WORKERS' COMPENSATION REFORM BILL 2004

Council's Amendments

Amendments made by the Council now considered.

Consideration in Detail

The amendments made by the Council were as follows -

No 1

Clause 8, page 6, after line 29 - To insert -

"**NRE amount**" means -

(a) in relation to any financial year ending on or before 30 June 2005, the prescribed amount in relation to that financial year;

(b) in relation to the financial year ending on 30 June 2006, $200 000;

(c) in relation to any subsequent financial year, the nearest whole number of dollars to -

(i) the amount obtained by varying the NRE amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia ("**WCI**") varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or

(ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the NRE amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars;

No 2

Clause 8, page 10, lines 1 to 6 - To delete the lines and insert instead -

(ii) by deleting paragraph (b) and inserting instead -

"

(b) the NRE amount as at the date of the worker's death, less the amount of any weekly payments made, the amount of any lump sum paid in redemption of weekly payments, and the amount of any sum paid under Schedule 2, for the injury suffered by the worker or impairment resulting from the injury,

".

No 3

Clause 10, page 11, lines 16 and 17 - To delete the lines and insert instead -

then, to the extent that the director executes the work, the director is taken to be a worker and the principal is taken to be the employer of the director.

No 4

Clause 117, page 113, after line 2 - To insert -

(3) Effect is to be given to directions under this section.

No 5

Clause 141, page 233, line 9 - To delete "25%" and insert instead "15%".

No 6

Clause 141, page 233, line 13 - To delete "25%" and insert instead "15%".

No 7

Clause 141, page 233, line 19 - To delete "25%" and insert instead "15%".

No 8

Clause 141, page 237, line 13 - To delete "25%" and insert instead "15%".

Mr J.C. KOBELKE: The Government will agree to all eight amendments. The first two amendments go to improve the benefits that are available to workers who are injured. Amendments Nos 3 and 4 deal with separate issues. Amendments Nos 5, 6, 7 and 8 all go to the same issue of changing the level of impairment that will in part entitle people to extended medical benefits. Therefore, I seek to deal with them according to the same issues.

Leave granted for the following amendments to be moved together.

Mr J.C. KOBELKE: I move -

That amendments Nos 1 and 2 made by the Council be agreed to.

This is quite a complex issue. Proposed new clauses 1, 1A, 1B and 1C of schedule 1 of the Workers' Compensation and Rehabilitation Act provide that dependants of deceased workers may be entitled to the notional residual entitlement, or an apportionment of it, when there is more than one dependant. Paragraph (b) of the definition of "notional residual entitlement", or NRE, in section 5(1) of the Act sets out the calculation of the lump sum entitlement for dependants of deceased workers if the age provisions in section 56 or clause 2 of schedule 5 do not apply. Under paragraph (b) this sum is currently calculated as being the prescribed amount and that prescribed amount currently is $139 995, less the amount of any weekly payments made, the amount of any lump sum paid in redemption of weekly payments and the amount of any sum paid under schedule 2 for that disability. In the Council's amendments, paragraph (b) will be amended and a new definition of "NRE amount" will be inserted in section 5(1). The effect of these changes will be to provide that, until 1 July 2005, the NRE amount will remain the same as at present; that is, based on the prescribed amount. It is planned that the reform Bill amendments will not be proclaimed until about that time. From 1 July 2005 until 30 June 2006, the NRE amount will be $200 000. From 1 July 2006 the NRE amount will be $200 000, indexed in line with annual increases in the prescribed amount. Paragraph (b) will continue to provide that any amount paid in any redemption, any amount under schedule 2 and/or weekly payments will continue to be deducted from what will become the NRE amount. The calculation of the NRE under paragraph (a) will not be changed. It is understood that paragraph (a) provides that for workers to whose incapacity section 56, "Entitlements to weekly payments ceasing on account of age", or clause 3 of schedule 5, "Incapacity for work resulting from disabilities of pneumoconiosis, mesothelioma and lung cancer - weekly payments", applied, the dependant or dependants receive the amount of weekly payments that the worker would have received up until they would have ceased due to age restrictions in the Act, less the amount of any lump sum paid in a redemption and/or under schedule 2.

In simple terms, these amendments have the effect of increasing the amount that would be available to the family or dependants of a worker who was killed from the current amount, which is just short of $140 000, to $200 000, taking account of the various provisions that apply in a range of cases, and also taking account of indexation of that amount of $200 000 after June 2005.

Mrs C.L. EDWARDES: Before I comment on this clause, I will take the opportunity to summarise again what the reform Bill is all about. Particularly in relation to this clause and a couple of the amendments that we will deal with later, it is about the impact of cost. The cost of this legislation will perhaps put workers' compensation into some form of jeopardy. In the past we have seen spiralling costs impact greatly on the aged, the disabled and community services. Although all the changes that have been made, including the ones that are being put forward tonight, have an impact, and on their own have a benefit such as increasing the medical benefits, they have all been ad hoc. None of the amendments that the Government is making to the workers' compensation legislation hang together.

It is of concern that this legislation will go through this Parliament. It is of concern in a number of ways. The fact is that there have been a number of key drivers. The PricewaterhouseCoopers' actuarial assessment of this legislation shows that today the cost of workers' compensation premiums has declined. I will comment on that in a little more detail when we get to some of the other amendments further down the track. What the Government is doing with the amendments tonight, including these two, is making ad hoc increases to workers' compensation premiums. This will have a huge impact on the ability of employers to fund workers' compensation. As such, there will be a negative impact on workers' compensation itself. This will impact on the aged, the disabled and community services much more quickly than the Government anticipates it will impact on small businesses, although they will be impacted upon. If the Government thinks land tax and payroll tax has hit them badly, this will cause workers' compensation premiums to skyrocket. The Government will find that within 12 months there will be an enormous outpouring of outrage about premium rates. When we get to one of the other amendments further on, I will have an opportunity to talk a bit more about premium rate setting.

