LEGISLATION COMMITTEE

on the

WORKERS' COMPENSATION REFORM BILL 2004

The meeting commenced at 10.00 am.

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

Resumed from 15 June.

Debate was adjourned after clause 98 had been agreed to.

The DEPUTY SPEAKER (Mrs D.J. Guise): I remind members that a daily *Hansard* will be produced for the Legislative Committee's deliberation as per a normal House sitting. However, it will be double spaced. Will anyone who speaks during the meeting please use the daily *Hansard* to make any corrections, which should be delivered to the Hansard office by 5.00 pm on the day following the meeting?

Mr N.R. MARLBOROUGH: Do the dailies end up on our desks like the normal *Hansard* report? Are they in our offices, which we will not get to until five o'clock tonight?

The DEPUTY SPEAKER: Let the committee know, and, more to the point, let Hansard know, if there is a problem.

Clause 99: Section 106 amended -

Mrs C.L. EDWARDES: Proposed new section 106(3)(a) will make a change concerning moneys standing to the credit of the general fund. It will read as follows -

> all moneys required for the remuneration and allowances of members of the governing body of WorkCover WA and of WorkCover WA's staff;

This will ensure that the governing body is the employing authority in the new structure of the organisation. Therefore, WorkCover will have the power to take moneys from the fund to pay everybody.

Mr J.C. KOBELKE: That is correct.

Mrs C.L. EDWARDES: I refer to the amendment to paragraph (e) that will delete "dispute resolution bodies" and insert "the DRD", which is the Disputes Resolution Directorate. This links to proposed section 157B. I cannot remember why I made that cross-reference. It deals with remediation and assistance. Maybe when the committee deals with proposed section 157B, I will remember why I made the cross-reference.

Clause put and passed.

Clause 100: Section 109 amended -

Mrs C.L. EDWARDES: A penalty is to be inserted. Section 109(4b) of the principal Act will then outline that any self-insurer failing to send a return of a statutory declaration in that month by such time as appointed will commit an offence and be liable to a penalty of $2 000 and a daily penalty not exceeding $100. Why has the minister increased the penalty to $2 000? Why $2 000? It relates to an insurance company that is not sending in returns. The company will be penalised on the thirty-first day when it had to lodge the return on the thirtieth day. Is the minister trying to establish a culture over a long period in which companies must comply with the dates? If so, $2 000 is a very small sum. The minister will either rip it out of the companies every month if they do not comply or -

Mr J.C. KOBELKE: This is a new provision. If an insurer is not managing its obligations in a way that fits requirements, the only potential for correcting that behaviour is to threaten to withdraw its licence to operate in the workers compensation system. Clearly that is a very big jump. We are now putting in the ability to have a penalty of up to $2 000 and also a daily penalty for non-compliance. The issue, rather than the amount of the penalty, will provide the embarrassment to the company. Obviously we are not dealing with very large amounts of money. If we made that penalty a more substantial amount, we would run into the difficulty of getting the courts to apply the penalties. These amendments change the action that can be taken against an insurer that does

not live up to its requirements in administrative areas. The Government has judged that $2 000 is an appropriate penalty given the embarrassment caused to a company that does not deliver to the required standards.

Clause put and passed.

Clause 101 put and passed

Clause 102: Section 110 amended -

Leave granted for the following amendments to be moved together.

Mr J.C. KOBELKE: I move -

Page 91, line 6 - To delete "sections 158F and" and substitute "section".

Page 91, lines 15 to 24 - To delete the lines.

The Government is seeking to change the procedures that apply to the specialised retraining program. The change we have made to the specialised retraining program provisions reflect the concerns expressed by stakeholders about the refunding of an unused portion of retraining funds if a retraining program is discontinued before the end of the three years. The specialised retraining program funds will now not be paid on an up-front basis to WorkCover by the employer but will be paid on an ongoing basis by the self-insurer, the employer's insurer or the workers' compensation and injury management fund, as the case may be, on the written instruction of WorkCover WA. WorkCover will administer the specialised retraining program payments and make all decisions on payments regarding modifications, suspension or cessation and instruct the party making the payments accordingly. This change will be consistent with other provisions in the principal Act under which the insurers' managers claim. However, these provisions will ensure that the insurer or self-insurer cannot discontinue, adjust or suspend payments without written direction from WorkCover WA. Complaints have been made to the Government. Because this special retraining program is a new program, the Government has clearly indicated it is limited to whom it will apply. We are hopeful it will apply substantially improved outcomes. However, it is an experiment. Therefore, we want to make sure that WorkCover controls it so that we get appropriate feedback about the efficacy of the program, the efficient use of the funds and about outcomes regarding people being trained to get back to work. WorkCover must control it. The way in which the legislation was drafted meant that the employer or the insurer paid WorkCover the money up-front on the worker's behalf and WorkCover covered all the money. The downside to that is that the person may drop out of the retraining program or it may be successful at an earlier date than anticipated. Therefore, if the money had been paid already, it was difficult to retrieve. The employer then had to carry the full cost, even though only part of the money was expended. The amendments that are now before us mean that the control of the program will still remain with WorkCover but the money will be paid on only a term basis or a part basis as required. Therefore, we will not run into the problem of trying to work out whether money should be returned at a later stage. There may be an issue of cash management for WorkCover with regard to how that is done. However, WorkCover is happy to manage that. The amendments will certainly overcome the potential problem of the employer paying money up-front and having to carry the consequences of that through what may be factored into their higher premiums when all the money may not be needed.

Mrs C.L. EDWARDES: These are worthwhile amendments. I have been told of the complaints regarding inconvenience, the administrative burdens and why the fund was not being treated similarly to other expenses and the like. I was told also of the real problems of the payback at some point if the insurance company no longer had that employer as one of its clients. Enormous problems were going to eventuate out of this provision. As the minister said, although the Government is dealing with this new scheme as an experiment, the amendments will make it as simple as possible for everybody. It will make a lot of sense if the system will treat this payment on a normal expense basis just like every other cost. I am sure the minister will be thanked for this change.

Mr N.R. MARLBOROUGH: If by nobody else, at least by the member for Kingsley.

Mr J.C. KOBELKE: Which I very much appreciate.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 103: Section 111 amended -

Mrs C.L. EDWARDES: This clause amends section 111, "Minister may give directions". The Blue Bill states -

(1) The Minister may give directions in writing to WorkCover WA with respect to the performance of its functions . . . unless prevented by subsection (1a) from doing so, . . .

Proposed subsection (1a) states -

> The Minister cannot give to WorkCover WA any direction with respect to the performance of any of its functions under section 151 unless the direction is allowed by section 154AB.

Section 151 and proposed section 154AB provides for the minister to direct the premium rating process to exclude retrospective court outcomes from the process. The retrospective costs are enormous. I attended the Insurance Council of Australia conference last Friday. It acknowledged the reasons the minister could not attend. However, to some extent it was a shame that the minister was not there to hear some of the general and specific concerns that were raised. Apart from the overall concerns, some detailed issues were raised. One of those issues was that the insurance companies could not meet all the respective costs. If Dutch comes in at worse than the best-case-scenario, premium rates will not reflect actual premiums. Therefore, the role of the rates will be seriously undermined. That is a serious issue in the community. When HIH Insurance went under, the Australian Prudential Regulation Authority implemented stronger controls to be put in place for insurance companies. That has changed the way in which insurance companies rate their premiums. HIH Insurance was undermining its premiums by the huge discounting it was putting in place and it then reduced its premiums even further in an endeavour to meet the old APRA guidelines. If the premium rates setting is not going to include retrospective costs, as the Government has put into the system, which includes not only Dutch but also weekly payment increases and the increase to the step-down, for example, then the Government will seriously undermine the insurance industry in Western Australia. The likelihood of that would be that insurance companies would assess whether they wished to stay in the system. Currently there are only eight insurance companies in Western Australia. Therefore, some of them might consider moving out of the system. If that is moved downwards, the lack of competition does nothing to ensure competitive rates or premiums.

Mr N.R. MARLBOROUGH: I beg to differ.

Mrs C.L. EDWARDES: The member could go to the sole insurer model in Queensland. Des Dans looked at that in 1983. It was his strong consideration, after reviewing it and having attended Queensland on numerous occasions, that the sole insurer model was not the model for Western Australia. Western Australia does compete very well as far as benefits are concerned. We have a paid-up system. Taxpayers do not have to put money into the Western Australian workers compensation system, unlike in some other States. We either have a system that is fully funded or we do not. Do we want taxpayers to fund some of the premiums to meet the benefits for workers, or do we want the insurance companies to get the money from employers? Employers fund the system. The minister wants to put in place, going into an election, a decision that premium rates will not reflect retrospectivity. That is what was done back in 1992 leading into the 1993 election. It does not work. It is unrealistic; it is fiction. The premiums will not meet the costs. Once that happens there will be a total undermining of the way the system is costed.

Dr J.M. WOOLLARD: Is it not correct that the premiums are less in Queensland and there are returns to the Treasury each year? The member is saying that we are down to eight insurance companies. Are we down to eight insurance companies or are the insurance companies getting bigger and stronger?

Mrs C.L. EDWARDES: Queensland has just put in place a new piece of legislation. If the member were to compare apples with apples today, she would find that the Queensland system is nowhere near as beneficial as the Western Australian system, let alone with the changes that are proposed to be put in place.

Mr J.C. KOBELKE: We can look at a lot of other issues to compare the system with other States, and there is value in doing that, but I do not think that serves the section we are dealing with. The member for Kingsley has quite appropriately drawn attention to the fact that the minister can give directions but he cannot interfere in the process of setting the premium rates as a general rule. That is the way it currently is, and the Bill retains that, but this legislation does provide a special area in which the minister of the day will be able to interfere and that relates to an instruction about increased costs through transitional issues and the implementation of these reforms. The minister can direct that they not be factored into the setting of the premium rates. This means that the insurers are being pressured to cover the burden of the transitional costs. That is a key component of these changes. While the insurers are not happy about that and while they may have some difficulty dealing with it, there is no doubt that they can deal with it. It is only fair. The changes that were made in 1999 meant that the level of profitability of the insurance companies had risen markedly. While the companies do have to meet prudential requirements, and the burden on them to meet those requirements is acknowledged, they have seen a very high level of profitability over the past four years, which has in large part been due to the fact that the level of benefits paid to injured workers has been reduced. Those workers who are already in the system will be given increased benefits. It is reasonable that the insurance companies therefore pick up those transitional costs. I accept that the insurance companies will have to adjust their businesses to meet those costs, because a substantial amount of money is involved, but in the total system they can certainly deal with that. The companies will have to deal with those ups and downs on a year-by-year basis. Those sorts of decisions are opening up additional

costs that they would not have factored in a few months back. They have to meet those changed costs as the system progresses. The issue is about the total package of changes that will give greater stability and certainty to the system, that will benefit insurers because they have to set their premiums based on what they expect to be the costs, and anything that provides greater certainty in the system will be appreciated. However, the companies are being asked to carry this burden. The section alluded to by the member clearly gives the minister of the day power to direct the setting of premium rates where transitional costs will be incurred, but those transitional costs are not to be factored into the average premiums that will be set.

Mrs C.L. EDWARDES: We will not be supporting this clause for the reason that it is unrealistic. It is creating a fiction. The minister is creating a fiction in an effort to set a scene going into the election. This is not support for the insurance companies; it is just realism. Yes, insurance companies have had a couple of good years, but the minister should look at the previous five years before that when they were under enormous pressure. Why does the minister think we shifted from 13 insurance companies to eight? Primarily because of the huge costs, impacts and pressures that were introduced by the Government of the day. The minister should not go back over history. Yes, we introduced those changes and they had a huge impact on the premium setting rate. Insurance companies were discounting enormously in an endeavour to keep business, because they could not set premiums to reflect the costs. Therefore, the companies had losses in those years. Then there were a couple of good years. The Australian Prudential Regulation Authority has changed the guidelines. It is a totally different system today.

Mr N.R. MARLBOROUGH: It is still voluntary.

Mrs C.L. EDWARDES: Voluntary?

Mr N.R. MARLBOROUGH: APRA.

Mrs C.L. EDWARDES: No.

Mr N.R. MARLBOROUGH: What guidelines have been changed?

Mrs C.L. EDWARDES: I can give the member a copy of them, if he likes. The guidelines have changed absolutely and totally in the way the insurance companies have to structure their businesses today. One of the retrospective costs relates to enhanced statutory benefits, which is $41 million - that does not sound a lot - or 3.8 per cent. Then there is the estimated impact of the Dutch changes and that will be anywhere from 6.8 per cent to 11.1 per cent. Yes, they are one-off costs. The minister is expecting insurance companies to unrealistically set and absorb all those costs and set a premium that does not reflect the actual costs. What will the minister do the year after that? Okay, there will not be retrospectivity, but the insurance companies will be under pressure. When HIH Insurance went under, employers had to pay a premium. We are talking about the long tail. There are still cases in the system which go back to the 1970s. Each year the premium does not match the cost, because a case does not resolve itself in terms of costs. What figure are we still paying out for HIH, and for how many more years will we be paying it? We are still talking about a long tail for HIH, and HIH went under two and a half years ago. Each year's premium does not match the actual costs of the system. I think the minister is making a huge mistake. As such, he will be putting enormous pressure on the system, pressure that I hope he does not regret in the future, because of the impact that employers and employees will suffer.

Mr J.C. KOBELKE: Clearly, the member is right in saying that workers compensation is long-tail insurance, which has considerable consequences for how the system functions and is funded. A substantial number, if not most, of those payments, which are part of the transitional payments, should already be set aside by the insurers because they would be covered by what are called outstandings. They are cases that are already afoot and, therefore, the insurers will put that money aside. That money should already be in the system, and that is the last place to find the extra money needed for most of the changes related to the Dutch decision. The member commented about the number of insurers. The issue is not simply a matter of them not making profits and the collapse of HIH Insurance; it is about the major issue of amalgamations. When we were in opposition, people advised us that we should deliberately try to reduce the number of insurers because of the complex nature of the industry, because it is so important to manage claims efficiently and because of the long-tailed nature of insurance. It was put to us by some people very well versed in this area - I am not talking about people working in insurance companies - that we would get a much better service if we had half a dozen insurers that really knew the game and played it well rather than many small insurers that have a great difficulty in such a complex market that is long-tailed in nature. Obviously, there is a concern to keep some balance in the market competition. I am not concerned that the number of insurers is currently a threat to that. A potentially bigger threat is that a lot more people move to self-insurance and the pool is reduced. That would be a potentially bigger threat than the current reduction we are seeing now in the number of insurers.

