I do not know that we will get quality with the kind of process where we just throw it open. Regulations are technical in nature so we need to have groups or stakeholders that are actively engaged with the subject matter of the bill rather than people who have an opinion that they want to share with government.

Hon Dr STEVE THOMAS: The parliamentary secretary may well be right. A list might be useful if it is not too difficult, but, again, it is not urgent. It is not something that we need by tomorrow. If it can easily be made available, that is great.

Hon Matthew Swinbourn: Is that the list of the targeted stakeholders?

Hon Dr STEVE THOMAS: Yes, the list of the targeted consultation people.

Hon Matthew Swinbourn: Yes, we will include that.

Hon Dr STEVE THOMAS: In the fullness of time, if we could see some additional information that would be very useful. I would like to progress through a couple of other bits. One of the things that was brought up during the second reading debate was the change in the way that medical practitioners will interact with the process in particular and the fact that the injured party will have private access to a medical practitioner to the exclusion of the employer or their representative. We might get to more detail on that when we get to that area of the act.

Traditionally there has been some degree of variation within the medical profession about diagnoses and, in particular, their personal assessment of a person's capacity to return to work or the things that they can do. It has been an issue around the workers compensation market forever. The parliamentary secretary has probably run across it himself. A person can go to one doctor who is very, let us say, tough on getting people back to work and the next doctor will be at the other end of the spectrum. Is there a risk? I think there is the capacity for the employer to seek an alternative opinion on that medical process. Can the parliamentary secretary give us a bit of an outline or some comfort? I think the government's intent is to allow the worker to have a private conversation with their GP or whoever it is without interference. If that is the aim, it is a reasonable one, but it potentially means that there will be some highly sought after doctors who are able to push some workers down a particular path. I do not imagine that is the intent at all. How does the government then manage that? How does the government manage the competition between the various ranges in the medical workforce? How does it oversee that process to make sure there is not a trend? A trend would occur when—this has happened in the past and it has happened internationally—workers seek out particular medical professionals and employers also do that because it suits their argument.

I would be interested to hear how that is managed now, but particularly when there are changes to the act. How does a government intend to manage that once the new act is in place?

Hon MATTHEW SWINBOURN: I want to make clear that nothing changes the employer's, insurer's or agent's right to require a worker to undertake a medical review by a doctor of their choice. It is important in this discussion to make the distinction between treatment and review. If a worker is injured at work, they see a doctor, possibly of their choice, but probably more likely one who is available. They might have cut their leg open, which was my own case; that actually happened to me. I needed stitches. It was a work-related injury.

Hon Dr Steve Thomas: Surely not in the legal profession!

Hon MATTHEW SWINBOURN: No, this was when I was a truck driver delivering milk. I jumped on the back of the truck. There was a burr on the side of the tail lifter, my knee caught the edge of it and it took a massive chunk out, and I still have that scar from the injury. I then chose my own doctor to see, which was a doctor at the University of Western Australia medical centre at the time. They sewed me up. My employer did not have a role in that initial consultation because that was the treatment. I do not think I took my pants off, but the ultimate thing for many workers, depending on the nature of their injury, are issues of both privacy and dignity that relate to how they get treated. It is not appropriate to have a worker's line manager or some stranger in the room with them whilst they are undertaking that examination. That is what the form in the area is about. It is about ensuring that we protect that dignity. For example, an employer with an injured worker would only accompany the worker to the doctor if they were taking them there because they were unable to take themselves. They would not necessarily take an interest in going into the room and being part of the discussion about when and how the worker could go back to work, and perhaps even second-guessing the doctor's course of treatment.

Hon Dr Steve Thomas: Being a vet, we might have actually done the treatment, but let us not dwell on that.

Hon MATTHEW SWINBOURN: Let us maybe not go there. Sophisticated employers often have dedicated workers compensation and injury management areas in their businesses that insist on their entitlement to attend medical appointments for treatments that occur between the worker and the doctor—it is mostly not small employers or even medium-sized employers. Those employers say it is important for their own reasons, but we say that the dignity and privacy of the worker whilst getting that treatment is also important. There can be a range of gender reasons, cultural reasons or just reasons of pure embarrassment because there could be issues about their body that they do not want others to know about. We all have that right. As I say, that does not and will not prevent the insurer, a rehabilitation provider or even the employer, when appropriate, from making contact with treating doctor to discuss in an appropriate forum what the worker's capacity is, their ability to return to work, what kind of duties might be appropriate for them to do, what they contemplated when they said the worker could not lift five kilograms above their head and all those sorts of things, as an example. That will continue to happen. It is quite narrow.

I do not know that we have any statistics that show the prevalence of an employer or an employer agent attending with workers, but it is more prevalent in some industries than others. Twenty years ago when I was working on workers compensation, it was far less common, and it became more common. I even had a worker being in a car with the employer driving them to the employer's choice of treating doctor, and the worker saying they felt trapped that they were being forced to go to that doctor. I would say to the worker that they should tell the employer to stop the car and let them out. That is the extreme end. As I say, in most instances there will be no impact on the capacity of employers, insurers or rehabilitation providers to deal with a worker's injury. It is in the worker's interest for their doctor to have an open communication with the employer about how they can get back to work because it can be an opportunity for a more meaningful return to work, with more understanding on the employer's part about the limitations caused by the worker's injury.

Hopefully, I can reassure the member that this is not just about tipping the balance in the favour of workers to the exclusion of employers. That is not what this is about all. We think it is important to preserve the worker's privacy and dignity. We have to put a limit between people's bodies and what employers are entitled to know and have access to.