With regard to these two amendments, can the minister tell me two things? First, what is the anticipated added cost of this amendment? Second - a drafting question - why is the amendment proposing to insert a definition

for "NRE amount" when I cannot find a reference to "NRE amount" in either schedule 5 or section 56 of the Workers' Compensation and Rehabilitation Act? The other definition contained in the Act is for "notional residual entitlement".

Mr J.C. KOBELKE: I will comment briefly on the member's general comment before I speak to the amendments. The range of reforms here have been discussed and considered by key stakeholders for several years. That was a very thorough process to make sure we had integrated reforms so that we could get a more efficient and effective system that would save costs. We will all have to wait to see whether they will stand the test of time, and I gave an example of where that has occurred in question time today. When we reformed an aspect of the Industrial Relations Act with the clear intent of making it a fairer system, which meant that fewer people would suffer unfair dismissals, again the member for Kingsley pooh-poohed that idea as simply not achievable and said that we would see a blow-out in the number of unfair dismissal cases. Two years on the records show that the number of applications has declined. The system delivered, as I said, because we put in place a fair and just system that worked better. This is a fairer and more just system, and if it is driven - which is certainly my intention - to give the people the ability to do that, it will deliver much better outcomes not only in terms of fairness for injured workers, but also for the employers in terms of stable and moderately low premiums. As I said, we will have to wait to see what happens with the test of time.

I turn now to the specific question asked by the member with respect to the definition of "NRE amount". This is complicated because it involves how the Bill amends the Act. All definitions are contained in section 5 of the Act. On page 13 of the Blue Bill, the member will see the definition of "notional residual entitlement". We are placing a new definition for "NRE amount" in that list of definitions, which will alphabetically go underneath the definition of "notional residual entitlement". Subclause (b) under the definition of "notional residual entitlement" gives effect to this new system. I do not know whether the member is following me; this is quite complex, and I am not an expert on it, but I am trying to come to the point.

Mrs C.L. Edwardes: I will just tell you what I am talking about. If the Act does not refer to "NRE amount", then the definition -

Mr J.C. KOBELKE: It does; I am coming to that. The definition of "notional residual entitlement" in the Act contains subclauses (a) and (b). Amendment No 2 replaces subclause (b), and that provision uses the term "NRE amount". It is then proposed that the next definition to follow on from the definition of "notional residual entitlement" will be the definition for "NRE amount".

Mrs C.L. Edwardes: So why doesn't it refer to -

Mr J.C. KOBELKE: I am yet to explain why, if I can come to that. The issue is that subsection (a) and subsection (b) of the definition of "notional residual entitlement" are differentiated because subsection (a) is the one that makes an allowance for age provisions; that is, if the injured worker was of a certain age, the entitlement is discounted because of that age factor. That is not the case under subsection (b). What happens then is that in the change we are making to subsection (b) - I am not saying that this is the best way it could have been drafted; it certainly seems rather convoluted - the term "NRE amount" is picked up, which is then found in the new definition to be inserted. That then is built into the whole area of notional residual entitlement. It certainly is confusing to most people who are not lawyers practising in the area that we have NRE amount, which stands for notional residual entitlement amount, and we have notional residual entitlement. They are technically different issues, one built within the other, but it has been drafted in that way to provide this enhancement to the benefits that will be available.

Mrs C.L. EDWARDES: The minister might like to have some more time in order to answer the question about the cost of this amendment.

Mr J.C. KOBELKE: I thank the member. I apologise. I will provide to the member later the breakdown. I have in my head the overall cost. Amendments Nos 1 and 2 deal with the enhanced benefits available on the death of a worker. The other change, which is taken up in amendments Nos 5 to 8, is an enhancement of the medical benefits that are available through the statutory scheme. The two together will take the full eroded costs up to 2.7 per cent. I certainly have that figure in my head. Claims were made on us for a range of other things that people in the other place said they would like to move. However, when we costed the claims that were being proposed, just one of those - I think it was the enhancement of the special retraining allowance - would have taken it beyond 2.7 per cent. We then had to do a bit of juggling to make sure that any other things that we put in were discrete, and therefore fairly easily drafted, so that they would not upset the context of the Bill, because requests were made for us to do major things that we could not countenance. The other issue is that we also needed to make sure that we kept within our promise that the cost would not go beyond 2.7 per cent. I will provide to the member by tomorrow, or Monday at the latest, the detailed costings on both of those areas of additional cost.

Mrs C.L. Edwardes: In dollar terms?

Mr J.C. KOBELKE: I can give them to the member in both percentage and dollar terms.

Mrs C.L. EDWARDES: I ask that only because I cannot let the minister get away with his comment about the reduction in workers' compensation premiums, because, as the minister has just recognised, the cost will go up by 2.7 per cent.

Mr J.C. Kobelke: If things go badly, it would be eroded to that. I will give you both the up-front costs and the estimate of eroded costs.

Mrs C.L. EDWARDES: The minister has acknowledged in his actuarial reports, in answers to questions, in his media statement, and in the committee, that the Workers' Compensation Reform Bill will cost more in workers' compensation premiums than employers are paying today. Is that not the case?

Mr J.C. Kobelke: Workers' compensation costs go up and down from year to year in a cycle. We are seeking to provide stability.