Mrs C.L. EDWARDES: If the proposition came across that self-insurers could move across to the federal system, I would not have a problem with that. At the end of day, we want to provide choice that should be open

to those people, and there is a likelihood that that proposition will be taken up by some of the major self-insurers. For instance, Coles Myer would have to be one of the biggest self-insurers around. It is a very effective organisation with great rehabilitation programs; it is one of the best ones around. I am sure that being a national company, it would be one of the first to jump at that opportunity.

Dr J.M. WOOLLARD: I am a little confused with this provision. I appreciate that the minister is saying that insurance companies will foot the bill. The member for Kingsley is suggesting that this is not a good thing. If insurance companies do not foot the bill, who will? Where will that money come from? Will insurance companies end up increasing premiums? Who will pay those costs? Can the minister explain that to me?

Mr J.C. KOBELKE: The market is very dynamic, with premiums going up and down every year. In a year in which there is an overall reduction in premiums, a quarter or a third of the industry sector premiums go up. The claims and the costs for each industry continue to be evaluated. About 300 different designated industry subsectors have a set premium rate. The cost for each of those groups of sectors is considered and the rates are moved up and down all the time.

Dr J.M. WOOLLARD: If the insurance companies do not pay for this, will they pass on this cost through premiums?

Mr J.C. KOBELKE: That is the point the member for Kingsley made about having a marketplace in which there is competition. Employers will have the opportunity to shop around if an insurer is seeking to up the premiums and pass that cost on to the employers when it is not in keeping with reasonable market competition.

Dr J.M. WOOLLARD: My understanding is that the minister is saying that the insurers should foot the bill and the member for Kingsley is saying that we should let the marketplace decide the premium. What did the member for Kingsley say it will do to insurance companies?

Mrs C.L. EDWARDES: It is just realistic. The cost is put at where the system is; we do not create fictions in that way. We are creating fictions in this way and we are making it unrealistic.

Mr N.R. MARLBOROUGH: I support the proposal. Unfortunately, the member for Kingsley always starts off talking about these issues with a sanitised version of the insurance industry. The truth of the matter is that a fairly unregulated insurance industry has seen the HIHs of this world grow very rapidly. I have met very few experts in the industry who are sure of how insurance companies manage their moneys across their different policies. The fact is that when the previous Government looked at the insurance industry, no less a luminary than a senior head of the Chamber of Commerce and Industry of Western Australia was quoted as saying that if he could tell the truth one day, he would really tell us where the costs of the workers compensation insurance policies for industries lay. The truth of the matter is that only about two people in the world know how insurance companies work out their premiums across their different divisions. If the insurance industries are left to their own devices, given a political circumstance by which they think they can grow, they will apply whatever figure they want. September 11 is the classic example of that. Insurance companies around the world have been absolutely out of control since then. Let us have a look at how they have affected our communities. Lifesaving clubs have had to close. All sorts of the voluntary organisations can no longer go on. We can no longer get mums and dads to volunteer to go on the sports field in case of injury problems. That event has had a massive impact. Insurance companies do not need champions like the member for Kingsley exposing how hard up and how hard done by they are as a result of government policies. They have raped and pillaged since September 11. Governments in the western world are battling to control them; that is the truth of the matter. The HIH issue is a monster, and there will be more to come in this industry because there is big money to be made. When there is big money to be made, there will always be people who take up the opportunity. It was no accident that HIH collapsed while the rest of the insurance industry stood silently by. I did not hear it screaming about how HIH were undercutting premiums then. Today, there are no public headlines about major insurance companies around Australia and how HIH was underdoing them. Although HIH may have been undercutting certain premiums, it was driving a new market opportunity for many of the other insurance companies. HIH was allowed to develop in a culture that was in existence then and is still in existence today. We need to be serious about the proper care of injured workers, people who go into work in the morning and expect to come home with all of their limbs intact at night, at a time when families are most in need; that is, when the major bread winner is incapable of earning a dollar because of an accident that was no fault of his own. As a nation, we need to get back to that being our core business of service delivery, even if that means in that core business of service delivery we have an insurance system that is not much different from the health system in which Governments of the day play a major role in the delivery of services. If we look after injured people, we will be better off. I do not succumb to or am impressed by the idea that the free marketplace is able to drive the best model. The evidence shows that these companies are greedy and avaricious and they drive nothing but dollars into their own pocket. In fact, as a result of the sort of rhetoric that the member is running with and this Government bringing

in new legislation, we are already seeing evidence of some insurance companies sending out letters and taking the opportunity with this change to talk about increases. Many of those measures and increases they are talking about have not been measured against any standard or any loss. They see it as the marketplace delivering to them a financial opportunity through a political event that has taken place; that is all. There are no rules that can stop them. That is what is driving it. The other day the minister and I attended a function at a factory in my electorate to hand out safety awards. As an aside, the company's insurance broker was there and he advised me quietly after the major function that letters were already circulating in the insurance industry along the lines that the member for Kingsley is suggesting. Insurance companies have just got to be reined in and be more responsible. The amendments to the legislation will simply add greater responsibility. From where I sit, the amendments go nowhere near far enough. To my mind insurance companies fit into the same category as banks; half of them are owned by banks and are just another arm for making money.

We are in this place today to debate legislation on how we can best look after injured workers and at the same time recognise that there must be a balance in the marketplace in which responsible insurance companies and responsible employers are willing to play their part. We are not in this place to look after the greedy and the avaricious, such as the HIHs of this world, that have caused more damage to the insurance industry than any legislation that has been passed by the previous Government and/or our Government. Those are the facts of life, and they have been able to do it with the model that is in place today. The sooner we look beyond this issue, the better. Members have talked about what we in Parliament should be doing and about having special inquiries into this, that and the other. Let us hold a special inquiry into the insurance industry and see how it measures up. It is a disgrace! It does nobody any good to stand as a champion of the insurance industry in the present climate. Insurance companies are big enough and ugly enough to look after themselves.

Mrs C.L. EDWARDES: Madam Chair, we can have a debate on whether we want insurance. There is a reason we have insurance in this world, whether it be for our homes, our cars, for public liability, for workers compensation or any of the rest of it. The member for Peel talked about a self-insured model. The question is whether Western Australia wants a fully funded workers compensation system with no potential liability on the Government or taxpayers? The other States envy our system because there are no liabilities.

Mr N.R. MARLBOROUGH: Bullshit!

The DEPUTY SPEAKER: Order, member!

Mrs C.L. EDWARDES: It is a fully funded system for which the Government does not put its hand in its pocket and pay out billions of dollars. We either have a system whereby the Government pays for it or the insurance companies pay for it. Ultimately it is not the insurance companies, but the employers, who pay for it. The member has talked about premium rating and so on; however, that is when WorkCover comes in with its guidelines. There is nothing in this legislation that says that the member for Peel's little company that got a WorkSafe award will get any premium benefits from this legislation.

Mr N.R. MARLBOROUGH: That is right.

Mrs C.L. EDWARDES: That is despite the policy or direction statement on which this Government came to power. That statement quite clearly said that benefits under workers compensation legislation would return to companies that had a good safety record.

Mr N.R. MARLBOROUGH: There will be; there isn't now.

Mrs C.L. EDWARDES: There is nothing in this legislation either that helps the member for Peel's little company.

Mr N.R. Marlborough: The model will do all of that.

Mrs C.L. EDWARDES: Ultimately, the question is whether insurance is part of everyday life. We either decide that we do not want insurance or that we do. Why do we insure things? It is because our house might burn down, we might have a car accident or somebody might trip on our property and expose us to public liability. Why do we have insurance? It is because we want the cover. The insurance companies grew from what the community wanted. When it gets down to workers compensation, it is a very simple decision. Do we want a fully funded system that taxpayers do not pay for and for which the Government does not have to put its hand in its pocket - and cost is where it is - or do we want injured workers to pay for their own workers compensation system?

The Australian Plaintiff Lawyers Association suggested to me a few years ago that employees should be able to provide for a top-up of their own system to reduce premiums. What model do we want? We have a particular workers compensation model. We should change the model if we want to change it, but we should not create a fiction by ensuring that the actual cost of the system is not reflected in the premiums. We cannot add on

retrospective costs if we want a fully funded system for which the Government does not put its hand in its pocket.

I will talk about HIH Insurance. In summing up that case, one of the lawyers said that it was beyond doubt that the biggest single cause of HIH's collapse was the failure to provide properly for future claims. That is what this legislation will do; it will create that fiction.

Mr N.R. Marlborough: What about the other line about crooks running it. Does it say that crooks were running it?

Mrs C.L. EDWARDES: No. The summing up said that HIH was not a case in which wholesale fraud or embezzlement abounded. It said that most of the instances of possible malfeasance were born of a misconceived desire to paper over the ever-widening cracks that were appearing in the edifice that was HIH. These comments were from people who had gone through all the books, mate, and who actually knew the system. Where did the money go? Some of it was wasted by extravagance, largesse and paying too much for businesses acquired - that is what happened in Western Australia - and questionable transactions. There were some trading licence breaches, but in the main the money was never there. The summing up said that past claims on policies that had not been properly priced had to be met out of present income. I will repeat that: past claims on policies that had not been properly priced had to be met out of present income. The summing up further said that this was a spiral that could not continue indefinitely and in the language of the industry, the failure to provide adequately for future claims is called under-reserving or under-provisioning. The lawyer said that in his view that was the primary reason for HIH failing; not only failing but also doing so in such an egregious way. I repeat that the inability to price risk properly was a serious problem; that is the issue. We either want a fully funded system or we do not. I believe the minister's direction will undermine the system in Western Australia, and I hope the minister does not regret that decision in future years.

Mr B.J. GRYLLS: The member for Peel raised a very interesting point. If the insurance companies are flush with cash and have been ripping off the system for years, they will make a little noise about this legislation as the issue comes to light and will get back on with the job of insuring, and everybody will be happy. If the member for Peel is correct, that will be a good outcome and there will be no increase in premiums. The concern is, if the member for Peel is not correct, the insurance companies will decide workers compensation insurance and public liability insurance are too hard and they will insure only cars and houses because they are easy. That does happen. I spoke to my insurance broker only this week about horse insurance and he said that the insurance companies were not interested; they have just stepped straight outside that system. If the whole insurance industry said that, the next point made by the member for Peel would be exactly right; that is, it will be up to the Government to rebuild a government-funded insurance system for workers.

Mr N.R. Marlborough: The National Party has never been opposed to those sorts of things.

Mr B.J. GRYLLS: That is probably a debate we should have another day. However, the problem is that is not what we are debating today. Today we are debating the issue of private insurance companies running a workers compensation system. If these amendments to the legislation lead to that system being inefficient, we will be back around this table trying to rebuild a state-funded one. History has shown that that is not exactly a perfect case scenario either. Insurance is a very difficult industry in which to be involved. Does the minister foresee any other areas on which he could give directions to insurance companies or can those directions be given only at the start-up phase when there may be some retrospectivity issues that should not be passed on? In my view, and from what the member for Peel has said, the more directions that the minister can give to drive out ludicrous profits that insurance companies have been raking in from the industry the better. If that is not the case, we will be creating for ourselves a system in deep trouble.

Mr J.C. KOBELKE: Currently the minister may give directions but not on setting premium rates. That function will be retained through the amendment to the legislation, except that the minister will have power to give directions for setting premium rates that relate to transitional costs. I have put that roughly. Under these amendments to the legislation, extra benefits will be paid to people in the system who have incurred extra costs on premiums that have already been paid. The minister can give directions on those additional costs so that they are not factored into the setting of premium rates. That is what we are dealing with here. In addition, the debate raised issues of how insurance operates, which I do not think adds a lot to the section. We are conscious of that and we changed the permitted loading. Currently, insurers can charge up to 100 per cent more than the prescribed rate for that industry, and can discount and charge below the prescribed average rate. We are saying that they should be able to charge only up to 75 per cent above the prescribed average rate. Section 153 provides an ability to look at permissible discounts as well. There is no change to the legislation that specifically takes it up, but it is a clear intent with the new board and the provisions that we have put in place. One aspect that we referred to earlier was the power to impose financial penalties on insurers. We want the board to drive a range of

issues to try to create a more competitive market between insurers. Insurers can play games. For example, the accusation has been made by some employers that they do not get a quote to renew their policies from their insurer until a day or two or a week before it is due to be paid, so they have no time to go to another insurer and are locked in. A requirement placed on insurers that are brought into the system is that they cannot refuse to insure. They can play the game with the quotes that they give for policies, so they may not get the business. In terms of the way the system is managed and the provision of quotes for premiums and those sorts of things, the board is able to look into complaints that may arise and it will try to make sure that there is a high level of competition between insurers. That is what will ensure that insurers price their premiums competitively and employers get a decent deal. There is no simple fix to that, but it is a clear intent that the board will look at and monitor that. We are reducing the ability of insurers to charge above the average premium from 100 per cent to 75 per cent, which is part of the element of ensuring that we monitor the premiums that are offered by insurers.

Mr B.J. GRYLLS: What is the backup plan if this does not work? The minister has given the direction that the premiums from the retrospective changes cannot be forced on, but after that it is back to private enterprise and the private market to deliver. If some of the claims by the member for Kingsley are borne out to be true and there is a large increase in the premiums for workers compensation insurance, what will be the policy then? Small business will have to carry that burden. Yesterday the issue of longer redundancy payouts was argued on talkback radio. Small business owners left the shop floor and got straight onto the phone to talkback radio programs to say that they could not bear that cost. This is another example today of a cost that they may have to bear. Small businesses will say that they will not take on employees. Has the department talked about the need for a plan B if this does not give the necessary outcomes?

Mr J.C. KOBELKE: We do not have a plan B. This will be put in place and we will seek to manage it to make sure that it delivers. Our best estimate is that the average cost -

Mr B.J. GRYLLS: There is no avenue for ministerial direction should that occur?

Mr J.C. KOBELKE: No. Although that might seem to be a good idea to try to keep down costs, there are major problems in terms of the way the whole system functions. That is why the current system does not allow the minister to interfere in the setting of premium rates. We accept that as a general principle. We are making an exception for the transitional costs. The transitional costs will be there for a year or a bit more and will then be out of the system.

Mr B.J. GRYLLS: The system in between the member for Peel's government system and this system involves more involvement from the Government and more direction from the minister of the day.

Mr J.C. KOBELKE: I did not catch the point the member was making.

