LEGISLATION COMMITTEE

on the

WORKERS' COMPENSATION REFORM BILL 2004

The Bill was referred to the Legislation Committee on 3 June after it had been partially considered.

The meeting commenced at 12 noon.

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

The DEPUTY SPEAKER (Mrs D.J. Guise): We are dealing with the Workers' Compensation Reform Bill 2004. The Bill contains 188 clauses and we are currently dealing with clause 21. The motion agreed to in the House is that we continue on this reform Bill as partially agreed to in consideration in detail. That means we will move forwards, not backwards.

Clause 21: Part III Division 2A inserted -

Debate was adjourned after the clause had been partly considered.

Mrs C.L. EDWARDES: Proposed section 31A deals with the application of the division. The division deals with the new regime for lump sum payments for specified injuries. Obviously, proposed section 31A deals with those who are in and those who are out. Will the minister explain how proposed section 31A will operate?

Mr J.C. KOBELKE: First of all, to touch on the new regime for lump sum payments for specified injuries, for the purpose of proposed division 2A only, the term "injury", which currently describes the permanent loss of use of or permanent loss of the efficient use of a body part or faculty listed in schedule 2 resulting from a personal injury by accident, is replaced by the term "impairment". The heading of proposed division 2A reflects the fact that the new division will apply only to an injury that occurs on or after the amendment day. Therefore, in proposed section 31A, the amendment day is the day in which this clause comes into effect. That is because we have to clearly demark between those who are caught by the provisions before amendment day and those who are caught after. That is the key intent of proposed section 31A.

Mrs C.L. EDWARDES: Proposed section 31A(3) reads -

> This Division does not apply in relation to noise induced hearing loss shown before the amendment day by an audiometric test under Schedule 7 clause 4.

Therefore, if the testing has not been done prior to the amendment day, it is included. If it is done prior to the amendment day, it is not included.

Mr J.C. KOBELKE: We discussed this at our last meeting in consideration in detail. Whether a person falls within the new or old regime depends on the date of the injury. However, noise-induced hearing loss occurs over time; therefore, the timing for that is set by the date of the baseline audiometric test, which indicates the noise-induced hearing loss.

Mrs C.L. EDWARDES: Proposed section 31B deals with the definition of the "degree of permanent impairment". This, of course, is one of the major changes to the legislation. The degree of permanent impairment under proposed section 31B(a) reads -

> except as provided in paragraph (b),

It is hard to read without schedule 2 for the particular section -

> the degree of permanent impairment of a part or faculty of the body, evaluated as described in sections 146A and 146B;
>
> . . .
>
> resulting from the injury or injuries arising from a single accident.

Will the minister explain again what that is and how it should be read? Will the minister then pick up proposed section 31B(b)?

Mr J.C. KOBELKE: We can quickly go through what is in the Bill. Proposed section 31B reads -

> **"degree of permanent impairment"** means -
>
> (a) except as provided in paragraph (b), the degree of permanent impairment of a part or faculty of the body, evaluated as described in sections 146A and 146B;
>
> (b) in the case of scarring referred to in item 80 or 81 of Schedule 2, the degree of permanent whole of person impairment, evaluated as described by sections 146A and 146B,
>
> resulting from the injury or injuries arising from a single accident.

We are clearly making a distinction for matters covered in proposed item 80 or 81 of schedule 2 for scarring, otherwise paragraph (a) applies.

Mrs C.L. EDWARDES: Minister, I can actually read that; thank you so much for reading it out again. Proposed sections 146A and 146B refer to the evaluation. I am dealing with proposed section 31B(a) at the moment, not proposed section 31B(b). It deals with the purposes of part 3 division 2A. Because we are all over the place and dealing with different sections, parts and schedules, will the minister summarise what is being achieved in a simple way?

Mr J.C. KOBELKE: Sure; however, I do not accept that we are all over the place.

Mrs C.L. EDWARDES: Only in the drafting.

Mr J.C. KOBELKE: The issue is that the degree of permanent impairment in this division includes the degree of permanent impairment of a part or body faculty or, in relation to scarring, the degree of whole person impairment. The guides that we are using use scarring as part of the whole person in the impairment measure. All other matters are taken as part of whole person impairment. The scarring itself is done as part of the whole person impairment, which is different from the rest, which is done body part by body part.

Mrs C.L. EDWARDES: Will the minister explain that?