Mrs C.L. EDWARDES: The minister has acknowledged that these reforms will increase workers' compensation premiums. That is referred to in the PricewaterhouseCoopers actuarial report.

Mr J.C. Kobelke: The average premiums that are anticipated from the actuarial work to flow from these reforms will be higher than the set average premiums this current year.

Question put and passed; the Council's amendments agreed to.

Mr J.C. KOBELKE: I move -

> That amendment No 3 made by the Council be agreed to.

The amendment to lines 16 and 17 deletes the words "that director is taken for the purposes of this Act to be engaged or employed by, or working for, the principal" and replaces that wording with the following -

> then, to the extent that the director executes the work, the director is taken to be a worker and the principal is taken to be the employer of the director.

This amendment will clarify beyond doubt that under the circumstances described in proposed subsection (2), a director will be deemed a worker and the principal deemed the director's employer. After a current reading of the Bill, it could be argued that a director of a company who has contracted with a principal would not meet the requirements of the definition of "worker" that the worker worked under a contract of, or for service with, the employer. This new approach will also provide consistency with the provisions in existing sections 7 and 8 which deem certain persons to be considered workers. A person who is a director - he or she may be a small business person who, in partnership with a spouse, runs a business - may pay workers' compensation, but as was proved by the Findlay case, that person would not be covered and would therefore not receive any benefits. The drafting of a solution to this has been incredibly complex. As I said earlier in the debate, it went through a number of different forms. We believe that this form is the best. However, as people have commented on it during its passage through Parliament, they have thought that the issue of making sure that a director is tied to the work that he is doing as a worker for the principal should be clarified with an amendment in the form that we have before the House. We are trying to ensure that the courts will not put further interpretation on it in a way that could destroy the clear intent to allow a director to not have to have workers' compensation cover when working for his or her own company. However, when that person is working for someone else, the other person has to cover him as an employee. Those who work in our residential building industry largely do so as subcontractors. If a bricklayer sets up a company with his spouse, he does not have to cover himself for the work he does as a bricklayer. However, clearly the principal who employs him to lay the bricks has to cover him. In essence, it should be a simple application. However, because there are so many forms of contracts, subcontracts and directorships of companies that do different work, issues may arise that we have not adequately covered. Given the time put into this, and the number of people who have reviewed it, this amendment will provide extra caution to ensure that that difference is not interpreted in a way that is clearly not the intent of the Bill.

Question put and passed; the Council's amendment agreed to.

Mr J.C. KOBELKE: I move -

> That amendment No 4 made by the Council be agreed to.

This amendment reinserts the following line -

> (3) Effect is to be given to directions under this section.

This line was inadvertently deleted by amendments when the Legislative Council was in committee. A lot of amendments were made and because of the complexity of the Bill, which is rather large, that line was inadvertently deleted. It was therefore reinserted in the other place.

Mrs C.L. EDWARDES: I do not agree that it was inadvertently deleted. It is an important deletion. This line deals with the directions of the minister to make a fiction of workers' compensation premiums. It has always been the case that there has been a recommended workers' compensation premium rate. As the minister has been at pains to say many times in the past, and even again tonight, workers' compensation premiums go up and down, sometimes according to the particular occupation and category. I have not always agreed with the categories and standards that have been set. I have argued vehemently that in some instances they must be changed. For instance, why should an art framer be considered to be in the retail business, because under that category his workers' compensation premium skyrockets? Some of the categories do not make sense. Under proposed new section 154AB, the minister may give directions in writing on the fixing of the recommended premium rates. The line he wants to put back in reads -

(3) Effect is to be given to directions under this section.

The minister will give a direction, and everybody will pay that amount. What a nonsense! It is unrealistic and a fiction. It will put increased pressures on the system.

I refer the minister to the upper House Select Committee on Workers' Compensation's first report on this Bill, which is quite enlightening in some respects. The committee report reads -

> The Bill is a textbook example of the difficulties experienced when policy has to be translated into statutory language. Although the concepts are easy to comprehend, their expression in the Bill is a complicated exercize if ambiguity and imprecision are to be avoided. The complexity is amplified by the form of the Bill, which is to make substantial amendments to the text of the parent Act, and the absence of a draft of the regulations -

We still have not seen those regulations -

> that are an essential element of the introduction and administration of the statutory scheme that is intended to supplant current arrangements.

It refers then to submissions and reads in relation to matters of interpretation -

> . . . may take some time to "bed down" before their application is delimited. Undoubtedly, further amendments will be required as and when the parliamentary intent parts company with the legislative effect of the enactment as interpreted by the judiciary.

The select committee sees huge problems with the legislation when it hits the streets. The proposed changes at a glance will undermine the current system, which is stable. Major changes will be made to all areas of the system when they are not needed. None of the changes will reduce existing costs. The minister referred to the fact that the changes will get people back to work more quickly. What nonsense! The time frame has been extended - it will not happen. It is likely that they will result in an increase of more than 30 per cent in claim costs for employers, and ad hoc benefits for workers. Nobody, not even the Australian Lawyers Alliance, formerly the Plaintiff Lawyers Association, which has been a strong advocate on behalf of injured workers, likes the legislation. No-one likes the legislation other than the Government and some members of the union movement - not even all members of the union movement want it. The Bill undermines the key components of a successful workers' compensation system; that is, injury management. The legislation certainly will not result in people returning to work at a very early stage because the processes to be put in place are far too complex. The select committee in the other place identified that situation; it stated that it does not know how it will be interpreted in practice. All those proposals will be undermined by the amendment when the minister's recommended premium rate will become irrelevant as an indicator of real costs.