Mr B.J. GRYLLS: The member for Peel spoke about the fact that we may need to get back to a government system to fund this.

Mr J.C. KOBELKE: No, the issue is that there are different systems around Australia. Some are centrally funded. People look at those from time to time. This has been drafted this way because we have no intention of doing that. That is not simply a one line item. To build a totally new system from scratch would be far more complex than the complex piece of legislation that we have.

Clause put and a division taken with the following result -

Ayes (4)

Mr S.R. Hill	Mr J.C. Kobelke	Mr N.R. Marlborough	Mrs C.A. Martin

Noes (3)

Mrs C.L. Edwardes	Mr B.J. Grylls	Mr P.D. Omodei

Clause thus passed.

Clauses 104 to 106 put and passed.

Clause 107: Section 145C amended -

Mrs C.L. EDWARDES: Section 145C deals with the medical assessment panel, which is currently in place. The clause seeks to insert a subsection (2a), which states -

> Despite subsection (2),

Which provides -

> Of the members of the panel at least one is to be a specialist in the particular branch of medicine or surgery that is relevant to the question.

Proposed subsection (2a) then continues -

> . . . each practitioner selected is to be a specialist in a branch of medicine or surgery that is relevant to the question.

Can the minister explain what is being provided for in this amendment? I am not sure whether it will be practicable.

Mr J.C. KOBELKE: The purpose of this amendment is to enable a medical assessment panel to perform a peer review of the medical evidence produced by the worker to support an application for a further additional sum under clause 18A(2a). This is a recommendation of the expert medical committee. It is consistent with the intention to limit access to only those for whom a specialist writes a treatment plan that needs to be reviewed by a peer group of specialists in the relevant field. This relates to an improvement that is being made to the statutory benefits to try to make sure that more people stay within the statutory benefits rather than go to common law. It applies to a very small number of injured workers who will have very expensive and ongoing medical costs. Currently, the total amount that an injured worker can receive for medical treatment is $30 000, with a further extension of $50 000. An amount of $80 000 is a fairly large sum of money. However, someone might undergo 20 operations, and the cost of that treatment would certainly go beyond that amount. In a small number of cases in which there is no dispute over the case and a person needs major ongoing surgery or medical treatment that is very expensive, insurers will pay beyond what is required under the Act. There is always a question that new treatments may be very expensive and insurers may not wish to accept them; they may want to be convinced of the validity and effectiveness of those treatments. We are not talking about that; that is another issue. We are providing an extra $250 000 to meet the medical expenses of someone who stays under the statutory scheme. That is a huge amount of money, but it is not then to become structured within the whole cost of the system so that it is factored in with redemptions or other things. We are putting in place a special approval process, to which this relates. The treatment plan will be ticked off by this group to make sure that it will be effective medical treatment, that it will provide the expected outcomes for the injured worker, and that the cost is justified. The injured worker will then be allowed to dip into the considerable amount of extra money.

Mrs C.L. EDWARDES: The medical panel must consist of two or three medical practitioners. Prior to this change, only one of those practitioners needed to be a specialist in the relevant branch of medicine or surgery. Now under clause 18A(2ab), which talks about an extension of the medical expenses to be paid and a medical plan, each practitioner selected is to be a specialist in that branch of medicine or surgery. Is that practicable?

Mr J.C. KOBELKE: Given the very small number of such panels that will be required, it is practical. About 300 doctors are currently registered to appear on medical assessment panels. Not all those are specialists, but a very large number are. There is much debate at the moment about how people are selected for those medical assessment panels. Often people self-select by their availability. The issue is, however, that with the small number of panels required for this purpose, we are fairly confident that doctors will make themselves available in the specialty area.

Clause put and passed.

Clause 108 put and passed.

Clause 109: Section 145E amended -

Mrs C.L. EDWARDES: The section amended by this clause deals with the determinations. Section 145E(1) is to be amended to read -

> If the members of the panel are not in unanimous agreement as to a question, the question is to be determined in accordance with the opinion of at least 2 members of the panel or, if there are only 2 members of the panel, by the Chairman.

Why is this subsection being changed? In a panel to which the director has already been appointed as chairman, there are two or three medical practitioners. There may be only two members, so the decision could be made by only one person making the decision as chairman, and a later amendment to this section disallows an appeal. That creates a bigger problem than the purple circle argument.

Mr J.C. KOBELKE: I am glad the member has drawn my attention to this point about the complex drafting. This has been put in to try to make sure that efficiency is created, but it may reach the point at which that efficiency is perceived as being unfair. On that basis, I am happy to move that the amendment referred to by the member be removed. I will need advice, however, on whether that will open up other complexities with drafting.

Mrs C.L. EDWARDES: Proposed new section 145E(8) states that the determination of a medical panel is not subject to an appeal. As such, if a panel with two members cannot reach an agreement, and the chairman makes a decision that is not subject to an appeal, the medical assessment panels will be opened up to all forms of criticisms that the process is unjust and unfair to not only the injured worker but also the panel itself.

Further, why has the limitation been placed on the determinations of the medical assessment panel, in that they are not subject to appeal? The finding by a medical assessment panel can have far-reaching consequences on all parties, and the inability of any party to challenge that finding has led to some of the unfairness accusations by individuals. The process is also limited to self-selecting. The medical profession is relatively small, and the number of specialists is even smaller. For instance, a patient suffering from a burn or a serious injury is battling to find a plastic surgeon these days. A woman must wait months for a consultation about a breast reduction, and perhaps a decade for the actual operation. The number of specialists in specific areas is small, and this is likely to impact on the self-selecting process for the medical assessment panel, in terms of the availability of such specialists. Only a small number will be available at any particular time, and there is no appeal. If the Government does not want to open the avenue of appeals to the Supreme Court, somebody should be able to hear some sort of appeal against the determination of a medical assessment panel, just to make sure that there is a level of fairness in any claims made.

Mr J.C. KOBELKE: As I have said, I am willing to seek to remove the amendments proposed to section 145E(1) that would mean that one person could determine the outcome of the panel. I need to get drafting advice on whether just striking out clause 109(1) is effective, or whether that will open up problems elsewhere in the Bill. I will need to get that confirmed. On that basis, I will seek in a moment to postpone this clause.

To answer the member's other question, these panels are necessary to determine questions of a medical nature. Therefore, they must rely on medical practitioners. The issue, then, is that appeals are limited because they would result in the matter between doctors being determined by lawyers, which is problematic. It also means that, if too great a burden is placed on doctors, the problem raised in earlier discussions will arise; that is, fewer doctors will be willing to assist or work in the workers compensation jurisdiction. The threat of having to spend a day or half a day in court having their medical determination questioned is a very clear way to make sure that a range of very capable medical practitioners simply will not work in the workers compensation arena. What would be the outcome? In the end, we must rely on the expertise and the professionalism of the medical practitioners. Therefore, the medical panels are a way of determining those questions when there is dispute on medical matters.

Mrs C.L. EDWARDES: I support that. The only issue is the process. If the process is not seen to be fair, there will always be challenges to it, which will undermine the system. If a review or appeal to the court is not wanted, I am sure that some other mechanism could be put in place, not to challenge the medical advice or opinion but to ensure the fairness of the process. Often, that is the question that has undermined the process. The impact of the decision of a medical assessment panel can often create serious consequences for the injured worker, but often the process is subject to some criticism.

Mr B.J. GRYLLS: I agree with the member for Kingsley: keeping matters out of court should be a priority. The minister should agree to three-person panels. Therefore, the situation would not arise of a two-person panel with one person arguing vehemently against the chairman, and the chairman having carriage of the decision. A three-person panel would create a far better situation.

Mr N.R. MARLBOROUGH: I do not want to sound petty or to be nitpicking -

Mrs C.L. EDWARDES: Never!

Mr N.R. MARLBOROUGH: - but I have no understanding of some words in this clause. That may be a measure of my level of intelligence, but it probably applies to most people who will read this legislation. What does "vitiated" mean? Is it the name of a cat or an operation?

Mr J.C. KOBELKE: Where is the word?

Mr N.R. MARLBOROUGH: I refer to proposed section 145E(8), which states that a determination of a medical assessment is not to be "vitiated".

Mrs C.L. EDWARDES: We are glad that the member for Peel was added to the committee.

Mr B.J. GRYLLS: We all pretended that we knew what it meant! If the member for Warren-Blackwood threw away his dictionary, we could all say we know what it means.

Mr N.R. MARLBOROUGH: Can we use wording that we understand? Does it mean the determination cannot be set aside or axed? What does it mean?

The DEPUTY SPEAKER: The member for Warren-Blackwood may be able to help the committee in a moment.

Mr J.C. KOBELKE: Members learn something new every day.

Dr J.M. WOOLLARD: While the member for Warren-Blackwood looks up the word, I am sorry I missed the earlier part of the debate. The member for Merredin said that it was best that these matters not go to court. I was under the impression that this was the privative clause regarding decisions of the medical panel. Maybe the member for Merredin was not aware that decisions of the medical panel will not go to the courts at all. The decision is final.

Mr B.J. GRYLLS: That is right. There is no appeal.

Dr J.M. WOOLLARD: Is the member agreeing with that proposition?

Mr B.J. GRYLLS: Yes.

Dr J.M. WOOLLARD: I do not agree.

Mr P.D. OMODEI: The new workers comp consultant has some information for the committee: "vitiate" means to impair the quality or efficiency of, to debase or to make invalid or ineffectual.

Mrs C.L. EDWARDES: That has made it very clear for the member for Peel!

Mr J.C. KOBELKE: The member for Peel will move to be substituted on every second clause of the Bill.

Mr N.R. MARLBOROUGH: In all seriousness, language could be used in drafting these measures that we all understand.

Further consideration of the clause postponed, on motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection).

Clause 110: Part VII Divisions 2, 3 and 4 inserted -

Mr J.C. KOBELKE: My amendment does not preclude debate on other parts of clause 110, which contains many proposed sections. I move -

> Page 109, lines 19 and 20 - To delete "a committee of medical experts established by WorkCover WA" and substitute -
>
> an advisory committee appointed under section 100A

This is a consequential amendment to proposed section 146R that, for the purpose of developing and amending the WorkCover guides, will delete the advisory committee in proposed subsection (2) and replace it with the advisory committee appointed under proposed section 100A. The establishment of that committee was discussed last night. Therefore, the amendment will tidy up the provision. It will remove any ambiguity in reference to that committee.

Amendment put and passed.

Mrs C.L. EDWARDES: This extensive clause contains a number of proposed sections. The committee can move through them slowly and in a logical order. Proposed section 146A is headed "Evaluation of impairment generally" and deals with the recurrence and aggravation of an injury and the request for an assessment by an approved medical panel where no agreement is reached etc. As this is an important clause leading to the rest of clause 110, could the minister outline how he sees this process taking place?

Mr J.C. KOBELKE: I am not sure where the member wants me to tap the hand and start in terms of the process. The committee is dealing with assessing the degree of impairment. Impairment will become the major assessment process. That is to be established through the provisions to be inserted through clause 110. Proposed section 146 defines the degree of impairment. Proposed section 146A deals with evaluation of impairment generally. I could try to summarise each provision; would that assist in answering the question?

Mrs C.L. EDWARDES: No. It would be better to move on as it is an extensive clause. I did not know whether the minister wanted to set the scene.

Mr J.C. KOBELKE: I have spoken to that in other areas. To repeat that briefly, there has always been an issue philosophically regarding whether to assess disability or impairment. Disability is a key term in the current Act. Many medical practitioners believe that disability is a vague and subjective concept, and that impairment is already used as the basis of their assessments. They work from that assessment to determine what the disability might be. Other medical practitioners believe disability is a fairer concept as it attempts to encompass the total effect on the injured worker. A great deal of subjectivity goes into that assessment. Therefore, the move to

impairment, particularly in relation to access to common law, is in keeping with the process used in all other States, which have tests of a similar nature for access to common law. It is well established. Although it is seen to be a little tougher - we debated that point last night - I am totally convinced that it will be a fairer outcome for the majority of injured workers; that is, the objectivity will mean workers will have a clearer view at an earlier stage of their choices within the workers compensation system, particularly regarding whether to access common law or to stay with statutory benefits. Even within statutory benefits, workers' entitlements will be clearer for second schedule matters. The system will have a greater degree of objectivity through the use of impairment, which will be a much better approach for injured workers. Through uncertainty, injured workers can currently be left in limbo and not know how to get on with their lives. That can lead to a downward cycle into depression as they feel they are not listened to or given clear assistance in moving through the system back to work. Impairment is not just a more objective and efficient way of dealing with the matter; primarily, it is a matter of giving greater certainty and objectivity to the whole process.

Dr J.M. WOOLLARD: If one accepts the minister's sentiment that this legislation will improve the conditions or benefits for workers is genuine -

Mr J.C. KOBELKE: For the majority of workers.

Dr J.M. WOOLLARD: For the majority of workers. The change to the legislation has resulted in an increase in the threshold of impairment. The minister has said that under the new system more people will get statutory benefits and therefore many more workers will be back at work more quickly. Why does the minister not lower the threshold of impairment so that the statutory benefits remain and the vast majority of people who might want to apply for compensation under common law under the old system would still be able to do that? Why set the benchmark at the previous level 2? Why not just lower the benchmark from 15 per cent plus? The minister has said that the statutory benefits will encourage people to accept those benefits and get back to work. Everyone wants injured workers to go back to work sooner rather than later. Why has the minister raised the threshold so high under the new system? Why does the Government not lower the threshold? It could be reviewed in 12 months. It would then not seem as though the Government was taking away so much from the system. One of the problems I have is that the threshold is being increased so dramatically. If, as the minister says, the statutory improvements that the minister is making to this Bill will encourage more people to take the statutory benefits, why not lower that threshold and see what happens over 12 months and then reassess the legislation after 12 months?

Mr J.C. KOBELKE: The member does not accept the point of view I have tried to put, which is okay; the member has a different point of view. The issue is that there is not a bottomless pit of money that people can grab as much of as they like. The current system is very expensive. The Government is seeking to provide fairness with regard to the benefits that injured workers can receive. We want to ensure that those injured workers in the greatest need receive the greatest support. The complex structure tries to prioritise who gets what money and for what reason. Lowering the impairment threshold measure for common law would mean that workers would seek to get that money and lawyers might encourage them to do that even if it is not in the worker's best interest. That is the problem we face. The figures I provided last night clearly show that the large number of people who go to common law - some two-thirds - receive less than $90 000. They could get $230 000 in total in some cases under the statutory scheme. However, the injured workers' lawyers do not explain that to them. I am trying to say that there are advantages in the statutory scheme and that if it is made even easier for injured workers to access common law, it would defeat the purpose of the changes. The issue is to look after injured workers in a total way, not to just look at one element of the benefits that may also put money into lawyers' pockets. We do not want to do that.