Mr J.C. KOBELKE: The point here is that the whole person impairment tables will be used to connect through to schedule 2, which is the table of maims. We are not seeking to change the basic operation of schedule 2. However, we are building it based on the whole person impairment assessment. That will have more standard use through the system. The issue then becomes that under the current arrangement, with the whole person impairment tables, scarring is applied across the whole body.

Mrs C.L. EDWARDES: What does the term "scarring must be across the whole body" mean?

Mr J.C. KOBELKE: Scarring will be assessed as part of the whole person impairment. If someone has a badly scarred arm, it will be assessed on the basis of how it affects the whole body. That whole person impairment is fair because major scarring to the arm could have effects on the respiratory system and all sorts of things in light of the stress it places on the body. That is how it will be measured. We must relate these provisions to schedule 2, which is a table of maims for a specific payment. If only an arm is affected and, therefore, the payment is to be made on the basis of the injury that has caused impairment to the arm, this provision will allow the scarring to the arm to be measured according to that part of the body. This clause will provide the assessor with the option of going either way; that is, of looking at the scarring relating to one part or faculty or assessing it in a holistic way across the body. Obviously, it seeks to achieve what is best for the injured worker. It opens up a choice.

Dr J.M. WOOLLARD: Will the minister explain why he accepts that scarring might have an effect on not only part of the body but the whole body, yet someone who loses a limb will be assessed on the basis of only losing a leg or an arm under these tables for impairment. The loss of a leg will have a devastating effect on a person's lifestyle. Why has the minister selected only scarring and not other major injuries that happen in the workplace?

Mr J.C. KOBELKE: The whole person impairment takes the particular injury in the context of the effect on the whole body. A medical panel considered this and recommended that scarring be treated in addition to that but in a different way based on how it impacts on the whole body. This clause allows for scarring to be considered under either aspect.

Dr J.M. WOOLLARD: What guidelines did the minister give the medical panel? I believe the guidelines sought to see how this impairment tool could be fitted into an assessment pattern. Although the minister has claimed that the medical panel recommended an exception, I happen to have seen some of the documents and I could not

see where an exception was provided in this area. Will the minister explain that a bit more? I do not think it is included in the guidelines.

Mr J.C. KOBELKE: The guidelines provided to the medical panel that reviewed this contained two key elements that are relevant to this issue. One key element was to review the New South Wales guidelines, which underwent a major review roughly two years before. We wanted to check that we were happy with them and on how they would apply in Western Australia. The second important element was to make sure that the current level of the table of maims benefits under schedule 2 was not in any way reduced through this change. The panel, therefore, looked to see whether "the whole person impairment" might result in a reduction in that level. If the panel feared there might be a reduction in the level, it was to give advice on how we could ensure that did not happen. This provision will ensure that when scarring has a broader effect on an injured worker, it is picked up and the benefits are not diminished.

Dr J.M. WOOLLARD: Were people asked to ensure that what the minister described as the table of claims -

Mr J.C. KOBELKE: It is a table of maims, which is the general term in schedule 2.

Dr J.M. WOOLLARD: It is proposed to ensure that payments received through the table of maims not be reduced through these changes. Was it not a term of reference for the medical review group that considered the guidelines to exclude psychological harm and some aspects of secondary harm resulting from an injury, such as pain and other physical measures?

Mr J.C. KOBELKE: Those were not matters the medical review group was asked to consider.

Dr J.M. WOOLLARD: Could the minister explain when psychological harm and secondary physical harm arose as something assessed under a workers compensation injury?

Mr J.C. KOBELKE: That has nothing to do with this provision. That would be an appropriate question to ask when the committee deals with the procedures for the second gateway to common law. The question does not relate to this provision, which concerns schedule 2.

Dr J.M. WOOLLARD: Madam Deputy Speaker, this provision considers the degree of permanent impairment. It refers to impairment resulting from injuries or injuries arising from a single accident. I refer to when an assessment is made of the impairment. While lifting a patient from a hospital bed to a chair, a nurse may damage her hip. As a result of that injury, the nurse may be left with a permanent impairment in that she can no longer have children. To me, that is very much a permanent impairment resulting from an injury. The minister states that we should look at these secondary effects later, but that secondary effect is that the nurse, through lifting a patient, is no longer able to bear children; therefore, she is left with a permanent impairment. The minister is wiping out those impairments with the clause.

Mrs C.L. EDWARDES: That would still be regarded as an aggravation of the first injury.

The DEPUTY SPEAKER: The minister suggests it is dealt with where?