Mr M.W. TRENORDEN: As I read it, the amendment will allow the minister to give direction under the provision. It is a remarkable amendment, given what has been happening in this place for the past five years. For a long period, provisions allowing directions to be given by a minister have been removed from Bills. In fact, consistently in this place during the past three years - essentially since the election of the Gallop Government - members opposite have been backing away from allowing ministers to become involved in legislation.

Mrs C.L. Edwardes: It was a totally independent committee.

Mr M.W. TRENORDEN: This Bill is going against the tide. This Bill recommends that the minister have the capacity to step in and make a recommendation. As we heard from the previous speaker, we have a system that has been universally proclaimed as working well. In the past, that system has been a mixture of all the people who have been involved in workers' compensation, including the unions, the insurance companies, industry and

people who were involved in the commission. Why would the minister want to insert a clause that says that an effect is to be given to directions under this section; that is, someone outside of the long-established and successful process must be brought in? Why is that the case? This Government has been backing away from ministerial activity and ministerial direction, and even from the inference of ministerial activity. Therefore, why is the minister saying that this amendment should be included because it was inadvertently taken away from a previous clause in an earlier debate? Today we had a debate about energy in which the Minister for Energy said it was totally inappropriate for him to get involved in matters regarding the regulator. He believes that is wrong. I believe that the minister has a right to get involved. The Minister for Energy says it is totally inappropriate for the Minister for Energy to have a view on energy. Therefore, why is it appropriate for the Minister for Consumer and Employment Protection to have a view on what should be the outcome regarding premiums? The minister would have to accept that one of the areas that has been stable and consistent in workers' compensation is the effect on premiums.

Mr J.C. Kobelke: I disagree totally.

Mr M.W. TRENORDEN: I will sit down and the minister can tell me why.

Mr J.C. KOBELKE: Premiums have not been stable. They increased to 3.4 per cent under the former Government and they are now down to about 2.3 per cent.

Mrs C.L. Edwardes: Because of the 1999 changes.

Mr J.C. KOBELKE: They have not been stable. However, that is not the main point. The member's main point is valid. Why should the minister have the power to direct? The member for Avon's comparison with the Minister for Energy must take into account two important matters. Firstly, the principle of whether the minister should be able to interfere, and, secondly, whether a minister is allowed to under the statute. Those two matters go together but they are separate issues.

Mr M.W. Trenorden: You are always allowed to.

Mr J.C. KOBELKE: Generally the minister should not be able to interfere in the setting of premium rates. We are specifically giving the minister of the day a limited ability to give directions relating to the setting of premium rates. The member for Avon must understand where the minister has this power. The member must read subclause (2) to understand that provision. In schedule 2, which is section 141 that has been alluded to, a range of new benefits are available to workers in the statutory scheme. Those new benefits are available to workers who have already been injured, even prior to this legislation being introduced. Most of the changes made in the reform Bill concern workers who were injured on the date after the section comes into effect to be eligible for the benefits. However, for a range of improvements to the statutory benefits, if a worker was injured one year or three years ago, he can pick up the extra benefits if he is entitled to them through the various provisions. The insurers rather than the employers are being asked to pay for that. The insurers have made very good profits since the changes were made in 1999.

Mr M.W. Trenorden: That is nonsense.

Mr J.C. KOBELKE: The member can have his point of view. The figures are there. The last annual report was tabled recently; the member can read it. Since the 1999 changes were made, the differences between the premiums collected and the money that has been paid out is huge; it totals hundreds of millions of dollars a year.

Mr M.W. Trenorden: I disagree.

Mr J.C. KOBELKE: The member can read the reports; it is true. It is because these premiums were paid three or four years ago and the insurers have the money and the workers who were injured under the old system pick up extra payments, they should pay for them, not the employers. That is what this clause is about. This amendment will give effect to subclause (2) because it provides that effect is to be given to directions under this section.

Under proposed section 154AB "Special directions by Minister", the minister can only direct on a matter. Proposed subsection (2) reads -

> The matter is the extent to which the cost of paying compensation under this Act as amended by the *Workers' Compensation Reform Act 2004* in respect of claims made before section 141 -

Which contains those benefits. It continues -

> of the *Workers Compensation Reform Act 2004* commenced -

That is, the payments made before it commenced. It continues -

> would differ from what it would have cost to pay compensation arising out of those claims if section 141 of the *Workers' Compensation Reform Act 2004* had not commenced.

That is the only thing the minister can direct under this proposed section. If the costs increase from what injured workers would have received before this legislation to what they would receive after it has been implemented because this one section provides for enhanced benefits, the minister can direct that premiums not be increased; the insurers must pay for it. It is a very limited power to direct. As a general rule, I accept the principle that the Leader of the National Party espoused - whether that was rhetorically or in support of it - that ministers should not interfere in the setting of premium rates; it should be a commercial decision of the board. Given injured workers have had their benefits reduced since 1999 and insurers' profits have increased, we are saying that any extra benefits that go to those people over the next two or three years as that is phased out are to be paid out of the insurers' profits, not by employers paying higher premiums. The minister has the power to direct that. It will not come into effect until next year, but if I am re-elected it is my very clear intention to give that direction. I have told the insurers, who do not like it. People from eastern states companies have told me they do not like the idea of my forcing them to pay that amount. As I said to them, since 1999, employers have been paying premiums on the basis of what they have had to pay out and the insurers have pocketed hundreds of millions of dollars, so they will have to meet this extra cost over the next two or three years, until this is out of the system. The amendment covers only one direction that the minister can give for that extra cost in that specific area.