Dr J.M. WOOLLARD: I accept that the minister is concerned that under the current system workers are handing over too much money to lawyers or that a certain amount of the injured workers' claim, which could otherwise remain in the injured workers' pockets, is being spent on legal fees. The minister just said that there is not a bottomless pool of money. The question remains: what are the costings? Also, how much is in that pool of money? How much has it been costing over the past few years? Where is the evidence? If the minister has the evidence and can show that workers will genuinely be better off under this system, people will support what the minister is trying to do. However, to date, I assume WorkCover has not given the minister the information because the minister certainly has not passed on that information. The minister gave only brief figures last night. The minister's sentiments may be genuine; however, no facts and figures back up what the minister has said. The minister is asking us - just as it appears WorkCover is asking the minister - to take at face value that workers will be better off under the new system. I would like to see a system whereby injured workers get the best benefits available. However, the move from "disability" to "impairment" means that the Government has doubled the threshold for entry into common law. That might be because, as the minister said, the majority of workers receive only a certain amount under common law. Will the minister table those figures? Will those full

costs be tabled? We could then look at them and, hopefully, we might be able to agree with the minister and support the Bill.

Mr J.C. KOBELKE: I have given the member the relevant figures.

Dr J.M. WOOLLARD: The minister has provided only some of the figures.

Mr J.C. KOBELKE: They are the relevant figures. If the member raises a more specific issue that relates to the argument, we can try to address that. However, just asking for global figures does not convey a message. The Government has provided the member with figures that help to convey a clear message that currently a very large percentage of people going to common law receive very small payments. Therefore, a very simple conclusion can be drawn that they would be just as well off under the statutory scheme. A few lawyers would not be as well off, but the injured workers getting into common law would overwhelmingly be better off under the statutory scheme. The figures I provided the member last night are clear evidence of that.

Dr J.M. WOOLLARD: I do not think the figures the minister gave me last night are clear evidence of that. Those figures were percentages. I put those percentages into a table and I looked at how much the minimum and maximum cost would have been over the past five years. The minister must look at the full figures to make a determination. He should not read only what WorkCover has written in a report that supports changes it wants made to legislation. Surely we are here not only to support the changes supported by WorkCover. We are here to find out whether these changes will benefit the community. I cannot make a fair judgment on these costs. I feel as though the minister is hiding the information. I am sorry, but I feel that the minister is not putting all the facts on the table. Why is the minister not putting all the facts on the table? Is there something that the minister does not want us to be aware of? I asked for a refinement of those figures. I to not know whether the minister received the letter I wrote to him or whether I will get the details I requested, but I hope I will get that further information. Even if it is not provided in time to discuss those figures in this House, I hope that I can at least be provided with them in time to discuss them with some members in the upper House. They can then address those points when this Bill is introduced into the Legislative Council.

Mr J.C. KOBELKE: I object to the implication that somehow WorkCover is covering things up. I take full responsibility for this Bill. I have had a major role in outlaying the key principles in it. The member does not have to blame anyone else; she can blame me. There has been no attempt to hide figures. The fact is that people are thrashing around trying to find reasons to pick this legislation apart and they simply do not understand the Bill. The questions are not specific enough to provide meaningful data. I have provided the information to the committee that there is a very big percentage of workers currently going to common law who have an expectation of getting large amounts of money. The data I have shown is that they do not; they get less than is available under the statutory scheme. The lawyers pocket money; the injured worker in many of those cases is no better off. That information is clearly available in the figures I have already presented. The member can look at the total costs of common law, but those figures, which are available in annual reports, are not relevant to the argument I am making. We are seeking to look after the interests of individual workers. We therefore look at what is paid to individual workers, not the total costs. I have given the member the summary of figures of what is paid to individual workers, and for many people it is a very small amount of money for those who just get over the current threshold into common law. That is as clear as the nose on my face. I have given the member those figures. On that basis we believe we are looking after the interests of the injured workers.

Mrs C.L. EDWARDES: Proposed section 146C deals with the evaluation processes for purposes of part IV, division 2, subdivision 3. Proposed subsection (6) excludes any secondary psychological overlay. On page 96 "secondary condition" is defined as -

> . . . a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, -

The minister acknowledges that it may result from the injury or injuries concerned -

> arises as a secondary, or less direct, -

I do not know what "less direct" means -

> consequence of that injury or those injuries.

When we introduced the 1999 legislation, it was put to me that I should remove secondary conditions and I resisted. I resisted on the basis of the cost benefit for removing it by comparison with the number of people who would potentially be affected. Whilst we were happy to keep it in the legislation and monitor it, I do not see any evidence that the minister is excluding some very serious conditions that may arise as a result of injury or injuries. Pain disorders are likely to be one of the matters that will be excluded, and pain disorders can have a huge impact on people. It could be said that they are psychological, but a number of specialists specialise in pain

disorders and pain management. While the minister is allowing the court to compensate for the secondary condition - if that person can get into court - he will be impacting on a great number of people in a very serious way. Some of those secondary conditions do have a huge impact on people's lives, and it is not made up for in all instances. I understand there is a view that the secondary condition is not as serious, but even if the results are less direct than the injury or series of injuries, I would like to know exactly why they are to be disregarded, what is an estimate of the costs, how many people will this provision potentially affect, what is the cost benefit and what will be the impact on those injured workers where it legitimately affects their ability to return to work and therefore their livelihood?

Mr J.C. KOBELKE: The primary issue here is to give certainty. It comes back to the discussion I was having with the member for Alfred Cove a moment ago. We want people to know what is the likely outcome of their assessment by the courts for statutory benefits, particularly under common law. The use of psychological or secondary oversight is not an area on which we have objective data; it is a moving area. If a lawyer believes that he can get his client into a common law case, he will seek to establish that he has the percentage disability - currently 16 or 30 per cent. Therefore, people shop around. I hope it does not happen very often, but there have been cases of lawyers making sure that an injured worker does not get that percentage, because if they do get better they would not get the percentage and the lawyer would not make any money. That is our real concern. The current system drives people to do that. The fact that we can give a much earlier and more objective determination of a person's condition is very important for the system. That is why we are not allowing "secondary condition" to be used for the purpose of the assessment to get people over the threshold. I want to make clear what the Government's intent is about "secondary condition", and that is that there are issues which are psychological, psychiatric or sexual that can arise as secondary or less direct consequences. We are not seeking to pick up other things that might have been considered secondary in the drafting when the member for Kingsley was then minister. I was concerned about the physical aspects that may have been caught up under "secondary conditions" and the way it was drafted. We want to make it absolutely clear that secondary conditions are conditions that are psychological, psychiatric or sexual in nature. Those areas are very subjective and it is difficult to get consistency between doctors. They are areas that can be used to try to mount a case for an increase in the percentage to get people into common law. There is obviously a more serious issue if someone is trying to get to 25 per cent of impairment, because that is the more serious end, but if they are trying to get to 15 per cent it has the potential of stringing injured workers out and doing them a great deal of damage for no actual financial benefit. That is our concern. That is why I am committed to maintaining that "secondary condition" cannot be used as part of that system.

Mrs C.L. EDWARDES: The minister has said that it is not an area on which he has data. He is making a decision that is likely to affect people in a serious way. I am not talking about instances of people being dragged into the system in an endeavour to up the ante to meet the threshold. They may genuinely be meeting that threshold. The minister may be excluding pain management. A pain disorder can have a huge psychological consequence. It is unfair to be excluding that. Clients of mine have gone through enormous pain and until a person has experienced that themselves I do not think they can understand it. I certainly do not. I have not been through that, but I have listened to people who have. That was one of the reasons for resisting doing it back in 1999. The minister is sticking with this because he is moving to an impairment system and therefore the whole premise underpinning these changes is to ensure that there is certainty in the assessment. Where there is not certainty, such as in psychological, psychiatric or sexual conditions, the minister is saying that will not be included. That will have a serious impact on people's lives and their livelihoods. It is totally unfair, particularly when the minister cannot tell us how many people are involved and the cost benefit. If the minister cannot tell us the cost benefit of it, why is he including it?

Mr J.C. KOBELKE: It needs to be put into context; that is, the degree of impairment is assessed based on the impairment tables. The tables allow for a range of conditions in which pain is factored in, and it is given a number. I accept that it is an area of weakness in the tables and that there are a number of areas in which, clearly, pain is an issue and that it will not be appropriately reflected in the percentage impairment given. That is an area on which we are seeking to have further work done. The other issue is that we are talking about psychological, psychiatric or sexual impairment only when it is a secondary condition. If they arise from the actual accident in the workplace, they are fully accounted for in the impairment assessment that will be given from the tables. If it is an issue of trauma that might be due to a bank hold-up or the horrendous nature of the accident in which the person was involved, such as a miner being trapped underground, the psychiatric or psychological effects are fully accounted for. We are talking only about the secondary conditions that are not directly related to the accident but develop over time.

Mrs C.L. EDWARDES: But they are still real.

Mr J.C. KOBELKE: I accept that they are real and that with this change perhaps a small number of workers may think that they will not get as good a deal out of the common law aspect. However, I am certainly convinced that the vast majority of people will be better off. We will remove the present uncertainty and subjectivity of the system that has allowed matters to be dragged out in the hope that people will get a pot of gold at the end. The figures I have given to the member for Alfred Cove show that many of them get very low payments; they go through all that process and they do not win.

Mrs C.L. EDWARDES: If only a small number of workers are impacted by this and it will have serious consequences, I do not see any justification for all the other changes made by the minister that will impact on the cost of premiums, given that this will likely be a minimum cost or impost. If the minister is saying that the change affects only a small number of workers who do not want to be dragged through the system, why should we still be unfair to them? The minister is bringing lawyers into the system at a very early stage. He is the one who will have to say to lawyers that they have a duty of care to their clients, which is to get the best possible outcome they can as a result of this legislation. At the end of the day, they have absolute responsibility for that, whatever the minister thinks of lawyers. Those lawyers have a duty of care and also their own level of professionalism that they must meet in terms of professional indemnity. The minister is bringing more lawyers into the system at a much earlier stage, yet he criticises them by saying they are the ones who are dragging cases through the system. That will increase under this system. As the minister said before, there will still be those who might try to put it on. There will always be cases such as the one involving a footballer with the back injury and all the rest of it; those people will always be there. However, at the end of day it is for the system to sort out. The minister is being totally unfair here, because he cannot provide us with the data and the cost benefit that will eventuate from this change, which will impact unfairly on workers.

Mr J.C. KOBELKE: I have respect for the vast majority of lawyers. They are very much needed to assist workers in the system. The member is suggesting that bringing lawyers into the statutory part of the system is a negative, but allowing subjectivity to give them a playground in the common law system is a good thing. The fact is that the two go together. Having lawyers able to assist in the statutory scheme will help to drive the system so that more lawyers will look to working for the total benefit of the worker and not to where they will make their money. Currently, a small number of lawyers in Perth look to what is in their interest. The current system is structured so that it is in the lawyers' interests to get people into the common law system because lawyers are currently not generally paid for assisting workers in the statutory system. Seeking to exclude lawyers from the statutory system has biased it because the lawyers' interest has been in getting workers into the common law system, which is of real concern to me. Our changes will allow lawyers into the common law and the statutory system, so that they will look after their injured workers and do what is of best benefit to them without having the cost pressure on the lawyers, who would normally miss out financially if their clients remained in the statutory system. That is a factor that helps drive the current system, and we want to get rid of it. If we bring lawyers back into the statutory system, they will look after the injured worker to get what is best for the worker, and they will take the injured work into the common law system only when there is a clear case that the worker will be advantaged by it. If it is not to the clear advantage of the injured worker, the lawyer will advise him to stay in the statutory scheme and the lawyer will be compensated for doing that - not as richly, but he will be compensated. That is very important and why we are making this change. The key element is that we are dealing with a secondary condition. The secondary condition that is currently used is highly subjective and becomes a play area in which a lawyer can seek to try to get someone into the common law system on the basis that the lawyer will make more money out of it. That is what we are trying to take out of the system.

Mrs C.L. EDWARDES: If the lawyers are doing the wrong thing now, this system will not change that.

Mr J.C. KOBELKE: It will because it will be far more objective in terms of whole body impairment. Injured workers will not be able to shop around for a doctor who will give them what they want. Similarly, without the secondary overlay, it will be much more objective, so that lawyers will know what are the likely percentages that the courts can determine. The case will be fought out in the courts if necessary; therefore, lawyers will make a proper professional judgment as to what is in the interests of the worker. They will be far more likely to do that under this system than if they had to consider what might be in their best financial interest.

Dr J.M. WOOLLARD: I think member for Kingsley hit the nail on the head when she asked what the figures are. How many people under the current system have got to step 1 - the 29 per cent common law damages claim - because of secondary factors, be they psychological, psychiatric or sexual? How many people in the current system have got to the step 2 in the common law system because of psychological, psychiatric or sexual reasons? We should think about what psychiatric, psychological or sexual impairment means. It might mean a nurse who, while lifting a patient, breaks her hip and is no longer able to have children because of the damages she has sustained. Psychological impairment might mean depression suffered as a result of a work-related injury from which someone is left suffering from chronic pain. From the research done in South Australia that I mentioned

earlier to the minister, we know that people from Mediterranean countries are more likely to suffer from depression as a result of suffering from chronic pain. When we look at these conditions, let us think about what they mean. They mean people suffering depression because of chronic pain experienced as a result of a work-related injury, such as a nurse in a hospital who, while lifting a patient, broke a hip and has been left unable to have children. I ask the minister how many women and men have made claims for psychological or sexual impairment that have moved them into the current step 1 or step 2 thresholds? If the minister were to put those figures on the table, he might find several in the system in step 1 but not so many in step 2. This new 25 per cent system will take away step 1; the threshold has been doubled. This is almost like the icing on the cake against injured workers. People with a psychological problem that takes them to the step 2 threshold have uncapped benefits. I ask the minister to put on the table those figures. I do not believe many people will be eligible under the new impairment guide.