Hon Dr STEVE THOMAS: As I said at the start, I think the intent of the government is good. I agree with the parliamentary secretary. I think he is right that in a small business there is an intimate relationship with staff, but that is not the right word. It is a close relationship of friendship, generally, so it is unlikely to be in those circumstances. I accept that the parliamentary secretary is probably unlikely to have any statistics on how often employers attend the doctor's surgery. Employees probably do not notify anybody most of the time, so I suspect that is right. As an aside, when we get to the review section where an employer or an insurance agency asks for a second examination with a doctor of their choice, I hope the parliamentary secretary will have statistics about how often it happens. I assume that insurance companies would report that to WorkCover.

Hon Matthew Swinbourn: No, I think with the volume being so large, it is pointless to keep statistics because there are thousands of workers compensation claims every year.

Hon Dr STEVE THOMAS: It is 24 000 or something.

Hon Matthew Swinbourn: Yes. It is quite run of the mill for that stuff to happen. I do not know that we especially keep statistics for that purpose.

Hon Dr STEVE THOMAS: I thought it was relatively common. It is interesting that it is so common that we do not keep statistics. I thought it would have been an interesting trigger point for insurance companies seeking that second opinion, if you will, and on occasions employers could do that. The parliamentary secretary might be able to provide that, but we will do that when we get to that clause of the bill.

Hon Matthew Swinbourn: The member also has to understand the motivation of insurers. Each time they do that, it costs them money, so they are not necessarily doing it willy-nilly and unnecessarily. It costs them a significant amount of money to get medical opinions, and that increases almost exponentially depending on how specialised the advice is.

Hon Dr STEVE THOMAS: Precisely. They do not start at less than $300 or $400 for a very simple examination, and they go upwards from there. I accept that it is expensive, but the fact that there are no statistics on it I think is relatively interesting.

I am nearly done. Parliamentary secretary, hopefully we will have some eastern states statistics on the timelessness of processing. I read the WorkCover annual report.

Hon Matthew Swinbourn: If it helps the member to get an understanding of the cost of reviews, I have just been advised that a ballpark figure for a medical review is about $2 000 for an occupational physician and about $4 000 for a psychiatrist.

Hon Dr STEVE THOMAS: I am not surprised at the psychiatrist's fee.

Hon Matthew Swinbourn: It is not cheap.

Hon Dr STEVE THOMAS: No, it is horrendously expensive. Maybe the parliamentary secretary should go back to that industry. The money might be better.

Hon Matthew Swinbourn: I was not an occupational physician. We do not get that much money!

Hon Dr STEVE THOMAS: I think I better go carefully. We are not doing anything negative about lawyers today.

In WorkCover's annual report, I picked up on the timeliness of processing. Annual reports are usually lovely glossy-covered documents with nice photos and some KPIs that are not overly relevant. That is not a slight at WorkCover, because every government department does it exactly the same way, which is something I have mentioned in the house before. However, in WorkCover's most recent 2021–22 annual report, I noted its key performance indicators and a couple of other interesting parts. The proportion of conciliations completed within eight weeks sit around the 96 per cent mark for 2017–18, 2018–19 and 2019–20. It drops slightly in 2020–21; the actual expected for 2021–22 was 90.8 per cent and the target was 97 per cent. It was very close to 97 per cent and it has drifted away. The proportion of disputes resolved within six months is in the low eightieth percentile across the board. It has not dropped away significantly; the target is still 90 per cent. In terms of the timelessness of processing these claims, has there been a drift, is there an issue and will the legislation result in any substantive change? Some of the submissions suggested that there might be an impact and in fact an extension of time frame rather than a reduction.

Hon MATTHEW SWINBOURN: Just to be clear, the member is asking about disputes through what used to be called the conciliation and arbitration review directorate. It is now called conciliation and arbitration services.

Hon Dr Steve Thomas: I am seeking some comfort that the time frames will not be extended by the changes.

Hon MATTHEW SWINBOURN: The bill will not impact that. The bill will not change that dispute-settling and resolution process. To give the member some context of why we think there has been a change in the KPIs and not meeting them —

Hon Dr Steve Thomas: They were not extreme.

Hon MATTHEW SWINBOURN: No. COVID obviously had an impact, and post-COVID we have not been able to get back to where we were, primarily due to medical reports and the time that it is taking for them to be produced. That is not a factor that WorkCover can actually change, because that is provided by the private medical industry or public hospitals, for the extent to which they might be involved in it. Without finger pointing, the delays are primarily because those materials that are necessary to make decisions are not as forthcoming as they were pre-COVID. Post-COVID, that has not yet improved. I do not think that is a surprise. During the estimates hearings, we talked about some of the delays in other courts and tribunals that still exist. WorkCover and its dispute-settling scheme is not immune to the same issues that exist in other parts of the legal and arbitration system, for want of a better word.

Hon Dr STEVE THOMAS: I might finish with this, parliamentary secretary. I noticed in the same report that the key performance indicators and cost efficiency for WorkCover were incredibly good. We could give the department a tick on that one. There was only one that slipped a little, and that was the average cost to complete an arbitration when the target was $9 000 and the actual was $10 739. Everything else sits very much within that target range. If I were the oversighting minister, I would be pretty comfortable that it was running reasonably efficiently at the end of the day. Is there an issue around arbitration, where that is extended, or does that also relate back to COVID delays in particular?

Hon MATTHEW SWINBOURN: Just quickly; yes, it is to deal with those factors that I identified. I am also advised that in the future reporting year, its costs have come back again. I am sure the minister will be pleased.

Clause put and passed.

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