The ACTING SPEAKER (Mr D.A. Templeman): I remind members that newspapers and magazines that are not related to the debate must not be read in the Chamber.

Mr M.W. TRENORDEN: I have a great deal of difficulty with the minister's comments. I attend the Insurance Commission of Australia's annual general meeting every year where the figures are available. If the minister had attended the last meeting, which he did not, and he has not attended any since I have been attending them, he would see that those profits do not exist. It is all very well to run a political argument, based on a snapshot of a given time, that insurance companies have made big profits. However, those of us who have been in this Chamber debating workers compensation for many years - I am one of them - know that the tail in workers' compensation is very significant. It is fair to say that workers' compensation insurance is a seven-year business; in fact, it can be much longer than seven years. It is totally unreasonable to take a snapshot view of one particular type of premium and pay outs and claim that that is the position. That is illogical. The minister is irresponsible in taking that position. We can all kick insurance companies. Members opposite have often pointed out my history with insurance companies. It is true; I did have a long association with insurance companies. However, I was an agent and, as such, I was a representative of clients, not insurance companies. I am not a great fan of insurance companies. I have batted for clients on many occasions against insurance companies. We cannot take the reality of money in and money out. The tail in workers' compensation is quite substantial. It does not matter how the minister wants to play the political game. If too much money is taken out of one year's pool, the amount will be caught up and somebody will pay the difference. Had the minister attended any of the Insurance Council of Australia meetings and looked at the graphs showing money in and money out and the tail of workers' compensation, he would have noticed that it has been many decades, probably back to the 1970s, since the insurance industry has made a profit out of workers' compensation. It certainly has not made a profit out of workers' compensation during the past four or five years. I know that you, Mr Acting Speaker (Mr D.A. Templeman), are interested in the industry. If one looks at the industry and the share market, apart from the past 12 months, share prices of insurance companies have been extraordinarily low because the companies have not been returning profits. Those companies that are now faring reasonably well in the insurance field do not deal with professional indemnity and workers' compensation. A couple of very specialised insurance companies have been floated in recent times. They basically deal with household insurance, motor vehicle insurance and the like. They deliberately keep away from workers' compensation and professional indemnity, because they both mean losses.

The minister's statement reminds me of one of my favourite sports, which is kicking banks. We all love kicking insurance companies and kicking banks, but it does not come to reality. We must deal here with the fact that a range of people get injured and seek workers' compensation. It is absolutely critical for those people to be paid and get a benefit not only for this year but also future years. The only way they will get that benefit is when people pay premiums and a fair system is worked out for insurance companies. There is no point in saying to the insurance companies that they are making millions. If a photograph of one day is taken, it will not give the correct impression.

Mrs C.L. EDWARDES: I take the opportunity of outlining the situation as summarised by PricewaterhouseCoopers, which carried out the actuarial assessment of the workers' compensation system today. I will then give a snapshot that will pick up on the minister's point on charging by insurers. The actuarial assessment states -

> If the cost of the Western Australian workers' compensation system is measured in terms of the Gazette weighted average recommended premium rates set by the Premium Rates Committee (PRC), then the

> cost has declined by 32% since the October 1999 Act amendments from 3.436% of wages to 2.342% of wages at 30 June 2002.
>
> . . .
>
> The current costs of the system are driven by two key aspects :
>
> - increases in real average claim sizes after adjusting for wage inflation
> - significant reductions in claim frequency and the number of claims incurred.
>
> The reduction in claim numbers has been greater than the increase in average claim size, leading to a net reduction in system costs over the period. The cost reductions are largely due to the impact of the October 1999 Act amendments. We note the reducing claim number trend stabilised during 2002/03.

The actuarial assessment goes on to refer to that period of time until 2004. It states -

> The current premium rating cycle based on insurer data up to 30/6/2003 has recently been completed and is documented in our 05/03/2004 PRC Report. The average premium rate reduced by 3.8% to 2.252% of wages.

When the actuaries did a snapshot to 30 June 2002 - the system has improved since that time - they identified data inaccuracies and enhancements, which hopefully will be corrected. The summary continues -

> claim frequency trend down stabilised (?)
>
> open claims down and closure rates up
>
> cumulative paid average claim size still increasing by AYR
>
> common law & legals paytypes significantly down
>
> redemptions significantly up
>
> weekly and medicals stable/slightly up
>
> overall payments per claim increased in 2002

Injured workers were actually getting benefits as well. The summary continues -

> loss ratios down from >106% in 1997 to target 80% (est)
>
> insurers undercharged from 1996 to 1998

This is because of the spiralling costs. That is a factor that the minister never takes into account when he is talking about the 1999 changes. He does not go back to that seven-year cycle, and that is wrong. The minister is misrepresenting what is occurring in the system, for his own purposes. The document continues -

> 2000 premiums onwards match Gazette trends
>
> expenses down from 19% (1998) to 16% (2002)
>
> average Gazette rate down by 33% to 2.3% since Oct 99
>
> common law frequency lower
>
> ultimate c/law frequency still uncertain
>
> common law cost still maturing
>
> impact of Oct 1999 Act changes appears to have stabilised.

By putting in a fixed direction the minister will increase the pressure on the system. The actuary has estimated that it will go up far greater than even the minister is anticipating. The report reads -

> For costings of this nature it is not possible to calculate exact outcomes with precision. This is because the current cost of the system cannot be estimated with certainty since it is based on future uncertain claim events and economic, social and legislative conditions. The actual outcome may well be different from the results presented.