I also ask the minister to look at the World Health Organisation guidelines for the assessment of impairment - the Department of Health library has a copy - because its assessment of impairment includes psychological and sexual complications. It might be possible for the minister to modify the WHO guidelines on impairment, rather than adopt the American Medical Association guidelines, so that focus is placed on injured workers, as opposed to the minister just introducing a tool. I ask the minister to consider the WHO guidelines for the assessment of impairment. I also ask him to get from WorkCover the number of people who have gone into the step 1 or step 2 threshold under the guidelines on secondary psychological or sexual complications so that he can consider removing this clause from the Bill and leaving in place psychological and sexual impairment as factors to be considered in the initial assessment of an injured worker.

Mr J.C. KOBELKE: We have looked at various types of assessment mechanisms. There is not another system around the world that gives the objectivity of this system. I certainly asked for it a couple of years ago. Although members foresee deficiencies in this system, a better one does not exist. That is why every State and Territory of Australia is using this system as a measure for gaining access to common law. The reality is that this is the best system available, despite its clear deficiencies.

Sitting suspended from 11.54 am to 12.48 pm

Dr J.M. WOOLLARD: During the lunch break I made some phone calls. Unfortunately, I have not yet received any replies to my queries. However, I was lead to believe that in New South Wales secondary factors such as psychological and sexual injuries and disabilities and impairments as a result of injury are not fully excluded from its workers compensation legislation. As I have been unable to get further information on that, could the minister tell me in which States secondary factors are excluded from legislation and whether they are not excluded in some States?

Mr J.C. KOBELKE: Each State has a different system. New South Wales uses the 15 per cent whole body impairment system, which is the same system as we are proposing. I understand that NSW does not allow for secondary psychological overlay to be used as part of that assessment. Victoria also has a form of exclusion of that overlay. However, that is a different mechanism and therefore is not the same as the mechanism we are proposing.

Dr J.M. WOOLLARD: The minister said that in Victoria the Government does not -

Mr J.C. KOBELKE: Allow the secondary psychological overlay. It is a different mechanism. I will get more specific advice for the member, but that is the advice I have received so far.

Dr J.M. WOOLLARD: The advice I have been given, for which I am waiting for more information, was from the Australian Plaintiff Lawyers Association. It believes that those secondary factors are not totally outside the legislation in New South Wales. I believe there is some incorporation of secondary psychological overlay within the legislation of NSW. If there is, can we look at what is in that legislation and whether our legislation could be reviewed? Could we consider whether it is proving detrimental to the way in which the legislation works in NSW?

Mr J.C. KOBELKE: We will seek further advice, or confirmation of the advice I have already received, about how it applies to those two States. I have made it clear that I am interested in looking after the injured workers rather than the lawyers. That is what this issue is about. The issue is to get many of these workers over the lower threshold. I have given the member the evidence already. The member cannot show that as a group injured workers are better off for getting into common law; they are not, but the lawyers are. Therefore, to the extent to which lawyers can use secondary psychological overlay to drive or to attract more people into common law, we are looking to give certainty to workers to look after their interests and not simply to provide a cash cow for a small group of lawyers.

Dr J.M. WOOLLARD: I accept what the minister is saying. However, the minister must also accept the fact that the lower threshold has gone under this new legislation. The lower threshold that exists within the current Act will disappear under this Bill. The current Bill goes straight to step 2 of the Act.

Mr J.C. KOBELKE: I do not accept that at all.

Dr J.M. WOOLLARD: Does the minister not accept that one per cent impairment practically equates to a two per cent disability?

Mr J.C. KOBELKE: I said earlier that there is no basis for that claim. I reject it.

Dr J.M. WOOLLARD: The advice I have been given is that it is almost double.

Mr J.C. KOBELKE: I am not usually a betting man but I bet that that advice comes from lawyers in the system who are making money from getting injured workers into the common law system.

Dr J.M. WOOLLARD: That advice has come from lawyers and also the medical profession. I will ask those people for more details about the comparisons. They are people who - particularly in the medical area - have a lot of credibility. I expect to be able to justify the claims they have made to me.

Mr J.C. KOBELKE: I am happy if the member can bring that forward. I have spoken with respected practitioners in this area who come from different backgrounds. They do not agree on a range of details. In my discussions with them, they gave no indication that going from "disability" to "impairment" would lead to that type of restriction on access to common law.

Dr J.M. WOOLLARD: Proposed section 146I, release of information relevant to assessment, states -

> (1) If an approved medical specialist has been requested to assess a worker's degree of impairment, WorkCover WA may disclose to the approved medical specialist any information that it has that may be relevant to the assessment.

Would this information be confined to the current injury? I am thinking of some of the people who have come into my office over the past year or two and have been unhappy with WorkCover because they feel that there has not been confidentiality of their WorkCover records. When the section refers to "any information that it has that may be relevant to the assessment" can the minister clarify that that is just information about that injury, or could it be information about previous injuries?

Mr J.C. KOBELKE: The way the system works is that the employer, the self-employer or the insurer maintains the files of the injured worker that would contain the medical reports. WorkCover itself maintains records about issues concerning where the injured worker's claim is up to. It is more likely that information will be requested about whether they will be paid; that is, has the worker used up all the medical expenses?

Mrs C.L. EDWARDES: That is a cynical view.

Mr J.C. KOBELKE: That is one example of many, which perhaps is a bit more cynical. They want to know whether the person has been recognised as being within the workers compensation system at an administrative level. For most people WorkCover does not maintain information about their case. When it comes into the dispute resolution directorate, that is a different issue, but the information being sought from WorkCover would be more about issues concerning managing their case.

Dr J.M. WOOLLARD: If a worker has an injury at work and goes through the statutory benefits and then has another injury 12 months or two years later, is that information all kept together within WorkCover and would it then be passed on under this section? Would previous information about work-related injuries be handed over pursuant to the wording in this section?

Mr J.C. KOBELKE: It is my understanding that WorkCover could provide information that the injured worker had had a previous case.

Dr J.M. WOOLLARD: I have heard from workers who have felt that their work history and their work injury is known about 12 or 24 months after they have had an injury. They have gone to another employer to seek employment, but they have not been able to get work. Concerns have been expressed in my electorate office that WorkCover has in some way disclosed the worker's information.

Mr J.C. KOBELKE: This relates to the fact that the worker requires the assessment by approved medical specialists. They should be able to make that decision with reasonable knowledge before them. If the assessment is to be done properly and to be meaningful, the approved medical specialist should be able to seek any information WorkCover might have. This proposed section means that WorkCover is approved to provide that information.

Mrs C.L. EDWARDES: Is there any restriction - I do not believe there is - on that approved medical specialist from disclosing that information in any further report he provides? If the information disclosed to him is of a personal nature or about prior injury or other matters, there is nothing to stop him from including it in any other report and from that report being distributed far wider than the approved medical specialist. I think that is the issue. That distribution could be done without the consent of the worker. If the worker gives consent, that is a different issue. If a worker is before an approved medical specialist who asks whether he has had other injuries, that worker will disclose that to the specialist. In that instance, he is not approving the release of that information, whatever it is, from WorkCover. It could be as broad or as narrow as the clause provides, and this provision is extremely broad. As such, there is nothing to stop that information from being provided to other people.

Mr J.C. KOBELKE: The issue throughout this area is to make sure that the information is available so that a proper and accurate assessment can be done, and decisions made with full knowledge of the condition of the worker. The issue then is to make sure that parties on both sides are not hiding information. If all the information were not available, disputation would be more likely and the outcome might not be as fair as it should be.

Mrs C.L. EDWARDES: The proposition the minister is putting forward is commendable and with the very good intent of ensuring that the worker is looked after in the best possible way to enable him to return to work as soon as possible. However, we are dealing with people's private and, in some instances, sensitive information. If the worker had a history of psychological disorder that had not arisen from any injury or whatever, for which he is taking medication and it is under control, why should that be disclosed to all and sundry? It should not be. It might be of a personal, sensitive nature that has nothing to do with the work injury. That is only one example. There is nothing to prevent the approved medical specialist from including that in a report that will be open to all others.

Mr J.C. KOBELKE: WorkCover does not maintain the files. Personal information is found in the files held by the insurers. We are not talking about dispute resolution for which all the files and data might be prepared. We are talking about a general provision for WorkCover.

Mrs C.L. EDWARDES: Why does it not apply to dispute resolutions?

Mr J.C. KOBELKE: The provision for dispute resolution contains a range of specific procedures. When an approved medical specialist is requested to assess a worker's degree of mental impairment, this will authorise WorkCover to disclose to the approved medical specialist information that may be relevant to the assessment. That will be on the basis that WorkCover, in generally overseeing the management of claims, does not have the files that contain the personal information. It does not retain them.

Mrs C.L. EDWARDES: Who does?

Mr J.C. KOBELKE: The insurers.

Mrs C.L. EDWARDES: What about the dispute resolution process?

Mr J.C. KOBELKE: The dispute resolution provision contains a range of procedures that spell out what is to happen.

Mrs C.L. EDWARDES: Which clauses in this Bill prevent the circumstances we have talked about in which personal and private information can be disclosed? If the minister does not have a problem, he should move to delete proposed subsection (2) to ensure that the worker's consent is required. He should include in the proposed section "the consent of the worker".

Mr J.C. KOBELKE: We are not aware of any explicit exclusion of that information. However, I repeat what I said earlier. We are dealing with the information held by WorkCover. WorkCover does not hold the files of injured workers. If the matter goes to dispute resolution - we will come to that later - relevant documents and processes must be made available. The issue is that it is quite likely that it would have to be made available through that process anyway. We are not providing something that could not be gained for the purposes of a dispute resolution process.

Mrs C.L. EDWARDES: A couple of provisions are contained in the Bill for which the worker's consent is not required. Why not include a provision to require the worker's consent?

Mr J.C. KOBELKE: I am not sure of the need for it. However, I am happy to have people investigate that and to provide an answer.

Dr J.M. WOOLLARD: Will the minister do that for proposed sections 146I and 146K.

Mr J.C. KOBELKE: We are talking about proposed section 146I now. We will investigate 146K.

Mrs C.L. EDWARDES: I refer to proposed section 146F. I do not know whether this was dealt with while I was absent.

Mr J.C. KOBELKE: No.

Mrs C.L. EDWARDES: Will the minister explain why there is an approved medical specialist? Proposed subsection (4) provides that WorkCover can cancel the designation of a person as an approved medical specialist. WorkCover decides whether a medical practitioner is suitable for designation as an approved medical specialist. With all due respect, what guidelines will be provided to WorkCover in order to make the improvements and to monitor these changes etc?

Mr J.C. KOBELKE: The development of the concept of the approved medical specialists arose out of a range of matters that centre around the use of whole of person impairment and the tables for establishing that. That obviously required a medical practitioner, and that medical practitioner had to be trained in the use of those tables. When considering the greater certainty that that gave, we had to make sure that not only would the tables be far more objective, but also the way in which they were administered would be as consistent as possible across all the doctors using them. Therefore, we needed some form of recognition of who those doctors would be. When it came to giving the injured workers the sole choice of which doctor they would use to give them a medical certificate for access to the common law system, we wanted to make sure that they would go to an approved doctor. For a range of reasons like that we needed some form of regulation with as light a touch as possible. That then came down to designating a group of doctors - we hope that it will be quite a substantial group of doctors - who will be recognised as approved medical specialists. We have also discussed the establishment of a special panel of doctors that is recognised in the Bill and established under the WorkCover board to give guidance on this area. The guidance relates to the use of the tables, who are the doctors, the admission of those doctors, the encouragement of doctors to join, the training of these doctors, the most appropriate way to offer that training to encourage doctors to take it up, and a range of things that will need to happen to make sure that the whole system functions well. Advice will be taken on those sorts of matters from the special panel that will be established under the Act.

Mrs C.L. EDWARDES: I asked a simple question: what are the selection and disqualification criteria?

Mr J.C. KOBELKE: That panel will help to lay those down; they have not been established yet. A group of recognised medical practitioners and specialists have already given us guidelines on this, and it is in light of that that we have set up some of these provisions. We will be looking to that group to help establish them. We want it to be as light a touch as possible because we want to encourage a lot of doctors to take it up. If it were cumbersome or difficult, that would not happen. Those guidelines have already been laid down. The report that we received from those doctors is a public document, and we have made that available to people who have requested it; it was put out for consultation many months back. That was the basis for accepting the New South Wales guide and procedures for the appointment of approved medical specialists.

Dr J.M. WOOLLARD: I believe that the terms of reference for those guidelines that were given to the medical profession were about how to implement the American Medical Association's tool for impairment.

Mr J.C. KOBELKE: How we implement the New South Wales guidelines, which were based on -

Dr J.M. WOOLLARD: Which were based on the American Medical Association's guidelines. The terms of reference were not necessarily seeking an opinion from the medical profession on the validity of those guidelines but how it thought they should best be implemented. Advice was then received on that. In this provision about approved medical specialists, again we come back to the regulations that go with this Bill. The minister is saying that this will flow from the guidelines and that some members of the medical profession will be asked to assist with this. However, I have looked at the course and the cost of training to become an approved medical specialist in the eastern States, and I think it will cost the Government just a few thousand dollars per medical specialist. The medical panel in the eastern States currently comprises consultants and experts in the area. However, there is no indication whatsoever in this provision about who can be an approved medical specialist; it could be a junior doctor who has just completed his training program. Under these guidelines, which the minister says are far more objective, perhaps in the country areas it could be an approved medical or nurse specialist.

Mr J.C. KOBELKE: No, that is nonsense. The Bill says it has to be a medical practitioner; it cannot be a nurse.

Dr J.M. WOOLLARD: With the tool that we will now be using, will it need to be a medical practitioner?

Mr J.C. KOBELKE: The way the law works in this State is that we are seeking to amend an Act, and procedures cannot override the requirements of the Act. The requirements of the Act are for a medical practitioner.

Dr J.M. WOOLLARD: I accept that it has to be a medical practitioner, but I am purely pointing out to the minister that he is moving to use a very simplistic tool to come up with a level of impairment for injured workers. I agree with the minister, this tool is far more simplistic than the current assessment because it will not look at the person as a whole. Therefore, my concern is that these approved medical specialists should not be junior doctors. I would like some guarantee that there will be a similar mix of medical specialists under this new system for assessing injured workers to that which exists under the current system. At the moment, this provision gives no guarantee whatsoever that it will be only medical and surgical practitioners who have been qualified for many years and have a vast deal of experience behind them. When will this decision be made? Are we going to wait until the Bill has passed through both Houses for it then to be put out to the profession for consultation or have there already been some discussions with the medical profession? Can the minister give us some indication of how the criteria will be developed to ensure that experts from medical, surgical, mental health and other areas are involved with the panel?