Mr J.C. KOBELKE: It is totally irrelevant. The member does not understand what the committee is dealing with. Members should turn to page 426 of the Blue Bill and find schedule 2, which is part of the statutory scheme. One need not take a case and prove negligence for access to a schedule 2 payment. If a person loses both eyes, he will receive 100 per cent of the prescribed amount. If a person loses binocular vision, 50 per cent of the prescribed amount will be received. This is called a table of maims. It considers the injury to the person, and a payment is made based on the assessment of how that person fits in with schedule 2. That is how it works. The amending Bill has taken these items and based them on the whole-body impairment table for the sake of uniformity and standardisation. It is straightforward in some areas. In other cases, the use of the whole-body table to assess items in schedule 2, such as scarring, as discussed, appeared necessary to ensure we protect or enhance the payment made. In other cases, such as with injuries to the back or neck, a special clause will be inserted to shift the percentage to give more compensation to the injured worker to ensure no-one is disadvantaged. This relates to statutory payments under schedule 2, which is basically a table of maims.

Dr J.M. WOOLLARD: I refer the minister to sections 31C and 78 of schedule 2 which draw in secondary complications resulting from an impairment. Is the minister suggesting otherwise? Those matters are currently assessed in those areas. Is the minister saying they are not to be assessed in that way? How are they to be assessed if they are not to come under schedule 2?

Mr J.C. KOBELKE: People do not get the payment in that case. That is how it currently works.

Dr J.M. WOOLLARD: I refer to someone who loses the full and efficient use of her pelvis. If someone has her uterus removed as a result of an injury, it must fall in the table somewhere.

Mr J.C. KOBELKE: The schedule 2 tables are to be divided into matters to apply before and after the amending day. After the amending day, assessments will be based on a whole-person impairment. The Government has been careful to ensure that no diminution will occur in what people are to be paid. No reduction will occur. For most measures, no change will be made whatsoever.

Dr J.M. WOOLLARD: Do I owe the minister an apology? Will a sexual dysfunction not be removed from the new impairment table?

Mr J.C. KOBELKE: No.

Dr J.M. WOOLLARD: If some form of secondary function arose, like psychological harm and pain, will people not be compensated for those injuries under the Bill?

Mr J.C. KOBELKE: The issue is that this is a table of maims, and the injury must be measured as a direct part of the body. Sexual dysfunction involving the loss of genitals is picked up in the Bill. If it is a more complex psychological issue, it may not be picked up. In that case, it is not currently paid. The Government is not removing that situation from application.

Dr J.M. WOOLLARD: Therefore, sexual dysfunction, if it is a result of a hip injury, is picked up in the new schedule?

Mr J.C. KOBELKE: The member is not taking on board what I have said several times now. This is a table of maims. If a matter is not in the table, the injured worker will not get a payment. Although the schedule contains a fairly large number of items, it is not totally comprehensive and does not pick up every type of injury. The current arrangement is that unless an injury can fit into schedule 2, payment cannot be made as a schedule 2 payment. The Government will not reduce what can be paid as a schedule 2 payment under its amendments.

Mrs C.L. EDWARDES: Proposed section 31C deals with compensation for impairments mentioned in schedule 2. It reads -

> Despite Schedule 1, in respect of a permanent impairment from a compensable personal injury by accident, if the worker so elects during the lifetime of the worker as provided by section 31H in respect of an impairment mentioned in column 1 of part 2 of the table in Schedule 2, -

This is the new impairment model -

> the compensation payment for the impairment is, subject to subsection (2) . . .

This relates to dates. The provision further reads -

> . . . to be the percentage ratio of the prescribed amount indicated in column 2 of that Part.

That is pretty simple drafting. Why has the lifetime of the worker been provided as the period in which an election can be made under this schedule? It does not fit very well with the whole premise of the legislation, which the minister now wishes to retitle as injury management legislation. Obviously, if we are referring to schedule 2, we are not talking about somebody who is seeking to go to common law and is therefore seriously impaired. Can the minister explain the reason behind proposed section 31C?

Mr J.C. KOBELKE: I ask the member for Kingsley to repeat the last part of her question.

Mrs C.L. EDWARDES: Why has the lifetime of the worker been provided as the period in which someone can elect a schedule 2 payment? What does this mean for an injured worker?

Mr J.C. KOBELKE: That is how it is now; we are not changing it.

Mr M.W. TRENORDEN: No, I do not think that is how it is now. That is not my understanding. Is it yours, member for Kingsley?

Mrs C.L. EDWARDES: I understand that aggravation can still occur and all the rest of it. What does it mean under the impairment model and the new injury management model to provide the lifetime of the worker as the period in which he is able to elect to go to schedule 2? What will happen to him from the date of his injury and over his whole lifetime for him to elect a schedule 2 payment?