On page 14, the report states -

> The influence of the erosion and transfer effects and claimants who modify their behaviour to limit the impact of any changes, causes a further degree of uncertainty.

How can the minister possibly direct those premium rates to be taken as he directs? He will be creating a huge problem for everybody in the community.

Mr M.W. TRENORDEN: There is a bit of an analogy here that should be taken into account. At the time that the current Premier was the minister responsible for the State Government Insurance Office, and the State set premiums on a range of state insurances, I remember very clearly him coming into this House and not increasing

premiums in a range of areas for political purposes. It was clearly found, after the Lawrence Government was defeated, that substantial losses were involved, because the minister had the capacity to direct premiums for the SGIO and did so for political purposes. That is not a statement that can be contested in this Chamber; it is absolute fact. When the SGIO was in a situation of difficulty, that situation had to be rectified. It does not matter how much politics is taken into account, in the end the money must be put in the bucket. It just has to happen. I oppose the process of having a minister involved, even in the limited area the minister is proposing. I concede that he may or may not be the minister at the time, but that is not the issue; we are talking about legislation that gives future ministers some capacity that may or may not be used. I argue that, over a long period, we have had every reason to have confidence in the Premium Rates Committee, because it has had the responsibility of not taking the current minister's point of view. The minister's view is that a snapshot can be taken on any given day and that people can argue about what is on the left of the line and what is on the right of the line. With workers' compensation we are talking about a situation that runs for a minimum of seven years for most, but not all, individuals. With workers' compensation we never talk about the 98 per cent, but always talk about the two per cent. It is really important that we consider the people involved in the claims process over the term of their claim, and not just at one point in the process. All members in this House will have had people come into their offices who have been very upset about workers' compensation. Not one member of this House would not have felt compassion for some of the people who come into their offices with very grievous stories. However, the claims of many of those people will never be met, because some of them expect their earnings during their lifetime to be met.

We must be fair about the safety net. Of all the members of this House, the minister is the one who argues most about the safety net. No-one argues more about safety nets than does the minister. He has a really interesting position on workers' compensation. I would be the first person to agree that workers' compensation is never an easy argument. However, the minister has a very interesting position on this matter. He is going through the process of this Bill with most people opposed to him. That is pretty remarkable. When the member for Kingsley was in charge of this process, the situation was often black and white. Is that fair to say?

Mrs C.L. Edwardes: In 1998 we had full agreement from employers and the trade union movement. It was only the Labor Opposition that opposed it in 1998.

Mr M.W. TRENORDEN: There must be compassion in this process. There is no point in the minister saying that the insurance company or someone else is at fault. Workers' compensation is a blend. There is no point in saying that it is a snapshot of a particular point in time and that there is a particular problem.

Question put and a division taken with the following result -

Ayes (22)

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

Noes (11)

Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr M.W. Trenorden	Mr J.L. Bradshaw *(Teller)*
Mr M.J. Birney	Mr B.J. Grylls	Mr T.K. Waldron	

Pairs

Mr S.R. Hill	Mr M.F. Board
Ms A.J. MacTiernan	Ms K. Hodson-Thomas
Mr J.J.M. Bowler	Mr P.D. Omodei
Mr P.B. Watson	Mr R.N. Sweetman
Mr N.R. Marlborough	Mr M.G. House
Dr G.I. Gallop	Mr A.D. Marshall

Independent Pairs

Dr J.M. Woollard
Dr E. Constable
Mr P.G. Pendal

Question thus passed; the Council's amendment agreed to.

Leave granted for the following amendments to be moved together.

Mr J.C. KOBELKE: I move -

That amendments Nos 5, 6, 7 and 8 made by the Council be agreed to.

These amendments are to clause 141(20) and (24) and will replace the whole of person impairment threshold requirement of not less than 25 per cent with not less than 15 per cent for eligibility for the proposed new further additional sum for medical and other expenses. Lowering the whole of person impairment threshold requirement will enable more injured workers to be eligible for the further additional sum. This change will give more workers, including any who have not less than 15 per cent whole of person impairment, real choice between the improved statutory and common law systems. Under this amendment, an arbitrator will be empowered to allow a further additional sum of up to $250 000 beyond the existing additional $50 000 for reasonable medical and other expenses if the worker has an agreed or determined whole of person impairment of not less than 15 per cent and meets certain prescribed exceptional circumstances criteria. These circumstances will include evidence that indicates that operative intervention will result in further improvement. For workers who access this entitlement, damages cannot be awarded at common law. Any disputes on the exceptional circumstances criteria may be determined through a peer review process by a special medical assessment panel comprising three specialist medical practitioners from a branch of medicine or surgery that is relevant to the workers' medical circumstances.

With regard to the issue of choice, it should be noted that the total aggregated amount of the improved statutory entitlements available to an injured worker under the reform Bill will amount to a sum greater than the cap in common law damages for workers whose whole of person impairment is at least 15 per cent and less than 25 per cent. This cap currently amounts to $293 990. To illustrate this, under the reform Bill the statutory entitlements that will be payable consist of weekly payments of $135 995; a further 75 per cent of the prescribed amount for total and permanent incapacity of $101 996; vocational rehabilitation expenses of $9 799; medical expenses of $41 998; an additional sum for medical expenses of $50 000; and the further additional sum for medical expenses of $250 000. In total, the sum of all statutory entitlements that might be available to someone in this category is $589 788, which is approximately twice the maximum a person could get through the 15 to 25 per cent impairment model or the second gateway access to common law. Clearly, this is a key element of ensuring that those workers at the low end of the common law spectrum can be looked after just as well as those in the statutory scheme without having to make the choice of going to common law, which has the potential to drag

their case out for a considerable time and be an inhibitor to their getting back to work or undertaking retraining and getting on with their lives, which we all know is absolutely crucial to helping injured workers overcome the damage and trauma they may have experienced from their injury in the workplace.