Mr J.C. KOBELKE: That has already been developed. That was put out for discussion and comment months ago. The issue is its ongoing monitoring and refining and taking advice from medical practitioners about how we can improve it. Those things have already been done. They are in the report from the committee of doctors that advised us on this. The member quite rightly said that they will give direction on how to implement this, but implementation addresses not only the guidelines, but also whether they need to be modified or changed, which the doctors gave advice on, and what will be the criteria for doctors to be approved medical specialists. It is all there.

Dr J.M. WOOLLARD: I apologise then. Amongst the mountain of paperwork that I have looked through on this Bill, I have not seen those criteria. May I please have a copy of them? I assure the minister I have a mountain of paperwork in this area but I have not seen those criteria, and I would like to see them.

Mr J.C. KOBELKE: We will provide that to the member.

Mrs C.L. EDWARDES: I refer the minister to proposed section 146J titled "Decisions of approved medical specialist". Proposed subsection (1) states in part -

> . . . a decision of an approved medical specialist is not amenable to judicial review.

The use of the word "amenable" is interesting drafting; it is not a word that would normally be used in that context. Does a right of appeal against a decision currently exist; and, if so, why is it being taken away?

Mr J.C. KOBELKE: Prerogative writs can be taken out against doctors who give assessments currently. That will not be possible under this legislation. In other words, an approved medical specialist will make a determination. An injured worker and an employer can have assessments made by different approved medical specialists. There are dispute resolution procedures for resolving any dispute on that determination, which may mean that the matter will be determined by a panel or in the District Court if the assessment is for the purpose of common law. However, it is not open for legal action to be taken against the doctor who made the decision.

Mrs C.L. EDWARDES: It is not only the decision that is not subject to judicial review but also anything done under the legislation in the process of coming to the decision. That is an extremely broad provision. Again, under this legislation, it is not only the determination that is not subject to judicial review but also any unfair process or other action used by the approved medical specialist to gain information. That is a most unusual provision.

Mr J.C. KOBELKE: In order to expedite cases and put people through the system quickly, a number of areas in the legislation prevent people from taking legal action to pursue and potentially hold up cases. There is protection in the legislation in that a District Court judge will head the dispute review process to ensure that proper process takes place and justice is afforded people. However, a number of legal avenues, which give people the right to challenge the processes that we want to work as effectively and efficiently as possible, will be closed down not only to protect people's rights but also to expedite decisions and help people get on with their lives.

Mrs C.L. EDWARDES: This is like the minister trying to push people through a sausage factory.

Dr J.M. WOOLLARD: This proposed section is very complex and is really the pivotal clause of the Bill. Proposed subclause (1) states -

> A decision of an approved medical specialist or anything done under this Act in the process of coming to a decision of an approved medical specialist is not amenable to judicial review.

On the homework I have done on the Bill, my impression is that although the clause states those things, the question of an improper use by a medical specialist of the power conferred by this proposed section could be taken to court on the ground of jurisdictional error. Will the minister clarify that issue for me?

Mr J.C. KOBELKE: Action could still be taken against an approved medical specialist through the Medical Board of WA if a specialist's behaviour was unprofessional.

Dr J.M. WOOLLARD: Could action not be taken in a higher court against a specialist if it were proved on the ground of jurisdictional error that an improper use of power under this Bill was used?

Mr J.C. KOBELKE: It would be open for a worker to take an action to the Medical Board because the doctor had not behaved in a professional manner.

Dr J.M. WOOLLARD: I accept that the matter would be subject to challenge at the Medical Board; however, I am asking whether the improper use of power would be a jurisdictional error and therefore subject to review by a higher court. I think it would come under the Hickman principle.

Mr J.C. KOBELKE: There is clearly provision for monitoring. However, the issue is what action would be taken in a particular case. WorkCover WA could address the issue if it found that a doctor had not fulfilled his duty as required under the Bill. The issue is whether a worker has evidence that a doctor acted improperly or unprofessionally, in which case action could be taken through the Medical Board. The issue is if the determination of an approved medical specialist is not accepted, there are avenues through which a different report can be obtained from another doctor. There may then be a dispute and the issue would be how to resolve that dispute.

Dr J.M. WOOLLARD: I accept that a problem could be passed to the Medical Board. However, my question remains and I would be happy for the minister to answer it at a later date if he does not have the answer now. Would a challenge to the improper use of power by a medical specialist not count as a jurisdictional error and be subject to review by a higher court?

Mr J.C. KOBELKE: The difficulty is that a claim of improper use of power could result in a big battle between doctors and lawyers. If battles such as that were allowed to continue, many doctors would not be willing to work in the workers compensation arena. That is the problem we have.

Dr J.M. WOOLLARD: That is why I would like an answer to this question. The minister has not answered the question I asked.

Mr J.C. KOBELKE: The member has asked a hypothetical question about doctors behaving in an unprofessional way. The issue is how to address that question. I have told the member that those matters will be addressed in a range of ways to protect the interests of injured workers. The member has asked whether an avenue should be open for lawyers to challenge that behaviour.

Dr J.M. WOOLLARD: No, I am not asking for that avenue to be opened.

Mr J.C. KOBELKE: That is the implication of what the member has said.

Dr J.M. WOOLLARD: I am saying to the minister that I believe it is open. Will the minister tell me that it is not open? I believe the wording of this proposed section leaves it open.

Mr J.C. KOBELKE: Leaves what open?

Dr J.M. WOOLLARD: It leaves open the possibility of a challenge in a higher court, on the ground of jurisdictional error, to an opinion, assessment or other decision made under proposed subsection (1) by an approved medical specialist if the decision was based on an improper use of power, as clarified by the purpose of the Bill.

Mr J.C. KOBELKE: If the jurisdictional issue went to the extent of saying that doctors were determining a matter that was not a medical issue, it is my expectation that yes, that case could be taken.

Mrs C.L. EDWARDES: I refer the minister to proposed section 146M(3) which reads -

> An employer or insurer who refuses or fails to comply with a requirement of an approved medical specialist panel . . . commits an offence . . .

The penalty for that offence is $5 000. Why has the Government not provided a balance; that is, what about a worker who refuses or fails to comply?

Mr J.C. KOBELKE: The issue is that a monetary penalty has different consequences for the insurer standing behind the employer who is handling million of dollars and a worker who has had his or her weekly payments

suspended and simply has no money at all. It would be grossly unfair to apply a penalty to both the injured worker and the insurer.

Mrs C.L. EDWARDES: What happens to a worker if he refuses or fails to comply with the requirements of the approved medical specialist panel? What is his penalty?

Mr J.C. KOBELKE: The penalty for the worker is that he fails to get the assessment. If he does not get the assessment, his case will not advance.

Mrs C.L. EDWARDES: What is it for the insurer and the employer?

Mr J.C. KOBELKE: Quite often there is an economic advantage to the insurer by simply having the matter delayed. I am not aware of any particular cases in which the injured worker has been advantaged by delaying a matter. There might be a small number of such cases; however, in the vast majority, it is in the interests of the worker that determinations be made and decisions reached so that he can get on with things, whether that be the reinstatement of his wages, or a medical determination so that he can get the particular benefits he is seeking. However, sometimes there is an advantage to the insurer. An insurer may be aware that it has to pay a certain amount of money or provide a certain benefit, but it would rather delay it because the longer it leaves it, the less it has to pay. The issue is that delays can benefit the insurer; however, it is highly unlikely that they benefit the injured worker. The penalty for a worker who does not cooperate is that he does not get a determination.

Mrs C.L. EDWARDES: I refer the minister to proposed section 146R, which deals with WorkCover guides. We have asked about these guides before and I think they are going to be made available to us at some point in time. Will the minister explain who developed the guides? Were they developed by the same people who will work in the system?

Mr J.C. KOBELKE: As I have already indicated, the guides are based on the American guides. We are using the New South Wales version. It is my understanding that the New South Wales system put a considerable amount of effort into it and established a controlling, steering or review group - whatever it is called - under which up to 14 panels of doctors with medical specialty looked at a range of areas. Out of that came a fairly comprehensive review of the American guides. We took the New South Wales guides and established the panel to which I earlier alluded. We looked at the New South Wales guides to determine whether any modifications were needed for Western Australia. The suggested changes were minimal. That is where they are currently at. With the passage of this legislation, and before it can be implemented, the advisory committee established under the Bill will be required to again look at those guides and either confirm them as they are or confirm them with modifications.

Dr J.M. WOOLLARD: Can we have a copy of those guides?

Mr J.C. KOBELKE: Yes

Clause, as amended, put and passed.

Clause 111: Part VII Division 5 inserted -

Mrs C.L. EDWARDES: This clause deals with the trialling of a specialised retraining program, which the Government is bringing forward in the Bill. In the first instance proposed section 146S refers to a panel of membership and reads -

> The Director is to keep a register . . . containing the names of persons approved under subsection (2) who are willing to be selected for a specialised retraining assessment panel.

Proposed subsection (2) reads -

> WorkCover WA may, with the person's consent, approve of the name of a person being included in the register.

Proposed section 146T outlines the constitution of an assessment panel. We will get to that shortly. Apart from those referred to in the Bill, will the minister describe the types of people who will be on the panel? How does the minister propose to seek nominations, get assessments and the like in order to establish the register, particularly given that it is a new body? Will letters be sent to people or will the positions be advertised?

Mr J.C. KOBELKE: I do not think so. We are seeking to promote injury management. Rehabilitation is an important part of that, although we are going beyond rehabilitation with the concept of injury management. We also have rehabilitation providers who are funded under the current Act, and that will remain. Someone who is likely to be eligible for this would have gone through a rehabilitation program; in fact, it is a requirement. In order to be a part of the specialised retraining program, a person must have been fully engaged in the rehabilitation program and assessed as needing additional help. They would have sought to use the rehabilitation

program to the maximum extent to which it could assist them. The rehabilitation providers or self-insurers who have their own rehabilitation schemes would be aware of the ability to apply for special retraining programs, and applications would be available from those people.

Mrs C.L. EDWARDES: I am talking about those people willing to be selected for the panel, not the persons who benefit.

Mr J.C. KOBELKE: I am sorry.

Mrs C.L. EDWARDES: How will people be selected for the panel? Will such positions be advertised or will respective groups be written to?

Mr J.C. KOBELKE: I assume that the normal process to be followed is that we would advertise that we need people to fill particular positions.

Mrs C.L. EDWARDES: I refer to proposed section 146T. The director will select three persons, obviously from the register. One will be an occupational physician who is an approved medical specialist; one will be a person who has knowledge of and experience in matters relating to the labour market; and one will be somebody from WorkCover who is experienced in the review of injury management. The director will nominate one member of the panel to be the chairman. I do not know why the director and not the panel will choose the chairman. That has been done in a number of instances. The issue is the members of the panel. No-one on the panel will be experienced in training. A person on the panel will have experience in matters relating to the labour market. That is an economic position and he or she may have no understanding of the ability, capacity and aptitude of someone undergoing a training program. Although a rehabilitation provider or a self-insurer may do the original assessment to refer the person to a specialised retraining program, such a representative will not be on the panel. Therefore, the panel would include someone from WorkCover who has some knowledge of the injury management program. There are some very good people at WorkCover who have been involved in injury management for some time. The panel would also include someone who has knowledge of matters relating to the labour market - goodness knows what that means. That person may have no practical knowledge of how to determine the necessary criteria for assessment for a training program; that is, the skills, experience, capacity, interest, ability and aptitude of a worker in being able to undergo such a program. There will be no rehabilitation provider on the panel. Although there is the protection that nobody can be on the panel who has treated, examined or had dealings with the individual worker, why has that not been incorporated?

Mr J.C. KOBELKE: The member has clearly gone through the requirements that are contained in proposed section 146T for a person to be a member of the panel. The member raised a couple of matters. She asked what is meant by personal experience relating to the labour market. Clearly, my experience as Minister for Training - I think the member for Kingsley was also training minister at one stage - is that people involved in registered training organisations and in training generally have experience and expertise in labour market matters; that is, the practical experience of knowing what jobs are available. Under our training system there is a continual review of the demands of particular sectors of the economy for skilled labour, and it seeks to provide that. It does not have to be a person who has training experience. It is quite likely that such a person could be picked up as well. That is critical because this whole process is not about putting in place another bucket of money; it is about trying to fund injured workers to get a high success rate and positive outcomes. We want someone who knows whether there is potential for employment in the area. It is a mixture of a range of issues. It involves the ability of a person to undergo retraining; that is, whether the person could acquire skills through training to perform the role and would be physically capable of performing the role. The issue then is whether there will be enough vacancies in that area for the worker to gain employment. That is why we have chosen these people. A rehabilitation provider might be the person who is not an officer of WorkCover WA.

Mrs C.L. EDWARDES: No, it must be a person with experience in labour market matters.

Mr J.C. KOBELKE: Sorry. It is a person who has that experience and is not an officer of WorkCover. The member is correct. The person from WorkCover is the one who will be experienced in injury management. That person will be working in this area and will know what is happening with injury management issues.

Mrs C.L. EDWARDES: However, that person will not be dealing with the injured worker down on the ground and on a day-by-day basis and will not know some of the problems that the worker faces in getting from there to Z. When we talk about someone with experience in the labour market, it could be an analyst. There is a skills shortage in the mining sector at the moment, particularly at the Burrup. That might be a huge and great employment opportunity, but it might not fit the capacity of the injured worker who is before the panel. It might not be of great benefit to an injured worker who wants to undertake specialised retraining if all of a sudden he is told that he can be trained and that there is a job at the Burrup. He might not want to go to the Burrup. How does that affect the injured worker? I will give another example of a constituent of mine who was a builder. He

had a most unfortunate accident; he fell off a roof. He was not able to go back to the building game again. He had great initiative and undertook a training course in jewellery design. He is a fantastic designer of jewellery today. Under this scheme, he would be told that there are jobs at the Burrup. He would not be able to do that work, first, because of his capacity for that type of work. He would also be limited and perhaps restricted from doing something else, such as jewellery design, in which he has achieved a career that has enabled him to return to being the main breadwinner in the family. The panel is narrow. More skills need to be represented on it. The panel should be constituted depending upon the individuals who come before it. It should provide the greatest level of application to the injured worker in terms of a specialised retraining program.

The DEPUTY SPEAKER: I advise that we are about to adjourn. We will suspend this session until three o'clock. I take this opportunity to advise members who have not eaten, that food is available in the bar until about 2.05 pm. It is my intention to ask the committee during this afternoon's session about possible times and dates that will be needed to complete the work of the committee, because of the need to form a roster for next week if we are to continue beyond tomorrow. Members could perhaps give that some thought between now and three o'clock.