Mr J.C. KOBELKE: The provision will still enable a person to apply during his lifetime. Under the statutory benefits, a person does not have to make a case to prove negligence. The entitlements are available to a person on the basis that his injury was sustained through work.

Mrs C.L. EDWARDES: Does aggravation cause a schedule 2 impairment? What are the circumstances that require a person to have a lifetime in which to apply? Why is it not a period of five years or 10 years after the injury has stabilised?

Mr J.C. KOBELKE: My understanding is that there is not currently a limit. We are not seeking to restrict that provision through the changes that we are making.

Mrs C.L. EDWARDES: I accept that. I do not know that, but I accept that what the minister is saying is true. However, I need it to be explained. I do not need it explained whether this provision is or is not being changed, but I do need the minister to explain why the period provided is a lifetime. What are the circumstances for an individual? Under the injury management model the minister is trying to get the individual back to work -

Mr J.C. KOBELKE: We are not changing it. This matter currently exists in the legislation. We have turned our minds to where we can make improvements. We have not sought to change that provision. The member has asked for my judgment of why previous Governments provided that in the legislation and did not change it. My estimation is that if a mechanism were included to try to curtail the time in which a person could apply, it would add to the complexity of the situation for potentially little gain. A period of 10 years could be provided and someone might apply after 11 years, only to be told that he was out of time. Those sorts of injustices could arise. We are not seeking to change how that currently works through this amendment.

Mrs C.L. EDWARDES: I understand that. However, is the minister able to explain the sorts of injury circumstances that we are talking about? Is it an aggravation? We are trying to understand the impairment model and how it will affect injured workers. Although the minister might not have changed the provision and the period of a lifetime that it provides, we are trying to deal with an amended schedule 2 and a new model of assessment. We are trying to come to grips with that.

Mr J.C. KOBELKE: An example is hearing loss, which might be detected years later. Therefore, if there were a cut-off point at which a schedule 2 payment could no longer be made, such a person might be ruled out.

Mrs C.L. EDWARDES: That is not the case. With hearing loss it is from the date of the audiometric testing.

Mr J.C. KOBELKE: We are capturing it here in that way. That is an example in which hearing loss, for which payment can be made under schedule 2, might occur years later. I am no medical expert. In fact, I know very little about medicine. The fact is that there are other cases that may not be detected. There may be an element of degeneration, but it will be clearly attributable to what happened in the workplace. A person could apply for a schedule 2 payment at a later stage.

Mrs C.L. EDWARDES: Essentially it is an aggravation that might occur and does not evidence itself until a later time.

Mr J.C. KOBELKE: Yes.

Mr M.W. TRENORDEN: Without going back to page 426 of the Blue Bill, the level of aggravation for hearing is 75 per cent. Is the minister saying that if someone were initially assessed at 60 per cent, 20 years later that person might be able to get a schedule 2 payment when he is assessed at 75 per cent?

Mr J.C. KOBELKE: Loss of hearing is complex in that there is a baseline established, because a person might have had poor hearing before he started. All those sorts of issues must be considered.

Mr M.W. TRENORDEN: I am not trying to pick on hearing.

Mr J.C. KOBELKE: Under schedule 2 it must be a total loss of hearing and how that is assessed.

Mr M.W. TRENORDEN: For back injuries the level is 60 per cent. If a person were assessed at 50 per cent, does that mean that in 20 years, when the assessment team says that the level of injury is now at 60 per cent, he will get a schedule 2 payment?

Mr J.C. KOBELKE: In terms of the history of an injury, a person can get only one schedule 2 payment. The issue is that some people might apply for it at a later stage. Back injury is outlined on page 428. The permanent loss of the full, efficient use of the back is 60 per cent, and the permanent loss of the full, efficient use of the neck is 40 per cent. People often have issues with different parts of the back, neck and pelvis.

Mr M.W. TRENORDEN: I am not trying to be smart about the process, but if a person were assessed by a state panel and was not at the 60 per cent level, or 40 per cent if it was a neck injury, but 20, 10 or five years later he was assessed again and was above that level -

Mr J.C. KOBELKE: This area is quite sophisticated. Members have to take into account the fact that when a person seeks a schedule 2 payment, two, three or four different elements might be added together and compounded. There is also the issue that people might take a schedule 2 payment at the time that they took some other part of the benefits that are available. They would then end up with a whole package. It is how they

are treated for the purposes of workers compensation as a whole. Schedule 2 is one of the key elements that provides a basis for payment. It is within that context as well.