Mrs C.L. EDWARDES: The minister has not told us what will be the retrospective impact of the costs of these changes, the estimated impact of the changes and, therefore, the estimated impact of the changes after erosion. They were all costed previously in the PricewaterhouseCoopers' report. The Government has not been able to identify those issues again. A change from 25 per cent to 15 per cent will grab a large number of injured workers. When we are talking about such a sensitive cost component as this may very well be, and bearing in mind the cost impact that the actuary has given previously, I would have expected the minister to be able to give us those costings. He promised at an earlier stage this evening that he would get them to me by tomorrow or, at the latest, by Monday. However, that is not good enough, because all members in this House have a right to have that information before them before they -

Mr J.C. Kobelke: I did give you the global figure; I couldn't give you the breakdown.

Mrs C.L. EDWARDES: The breakdown is very important. The estimated initial impact of the changes is 1.4 per cent in claim costs. On an annual basis, it is 1.1 per cent. The retrospective impact - that is, the one-off impact of changes - is 1.1 per cent on outstanding liabilities. The impact of changes, after erosion, on claim costs only is 1.7 per cent, and on annual charges, 1.3 per cent. At 25 per cent, it is quite significant. At 15 per cent it will be even more so. I suggest that the minister is being very optimistic by having it set at the upper limit of 2.7 per cent.

There are no winners under this workers' compensation legislation. The Government has just grabbed bits and pieces in an endeavour to do a deal with the Greens (WA) to get the legislation through the Legislative Council. It will find that it has totally undermined the whole workers' compensation system that operates in Western Australia. This will not work because it does not hang together.

Mr M.W. TRENORDEN: I said just a few moments ago in the debate on a different amendment that we must all have compassion for injured workers. However, the bottom line is that the whole system must be in balance; that is, the employers need to have the capacity to meet the premiums for the injured workers to have the capacity to receive the benefits of workers' compensation. It is totally unacceptable for any piece of workers' compensation legislation to go through this House without a reasonable costing.

The ACTING SPEAKER (Mr D.A. Templeman) Members, the level of conversation is now becoming more audible, so I ask that members who are having conversations either leave the Chamber or not speak if they remain in the Chamber.

Mr M.W. TRENORDEN: Mr Acting Speaker, those members opposite are deriding you. This is a very ordinary situation. They have been a very unruly bunch all day. I will point out a very serious situation. Three National Party members are here tonight - a Thursday night.

Mr A.D. McRae: Four?

Mr M.W. TRENORDEN: No, we will not get four. Try as we may, we will not get four. However, we will get three, which is a fairly significant event. Therefore, I suggest that members opposite should have a bit of reverence for the significance of tonight's occasion.

It is important that the system be in balance. However, in the end it needs to be balanced, and it needs to be kept in moderation, because too many people will lose and too many people will be hurt if we do not do that.

I have had a passion about workers' compensation for all those years. I have actually experienced it. I was an insurance agent before I came into this place. The same types of people came through my office in those days as come through my office now. One cannot feel anything other than compassion for those people who are in pain and have had their lives destroyed. However, we need to face the fact that despite the expectations of a lot of people, workers' compensation is just a safety net. Once people run out of their safety net of workers' compensation, the only thing left is the other safety net - social security. A lot of people will argue that that is not fair. In a perfect world, it is not fair. Unfortunately, like all things in society, it has to be paid for. If we want to have a situation in which people are paid according to their full expectations of what they hope to achieve in their lifetime, then none of us will be able to afford the premiums. When we get older and start to get a bit of grey hair - you may understand this, Mr Acting Speaker (Mr D.A. Templeman), when you start to get a bit of grey hair - we find that a lot of our friends die and fall short of the mark of achieving their expectations for their lives. There is enormous pain in that. However, it does not change the fact that that is what happens in the real world.

We need to make sure that when people turn to the workers' compensation system it is in balance and there is some equality in the process, because if we drive a situation in which the claims process gets out of balance, the premium process will get out of balance too, and we will get back to the situation to which I referred earlier.

The greatest example of that is the Kirner years in Victoria - perhaps that is a bit unfair, because it began shortly before her time - when the cost of workers' compensation blew out to some $2 billion. What happens then is that the system has to be hauled back, and the people who are part of the system at that time are penalised. That is the last thing we should expect to come out of the workers' compensation system. It is not acceptable that the minister cannot give us a clear indication of the cost. The minister is unable to give us the cost at 25 per cent. He is much less able to give us the cost at 15 per cent.

Mrs C.L. EDWARDES: The Leader of the National Party has talked about balance. That reminds me of the time the minister gave a guarantee that under this legislation costs and expenses would balance out, so that the net effect would be that premiums would remain the same, or hopefully continue to reduce. That cannot be achieved. The minister has acknowledged that tonight. The minister said, by way of excuse, "Oh, but that was said way back then." The minister already had an indication at that time that the system was stabilising or going down. There will be no winners out of this legislation. The injured workers will not be winners. Injured workers want to get back to work. The first extension in the duration of claims will come from the increase to 13 weeks for the first step-down. That will mean that an injured worker will not get back to work at the four-week stage. The attempt under injury management has always been to get the injured worker back to work. This system will not allow injured workers to do that. Any changes to workers' compensation need to strike a balance between the needs of injured workers and the affordability of workers' compensation premiums. Over the many months of this debate, the Opposition has attempted to give the minister some advice. I will again take that opportunity in the closing stages of the reform Bill debate.