Sitting suspended from 1.45 to 3.04 pm

The DEPUTY SPEAKER: The question before the committee is that clause 111 stand as printed. I do not know whether the minister wants to take this opportunity to respond to the member for Kingsley. I will take guidance from the committee.

Mr J.C. KOBELKE: I think the member made a statement more than asked a question. I am happy to have responded. The member may wish to continue on the same lines.

Mrs C.L. EDWARDES: I move on to proposed section 146U, which deals with procedures. In making an assessment the panel is supposed to act speedily and informally and in accordance with good conscience. Proposed subsection (2) reads -

> For the purposes of assisting it in making an assessment a specialised retraining assessment panel may request the worker, employer, insurer, medical practitioner or approved vocational rehabilitation provider concerned -
>
> (a) to attend before the panel;
>
> . . .
>
> (c) to produce to the panel any relevant document; or
>
> (d) to authorise any person who possesses a relevant document to produce it to the panel.

The powers are to be exercised in private unless the worker otherwise consents. In what circumstances would that occur?

Mr J.C. KOBELKE: That the worker might ask otherwise?

Mrs C.L. EDWARDES: Yes. The proposed section reads "unless the worker otherwise consents". It is therefore basically a matter of the panel saying to the worker that it wants to conduct proceedings in public and asking the worker for consent.

Mr J.C. KOBELKE: The powers given under proposed subsection (2) are exercised in private; that is, if the panel requests information from those other parties, that is to be in private. Under proposed subsection (3) the worker may otherwise consent, in which case the information may become public.

Mrs C.L. EDWARDES: I thought it was the hearing or the attendance before the panel that was to be in private, not the documents. The first part of proposed subsection (3) reads -

> Powers given by subsection (2) to a panel are to be exercised in private unless the worker otherwise consents . . .

It then refers to any information or document. The first part of that proposed subsection is basically dealing with the hearing.

Mr J.C. KOBELKE: If I may correct that statement slightly, the powers provided in proposed subsection (2) go beyond merely the provision of information; they also cover attendance before the panel and answering questions. Quite clearly it encompasses a wider range of potential outcomes when that information is to be kept secret unless the worker otherwise consents.

Mrs C.L. EDWARDES: Under proposed subsection (4), a worker or any of the persons who go before the panel are not entitled to be represented in proceedings before the panel. Why is that?

Mr J.C. KOBELKE: Again, we are seeking to put in place extra money for this specialised retraining program so that workers in a very select and specialised category can be put into a retraining program to get them back to work. It is seen as special. The issue then is that we do not want this lumped in as just another bucket of money that everybody has a go at. We want to target people who will be successful. That then flows on to the fact that we are not seeking that a person should have legal representation. There is an assessment to be made by the panel, and we have already discussed the proposed section on the constitution of the panel. In fact, the member made some more comments in a way that indicated to me that she did not want me to go back and make more specific comment. Given that context, we are trying to make sure that we do not get caught in a legal wrangle on how to apply the proposed section. It is clear in the way the proposed section is constituted that the intent is to consider the interests of workers. There are, therefore, four indicators that the person is not entitled to be represented by anyone.

The issue may be that it does not exclude the worker in a particular circumstance and the panel may seek to have someone else provide information on behalf of the person. I think that is already reflected in part 2, but it does not tie down the panel to meeting without that person being there. It clearly states that the person is not entitled to be represented in the proceedings by someone else.

The member for Kingsley asked a question before the earlier session was suspended. I respect the member's genuine interest in this area, but in her implied criticism I think she was setting up a straw man to knock over. We want an efficient mechanism with expertise that will be fair to workers. A three-member body suggested itself as the ideal model, rather than a four, five or six-member body, which would have the difficulty of getting together people with the relevant expertise and all the rest of it. As the member understands, we will establish a register of names from which the panel will be drawn. Having an occupational position on the panel indicates that we want someone with a thorough understanding of the medical conditions that might apply to workers and that the person will have expertise in getting injured people back to work. We are also after someone who is not a member of WorkCover, but who has experience in issues relating to the labour market, such as a worker's potential for getting a job and for attending retraining programs. Again, that person could be chosen from a panel in light of the particular worker sought to be assessed. The third member of the panel will be from WorkCover and will be someone with experience in the whole injury management program, of which this is one very small subsection. That person will have a breadth of knowledge on how rehabilitation programs are going, be able to get feedback from rehabilitation providers and have an expectation of the employment market in some areas. That panel will be a manageable group of three people who can assess the potential of an applicant worker to successfully undergo a training program and get back into employment to create new possibilities in life for that worker.

Mrs C.L. EDWARDES: The issue was not necessarily to broaden the number of people on the committee but to broaden the skills from which potential members could be drawn. As the minister said, it is a pilot program. He may find that it is not as diverse as it needs to be to meet an individual's needs. The minister might consider broadening the skills base from which people can be drawn in future. I suggest that WorkCover be cognisant of that fact, without being too exclusive in determining who will comprise the panel, particularly when referring to the labour market. That could be quite an esoteric issue, as against re-encompassing on-the-ground training skills, as some workers may have a very limited ability to undertake some form of retraining. The panel must have a person who is skilled, not only in vocational rehabilitation but also in medicine, so that the panel can determine whether an injured worker is capable of undertaking a particular task or whether there is a job that the worker can do ultimately. The panel will need to know whether the injured worker has the capacity and skills to undertake a retraining program. Although the notion of the legislation is to reskill an injured worker, it may very well be that the program will set up the injured worker to fail. I am concerned that the program may be too narrowly interpreted by the panel in its determination of an individual's capacities so that the individual may be set up to fail. That is a real possibility.

Mr J.C. KOBELKE: This program has the potential to be expensive; therefore, it must be effective. It is a matter of getting the correct balance. Because the program is new, it must be monitored very carefully. It must be assessed carefully so that there is a high chance of positive outcomes for the people engaged in it. I make it clear now for the record that it is not intended that the program become a bucket of money to be thrown around in the hope that it will produce outcomes. The program is to be very clearly targeted and managed to provide positive outcomes. It will not be regarded as successful if it does not provide positive outcomes and we will, therefore, consider removing it. On the other hand, if it is successful, we will consider expanding it to make it available to more injured workers.

Mrs C.L. EDWARDES: The actuary's report indicates that he was told there would be 30 to 50 participants in the program. How was that figure determined?

Mr J.C. KOBELKE: That is our best estimate of the number of people who could be helped and will be managed by the program, given the criteria that we have set for it. The program has been set up in such a way that a pool of about 30 people a year will be managed with assistance, and on that basis we will assess how well it is working.

Mrs C.L. EDWARDES: Has the minister drawn on information from elsewhere for the program?

Mr J.C. KOBELKE: There is not a scheme elsewhere that we sought to copy. I am not saying that there are not small elements of secondary retraining schemes in the scheme. However, we were driven more by criticism from a sizeable number of people that there was no retraining program, that rehabilitation was just the start of retraining and that people were likely to have their weekly payments cut when they started a retraining program. For instance, there was a lack of retraining programs for seriously injured workers, other than attendance at a TAFE college or entry into a commonwealth scheme through Centrelink. The issue was whether we could have a go at putting together an effective and productive scheme for these people. The scheme is a trial and we do not know whether it will work as effectively as we hope it will. We therefore want to ensure that the numbers participating and the costs are controlled until we can see good results from it.

Mr M.W. TRENORDEN: I would like to talk about the same issues, but I will get back to the question of trainers. Who will be the trainers?

Mr J.C. KOBELKE: That is not covered in this legislation. The specialised retraining program is for people who clearly cannot go back to their former job or the type of work they were doing and are therefore likely to end up in a very low-paid menial job or be long-term unemployed. We want to establish a support mechanism that will fund those people during retraining. The training will be done simply by a registered training organisation, such as a TAFE college or a university, and that training organisation will depend on the specific person, their capabilities and what is judged likely to assist them and be successful in assisting them.

Mr M.W. TRENORDEN: Will the minister tell me whether it is true that $100 000 will be put into a trust fund when an individual goes into this process?

Mr J.C. KOBELKE: No, we amended that proposed section. That provision was proposed but there was criticism that the employer - or the insurer standing behind the employer - would fork out the $100 000 and the worker might withdraw from the training program when the employer had spent only $5 000 or $10 000. The employer would then lose $95 000 or $90 000, which would be difficult to recoup and likely to be held as a cost against the employer. That would, in turn, lead to higher premiums for the employer, which would not be fair. We have changed the structure so that WorkCover - not the insurer - will continue to be totally responsible for making and discontinuing payments, but having made a decision that affects the premium, the employer or insurer will have to pay the actual costs.

Mr M.W. TRENORDEN: Frankly, that is a better scheme. When reading through proposed section 146U, I did not see a role for training organisations or professional trainers. Was that done for a purpose?

Mr J.C. KOBELKE: Clearly they have a major role, but it does not need to be recognised in the legislation.

Mr M.W. TRENORDEN: I am wondering how that will happen.

Mr J.C. KOBELKE: They are already regulated -

Mr M.W. TRENORDEN: I refer to advice coming into the process; I am not talking about the current system. I am wondering how there will be interface between the panel and those giving advice in what could be a successful outcome.

Mr J.C. KOBELKE: Proposed section 158H provides for three-monthly reviews of the performance. WorkCover's role will be to continually monitor not only the injured worker who is doing the retraining, but also the provision of services and how the program is going.

Mr M.W. TRENORDEN: I am still curious about how the new program will make possible professional global contact with the contracted provider.

Mr J.C. KOBELKE: The issue is that people already go through rehabilitation. Often that is done through professional rehabilitation services. They are already looking at a range of issues; therefore, they are already used to assessing an injured worker's potential to learn new skills and to move into new work roles. They are also skilled in assessing the personal, psychological and training support needed for a person. The current rehabilitation schemes are incredibly limited. We will be drawing on that information. We will be using people who have a broader understanding of labour market and training issues so that they can make an assessment of the likely success of a person undertaking a particular course in the specialised retraining program. Having made that decision, it will be monitored.

Mr M.W. TRENORDEN: The point I am trying to make - the minister will know this because of his past ministerial responsibilities - is that a range of people will be designing training programs because this has been put into the stratosphere. These people are specialists in designing processes that take money from people. Part of that is a good outcome, but we all know that it can also mean a bad outcome. I am trying to understand how the process will be filtered because qualified registered trainers will dream up a great little scheme - "Have I got a plan for you, minister" - and deliver that plan to the minister. How will that work?

Mr J.C. KOBELKE: That is why we need those people to assess it and provide ongoing monitoring.

Mr M.W. TRENORDEN: It seems very loose, minister.

Mrs C.L. EDWARDES: I refer the minister to proposed section 146U. Under proposed subsection (5), if a worker does not comply with the panel's request to attend, answer questions, produce documents and the like, an arbitrator may issue a certificate to that effect. How do we get from the panel to the arbitrator and then to the arbitrator being the one who can remove a suspension? If a worker is not willing to attend and participate, it will not be an effective system at any point. The process needs the commitment of the worker.

Mr J.C. KOBELKE: Absolutely. If there is any doubt about that, which could be evidenced through matters raised in proposed subsection (5), that application would be suspended.

Mrs C.L. EDWARDES: Who makes the application for suspension?

Mr J.C. KOBELKE: The connection is that the decision whether a person is funded to undertake the specialised retraining program is made by the panel as constituted under proposed section 146T. The arbitrator may come in on a range of matters because there may be an issue about the suspension of weekly payments, or medical issues may arise at the time about whether a person can continue a course. Therefore, those other disputes - but not matters pertaining to the selection of the person for the specialised retraining program - are matters that can go into dispute resolution and, therefore, the arbitrator will play a role. That is what we are picking up in proposed subsection (5). The arbitrator would issue that certificate.

Mrs C.L. EDWARDES: Who makes the application to the arbitrator - the panel?

Mr J.C. KOBELKE: The matter seeking arbitration could be initiated by WorkCover or it could be the employer or insurer if they have concerns or evidence that suggests that corrective action is necessary.

Mr N.R. MARLBOROUGH: I refer the minister to proposed section 146T, which deals with the panel to be constituted. What concerns me is that we will have a fairly arbitrary process that could cut people out of the process if they are not deemed willing to go along with the plan as indicated. I will come to the detail of that in proposed section 146U(4) and (5). One of the criticisms of the present model whether or not we like it - I know this is in the area of specialist care - is that the injured person does not feel represented at all. There is dubious evidence of the type of people who will sit on that panel. Some lists of doctors on a panel have included doctors who are dead. Of the 300 doctors listed on panels, a group of about 30 or 35 has continually gone around. The head of one field of medicine at the University of Western Australia advised me 18 months ago that he had been on the panel for 11 years, that he had trained most of the specialists who went through and who are now working, and that he had been on the panel on only one occasion. The reason for that was that he did not support insurance companies and their outcomes. He told me that directly when I went to see him about this issue. The make-up of the panels has always been a concern; people simply do not trust them when they are the victims of their decisions. I cannot find where in the Bill it provides that a worker or injured person is represented. An occupational physician will be on the panel. That seems fairly obvious, because we need some sort of health professional. The panel will also comprise those who, in the opinion of WorkCover WA, have knowledge and experience. That is part of the problem at the moment. Nobody trusts WorkCover in insurance outcomes these days, particularly an injured worker. The panel may comprise a person who, in the opinion of WorkCover, has knowledge and experience in matters relating to the labour market. Can I be convinced about the types of people in that category? Proposed section 146T(2)(b)(ii) refers to a person who is not an officer of WorkCover. That is fair enough. Will proposed paragraph (b) provide any ability to have somebody on the panel who may represent and understand injured workers or where they are coming from? Proposed section 146T(2)(c) refers to a person from WorkCover. What is the minister's view on how this panel will be made up, other than the obvious? Who will come under the category referred to in paragraph (b)(i)?

Mr J.C. KOBELKE: If I did not know the member for Kingsley better, I would think that she had put the member up to asking these questions, because she asked them all before the lunch break!

Mr N.R. MARLBOROUGH: I apologise. I did not realise that the member had already asked them.

Mr J.C. KOBELKE: The additional aspect to the question asked by the member for Peel is whether injured workers who seek to gain access to the specialised retraining program believe that they are being treated fairly,

that their cases are being fully and properly considered, and that it is not just some biased process. Clearly we will seek to ensure that people feel that they are being treated fairly and properly. However, what we are dealing with now, and what I was talking about before the member returned to the committee hearing, is a whole new specialised retraining program. It has the potential to cost a fairly large amount of money. As I have already said several times, we are not establishing a bucket of money for everyone to dip into. We want to ensure that the people who are selected for this program have a very high chance of succeeding. Therefore, it is not an opportunity for just anyone to do a course. We will pay for their course and we will pay their weekly payment on the basis of an assessment process that will be set up through this panel and these procedures, so that there are very good grounds for believing that the injured workers who take up the retraining program will be helped and will have a very good chance of success.

Mr N.R. MARLBOROUGH: I knew that would be the minister's intention, because he has the interests of the injured worker at heart. I will be more specific. What type of person are we looking at under paragraph (b)? I can see that one will be a specialist.

Mr M.W. TRENORDEN: Somebody who does not come under paragraph (a).

Mr N.R. MARLBOROUGH: Somebody who does not come under paragraph (a) will obviously fall under paragraph (b), because we do not need two specialists. It would cost a lot of money.

Mr J.C. KOBELKE: I answered this about half an hour ago. Clearly the occupational physician will be someone who understands the medical side, plus is an expert in the potential occupations or careers a person could follow. WorkCover is to pick someone who is not from WorkCover and who has experience in labour market matters. That might be someone from a training organisation who clearly understands the job, the skills that are required and how one might acquire those skills. The panel also must include an officer from WorkCover who is experienced in injury management. That is a major area of WorkCover's undertaking. We already have - we will ensure that it continues and expands - officers who can be chosen from this area, who work with injured workers for rehabilitation and injury management and who understand their needs, the range of problems those people face, the other skills they might be able to acquire, where they might acquire them and the potential job markets. This provision seeks to put together a small group of three people who can make a determination, which is not reviewable, and who can assess the best interests of the injured worker and call upon rehabilitation providers who might have worked with the injured worker, the employer and others who know the case to try to get the best possible outcome. I repeat: the determination to enable that person to take advantage of the specialised retraining program will be clearly on the basis that there is a very good probability that that person will be able to complete the course and get a job.

Mr N.R. MARLBOROUGH: That leads me to proposed section 146U(4), which provides that a person is not entitled to be represented in proceedings. Predominantly, the people who come into my electorate who have been through the workers compensation process have little understanding of the procedures that they have been involved in. Their level of intelligence does not seem to impact on their understanding. The whole process is quite traumatic. A panel of doctors from all over the metropolitan area seek an outcome and hope to be able to say that it is all in the worker's mind and it is not actually the fact that he has lost an arm. It is like the "Black Knight" character in that Monty Python movie - he was armless. By the time that worker gets through the process, he is traumatised. I am concerned about the workers who come to see me. All of that is happening anyway, but on top of that they have other difficulties. They might be migrants whose first language is not English. They will have to attend these proceedings, at which they are not entitled to be represented. Yet in this provision the worker concerned, without reasonable excuse - proof of which is on the worker - can be chopped out of the system and can be given a letter to say that he is not measuring up, because he is not willing to comply with the request for whatever reason. He will not have representation but the panel will be smart enough to tell him that he cannot go any further and will be out of the system altogether. There appears to be no balance for how people in the workers compensation system should be protected when they reach that stage. I am not suggesting that they need to be represented by a Queen's Counsel or a lawyer, but I am saying that when there is a difficulty, particularly with language, people should be able to have representation. After all, we are seeking proper rehabilitation, not penalty. My concern is that this is written to quickly penalise workers. If a worker for whatever reason refuses to comply with a request made by the panel, he will be removed from the system. I want to know what is the definition of "reasonable excuse" and who will make that determination? Will it be the panel or will it go to a separate arbitrator?

Mr J.C. KOBELKE: The phrase "without reasonable excuse" is a reasonably common term. The whole thing will not work unless the injured worker is committed to it. We discussed this a few minutes ago. There is a requirement on the worker to comply with requests and the only time the worker would not comply yet still be able to continue is when he or she has some reasonable excuse.

Mr N.R. MARLBOROUGH: Who will determine what is a reasonable excuse?

Mr J.C. KOBELKE: If it gets to dispute resolution, it will be the arbitrator. That is a requirement in a range of other areas.

Mr N.R. MARLBOROUGH: It will be sent to an arbitrator of some kind. It will not be determined by this panel. This panel may make a decision that there is no reasonable excuse, but that decision can be tested by an arbitrator.

Mr J.C. KOBELKE: No. I addressed this issue a few minutes ago before the member came back into the committee hearing. The issue is that the decision on whether a person can participate in the specialised retraining program will be made by the panel established under proposed section 146T. It cannot be made by some other body. A range of issues hangs on the person's engagement. It may be discontinuance of the weekly payments or the weekly payments may be cut but that was not the expectation and the worker wishes to have that matter resolved. Then the worker would enter dispute resolution and the arbitrator would have a role to play. Similarly, if there is some concern - it may be with WorkCover - that the injured worker is not attending lectures and is not participating in the course and the panel asks the injured worker to provide evidence that he is participating or for an excuse for why he is not participating in the program, and that matter is contested, it would go to arbitration.

Mr M.W. TRENORDEN: I am in agreement with the member for Peel. I think this is a good role for unions. Unions have carried out this role superbly over a long period.

Mr N.R. MARLBOROUGH: I had written under paragraph (b)(ii) "should be a union rep who is not an officer of WorkCover".

Mr M.W. TRENORDEN: That is not my point. I am curious about the way this has been put forward. Proposed section 146S refers to a register of names of persons who are willing to be selected.

Mr J.C. KOBELKE: That is for the panel, not for the people participating in the course.

Mr M.W. TRENORDEN: Okay; I have misread that provision. Who will select those individuals who come forward?

Mr J.C. KOBELKE: I answered all this before.

Mr M.W. TRENORDEN: Will it be by the panel or -

Mr J.C. KOBELKE: These injured workers already have available to them money for rehabilitation. Some workers get one day's assessment and some get a more fulsome rehabilitation, but most of them are of a very limited duration. With the specialised retraining program we are looking at something quite different in addition to rehabilitation. The person must have completed an effective rehabilitation program and must have complied with that to be eligible for this. Therefore, they will be recommended by their employer, but more likely by their rehabilitation provider, as being able to undertake the program.

Mr M.W. TRENORDEN: I have not caught up with the new amendments, but is there an upper limit on costs for training?

Mr J.C. KOBELKE: There is a fixed amount for the specialised program; that is, 75 per cent of the prescribed amount, which is about $100 000.

Mrs C.L. EDWARDES: I refer the minister to proposed section 146U(6). The panel's procedures and practices will not be prescribed, but will be as the panel determines. How will that operate? I understand that this is designed to provide as much flexibility as possible, but it could lack structure, which in turn could lead to an inefficient and ineffective body. Criticism has been made to that extent in the past as well. How does the minister see it operating? Will the panel lay out its rules so that people will know them, or will the panel operate as it determines from case to case?

Mr J.C. KOBELKE: As with most areas of administrative law, procedures develop and best practice grows from that process. The procedures and practices are to be as the panel determines. That fills in what would otherwise be a grey or nebulous area regarding who should give direction to what the panel should do when the statute is silent. The Bill makes it clear that the panel can determine a matter when it needs to decide on a procedure and the Act does not provide appropriate guidance.

Mrs C.L. EDWARDES: Under proposed section 146V, the assessment will be final and binding, not be subject to appeal and not be amenable to judicial review. Whatever the panel says will go - no debate will be entered into. What if the injured worker determines that what the panel has in mind for him or her will not work? In terms of a practical application, what role will the injured worker have in being able to state, "Yes, I think it will

work, but I am a bit frightened about that aspect"? What will be the interaction to ensure that it will work if the injured worker is not on site?

Mr J.C. KOBELKE: I agree with the member's comment. The board itself will take a clear interest in managing the matter. I will provide instruction, but I am sure it will do so anyway. It is to be a new body. We have great hope that it will assist injured workers. It has the potential to cost a lot of money, so we want to ensure it is effective. The board, which will contain union and employer representatives, will monitor and help to set guidelines on how the panels will operate. A transparent process will be developed so that people will be aware of the requirements and how the panel will assess the applicants.

Mr N.R. MARLBOROUGH: The minister may have started to answer my question, and I may have missed something as I was not here for the last session. With that sort of a coverage, where does the board fit in?

Mr J.C. KOBELKE: It is the WorkCover board.

Mr N.R. MARLBOROUGH: Will it sit above this body?

Mr J.C. KOBELKE: We have been through that aspect. We currently have the commission and the department, and they are to be rolled into the one legal entity with a restructure of the board. We have been through that matter.

Mr N.R. MARLBOROUGH: Proposed section 146T(3) reads -

> A person is not eligible to be a member of the panel if the person -
>
> . . .
>
> (b) has had dealings with, or has knowledge of, the worker concerned in a professional capacity.

I am concerned about who that may cut out of the process. What is defined as a professional?

Mr J.C. KOBELKE: The occupational physician giving treatment to an injured worker cannot be a member of the panel making an assessment. The physician's reports will be available. The rehabilitation provider who provides services to the injured worker cannot be a member of the panel making an assessment. They will provide reports and advice, but cannot make a decision.

Mr N.R. MARLBOROUGH: I refer to proposed section 146T(2)(b)(ii) and the reference to "not an officer of WorkCover". Would an official of a union, be it the secretary of the union or the occupational health officer of the union, be ineligible to sit on the panel if the injured worker before the panel were a member of that union? That official may not have come across this injured worker before, other than as part of their belonging to the same organisation. Will that proposed section prohibit that situation?

Mr J.C. KOBELKE: There will always be a question about where the boundaries are drawn. If the injured worker were represented throughout the process by a union official, as the workers compensation officer, in my judgment it would not be appropriate for that person who, in a professional or a personal capacity, had assisted the injured worker, to be one of the three people on the panel deciding the issue. Clearly, the union representative could appropriately assess a worker from a different union.

Clause put and passed.

Clause 112 put and passed.

Clause 113: Sections 147 to 150 repealed -

Mrs C.L. EDWARDES: The Opposition cannot support this clause. The Premium Rates Committee has stood tried and true. The independence and integrity of the committee has been maintained by having Des Pearson, who is also the Auditor General, as chair of the Premium Rates Committee. When rates have increased, with no interference whatsoever from a Government, and although it may have caused pain and hurt, the independence has been retained and not questioned. That has kept the system secure. The minister wants WorkCover to also be independent of the minister, but that will not be achieved. It will always be seen to be WorkCover. The governing body will not be seen to be as independent as the Premium Rates Committee has been under the chairmanship of the Auditor General, Des Pearson. I know that Des Pearson has wanted to get off the Premium Rates Committee. He probably asked the minister for that to happen on the first day that he met the minister; he asked me the same thing the first day he met me when I had the responsible minister's role. I place on record that Des Pearson has done an outstanding service to this State in that role. It is not an easy role to work through. There have been some difficult times in the past few years. However, the issue is that the committee has always been seen to be independent. Abolishing this committee and establishing a governing body, even if it sets up a subcommittee of its own, will undermine the question of independence. The change is unnecessary. Not

replacing the Premium Rates Committee with a separate, independent committee, apart from the WorkCover governing body, is a serious error of judgment.

Mr J.C. KOBELKE: I think the governing board to be established under the legislation will clearly have independence. People will judge that on the legislation. Currently, the minister of the day appoints people to advisory committees, to the commission and to the Premium Rates Committee. I think it is a case of re-inventing the wheel. Usually the same people get appointed to positions, with some variations. This legislation will provide that the board must accept its responsibility for the management of the whole scheme. Setting the premium rates is a pretty crucial part of how the whole system functions. The board should not say that someone else should take responsibility for the costs. The board should monitor the level of benefits to the workers and the health of the workers. The board should take responsibility for the efficiencies of the system and it should make sure it keeps down the costs and carries through and has responsibility for setting what the premium should be so that the board accepts full responsibility for the whole package.

I support the comments the member for Kingsley made about Des Pearson and the very good contribution he has made over many years. I would like to keep him involved; however, that is not my decision. If this legislation goes ahead, it will be a matter for the board to decide. It is open to the board to establish an advisory committee. The decision on premium rates must rest with the board. I believe that it would have the power to ask Des Pearson or someone else, if it so wished, to head an advisory committee. The requirement is that at least one member of the board would have to be on that committee, as established under this Bill.

Mrs C.L. EDWARDES: Would that committee member not have to be the Chair?

Mr J.C. KOBELKE: I do not think so. The issue is that the board could not make decisions on premium rates; a decision on that would have to come back to the governing board.

Mr M.W. TRENORDEN: Would the governing board have to refer back to the minister?

Mr J.C. KOBELKE: Yes, the minister must be advised. That is the current arrangement. In fact, I do not think the minister has a veto, but he must be advised.

Mr M.W. TRENORDEN: The minister has vetoed it in the past.

Mr J.C. KOBELKE: My understanding is that -

Mr M.W. TRENORDEN: The minister has delayed it from one budget to another, put it that way. I have similar concerns to those raised by the member for Kingsley. Not only the Auditor General but also a range of people from UnionsWA have given outstanding service while serving on the premium committee. A range of people who are interested in the process has come from every direction to provide input into workers compensation. They have been responsible enough to sit in a room, get on with the job and work with each other. Some very responsible people from the union movement have done that, and I give them full credit. I cannot think of a single person in that process who I could say has not done that job with due diligence and with much credit. One of the benefits of the current process is that people from different perspectives and directions who were involved in workers compensation all had the same responsibility to make sure that the system worked for everybody. They will not have that responsibility in the future. They will still have that role, but the responsibility will now lie with the board. The spotlight will not be on those individuals as is the case with the current process. The process of individuals being held accountable for their position on that committee has served the State very well. We could argue about the role of insurance companies and a range of other people involved with workers compensation. However, the people on this board have driven and held accountable a lot of other people. I think that will be lost under the new system. Those people will be in the backroom and will hand that responsibility on to a board instead of being directly involved in it themselves. That will be lost and I believe that the Government will rue the day it does it.

Clause put and a division taken with the following result -

Ayes (5)

Mr J.C. Kobelke	Mrs C.A. Martin	Ms M.M. Quirk	Mr M.P. Whitely
Mr N.R. Marlborough			

Noes (4)

Mrs C.L. Edwardes	Mr J.P.D. Edwards	Mr P.D. Omodei	Mr M.W. Trenorden

Clause thus passed.

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

Committee adjourned at 3.55 pm