This legislation will go through the Parliament this evening. I ask the minister to allow time for it to be implemented. The minister will respond by saying that I have asked for that so that nothing is done before the election. I ask the minister to put the election aside, because this legislation will tip the whole workers' compensation system upside down. The minister has made changes to dispute resolutions, and they must be put in place properly. The Bill will implement impairment-based thresholds, and medical practitioners must be trained so that they are competent in that role. The minister must ensure that that occurs. The new benefits and procedures must be put in place in a considered and controlled time frame. The minister could tomorrow give the whole schedule 2 benefits of retrospectivity and every injured worker will find that, as we approach the next election, he has extra money in his pocket. However, what the minister will do - I cannot view him as a responsible minister if he does this - is start to undermine the whole system from the time of its implementation. The minister must ensure that the new commission is given the opportunity to manage the issues that it will be involved with. I would like the Premium Rate Committee, together with the independent actuary that has been involved in Western Australia's workers compensation landscape, to be given the option to consider the impact of the changes. I want the minister to allow them, before they are disbanded, to give consideration to the impact of the changes. If the new system is rushed through, there will be a lack of confidence and understanding of the system. That will have an immediate effect that is far greater than that accepted on costs, injury management and the duration of claims. If the minister lets any one of those get out of balance - even the balance that the minister has portrayed - he will undermine the system in a major way. As I have said, the increase to 13 weeks for the first step down will increase the duration of claims, as will some of those other statutory benefit increases. The training scheme is a major unknown experiment. I hope it works. If it works, I hope there is an opportunity to extend it further in order to get injured workers back to work. If the minister puts this system in place with little control and no regulation, he will again undermine what he wants to achieve. The Opposition does not like this legislation. We do not think that many people in the community like it. Yes, some injured workers will get extra money in their pockets. However, for those of us who have been involved in the system for a long time, we know that it will not ultimately benefit injured workers in the long run. As such, I ask the minister to ensure that whatever he puts in place is conducive to stabilising any beneficial outcomes that he wants to achieve.

Mr M.W. TRENORDEN: I will make some final points, because we have reached the end of the night. I have attempted to say that I have a genuine concern about the workers' compensation system and the people it effects in the industry. I have a genuine concern about those people who are trying to create economic activity to find a premium and keep all this going. In the end, this Bill will not succeed. In days to come the minister and I will run into each other - we do not dislike each other - and I hope that the minister will be able to point to me and say "You were wrong, member for Avon." I suggest that that will not be the case, minister.

Mr J.C. Kobelke: I hope you can get re-elected so it can be the case.

Mr M.W. TRENORDEN: Whether I get re-elected or the minister gets re-elected is not the issue. We have always argued the point that workers' compensation is about people - it has a significant impact on people. I think the minister will have problems and the Bill will run out of control because some reason compelled the minister to allow lawyers back into the process. If I sound like I am anti-lawyer, it is mainly because I am anti-lawyer.

Mrs C.L. Edwardes: Apart from your colleagues with whom you work.

Mr M.W. TRENORDEN: Apart from some colleagues around the place.

Mr J.A. McGinty: I'm a bush lawyer.

Mr M.W. TRENORDEN: The minister is substantially in front of me; I am much lower than a bush lawyer.

Vested interests in any position is a worry. Some very sharp minds will look at the minister's Bill and consider ways to bring the new points into focus. I refer to the step downs, extra benefits and so on. These changes give very good minds the opportunity to find new points on which to barter and bank. That is one concern. My baseline argument against lawyers becoming involved is that in the many years I have been involved in workers' compensation I have seen individuals being paid $30 000, $40 000 or $50 000 only to see a lawyer pick up $10 000 or $12 000 of those funds. The minister and I both know that the worker would eventually have been paid that amount without a lawyer in the process, even if it took two, three or six months longer. Unquestionably, in the vast majority of those cases, workers would have been paid without lawyers.

I want to give the union movement one big tick in this area. I have never counted myself as anti-union. Advocacy in workers' compensation system by unions is excellent, and I am surprised that the minister is moving away from that process. The common touch of advocacy provided by unions and by a small group of other people not involved in unions has been one of the excellent stories in workers' compensation. The minister through this Bill will take away the value of those individuals and give it to another range of individuals who have extreme vested interest in the process. Every time we throw vested interest into workers' compensation, a cost is involved. The minister may want to argue, as we have argued in the past, whether the cost is caused by the employers, the insurance companies or the lawyers, but the system's balance is thrown out of kilter. There is a cost. I will be out there tomorrow, minister, saying I am very concerned about workers' compensation.

Question put and a division taken with the following result -

Ayes (20)

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

Noes (11)

Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr M.W. Trenorden	Mr J.L. Bradshaw *(Teller)*
Mr M.J. Birney	Mr B.J. Grylls	Mr T.K. Waldron	

Pairs

Mr S.R. Hill	Mr M.F. Board
Ms A.J. MacTiernan	Ms K. Hodson-Thomas
Mr J.J.M. Bowler	Mr P.D. Omodei
Mr P.B. Watson	Mr R.N. Sweetman
Mr N.R. Marlborough	Mr M.G. House
Dr G.I. Gallop	Mr A.D. Marshall

Independent Pairs

Dr J.M. Woollard
Dr E. Constable
Mr P.G. Pendal

Question thus passed; the Council's amendments agreed to.

The Council acquainted accordingly.