Mr M.W. TRENORDEN: We are not talking about what I want to talk about. The minister needs to tell me whether I am way off the mark. I am concerned about people who have been injured and who may fall some degree under the minimum level in the schedule of assessments, and whether they may not get in a position -

Mr J.C. KOBELKE: Their injury may not be sufficient to get payment on a particular item under schedule 2.

Mr M.W. TRENORDEN: That is right. If we go to the schedule of benefits, a lawyer might say to a person that he had better keep him on the record because he might be able to get him over that line at some time in the future.

Mr J.C. KOBELKE: I am advised that about 2 000 applications for schedule 2 payments are made each year. I do not have any evidence, and my officers have not given me any evidence, of people coming back time and again hoping that they will then get through. We must keep in mind that we are talking about a permanent impairment or a total loss; a person either gets it or he does not get it. That is not to say there are not a small number who might not come back a few years later, be assessed differently and then be able to get the payment. Our evidence is that currently people are not going round and round to see if they can get the assessment, having missed out the first time, that will give them a schedule 2 payment.

Mr M.W. TRENORDEN: I do not dispute that, but we are now moving to a new system. Under the old system a person would have to see three medical practitioners and go through a whole process of -

Mr J.C. KOBELKE: Not if it is agreed. I am talking about only the disputed cases.

Mr M.W. TRENORDEN: No, I am talking about the marginal people.

If a person is clearly above the line, there is no discussion. I am talking about those people who are under the line. In the old system, a person had his own medico, the system's medico and the arbitrator. Under the new system, there is only one medico.

Mr J.C. KOBELKE: No, this is not a statutory scheme. We are not changing that in a statutory scheme. As I indicated, very few of those 2 000 applications a year are disputed. They are accepted on the medical evidence. We are not changing the system in that regard. We are changing only the part in which the doctor currently assesses a person according to schedule 2 as a table of mains, and I am not across the methodology for doing that. That will be changed to be based on the whole person impairment, but it still comes out to the same actual loss of function or injury that is currently the case, except in a couple of areas such as scarring, where it is sought to make sure there is no diminution or slight enhancement. We have increased the numbers for back and neck impairments to make sure that people do get in, whereas now they might miss out. Otherwise, schedule 2 is applied in the same way. There is some change in terminology, such as the medical assessment panel now becoming an approved medical specialist -

Mr M.W. TRENORDEN: Is there not a change in that process? A person will have to become qualified to assess for impairment.

Mr J.C. KOBELKE: Yes, the person can go for an assessment to only a doctor who has done the course in the medical tables.

Mr M.W. TRENORDEN: Apart from the dispute process, will the ruling on a person's impairment have to be taken from that medico?

Mr J.C. KOBELKE: Yes. The issue is that the approved medical specialist will give a person the required documentation that says he has the whole person impairment that meets a certain criteria of schedule 2. If that is disputed, that case will go before a medical assessment panel, as currently exists but with a different title.

Mr M.W. TRENORDEN: I will have to take some advice on that. I am still concerned that there are slight changes. I accept the fact that very small numbers are now coming back to the system.

Mr J.C. KOBELKE: Back to the medical panels.

Mr M.W. TRENORDEN: Yes, but I am talking about coming back after a lapse of years.

Mr J.C. KOBELKE: Sorry.

Mr M.W. TRENORDEN: After a lapse of years, very small numbers come back. I accept that because I know that to be true. I wonder whether there will be any change in that process. If there is, there will be an increase in costs. I will go back to the people I talk to about that, and perhaps we can talk about it again during the third

reading stage. I am concerned about reintroducing lawyers into the process. I am concerned that they will put a marker on the file of a person who has not quite met the assessment to keep them in the system; that is, their system, not the workers compensation system.

Mr J.C. KOBELKE: One of the strengths of the whole person impairment tables is that they are far more objective.

Mr M.W. TRENORDEN: I understand that; I said during the second reading debate that I accept that.

Mr J.C. KOBELKE: That will also be reflected in here; there will be much greater transparency. It will be less likely that two doctors will be in dispute over a patient about what should be the level that will be covered by schedule 2.

Mr M.W. TRENORDEN: I am not talking about that issue.

Mr J.C. KOBELKE: The member is talking about disputation.

Mr M.W. TRENORDEN: No, we started with a lifetime opportunity for people to go back to schedule 2 benefits. I am talking about someone being assessed somewhere below the level contained in the current schedule, then some years later coming back because of the deterioration of his condition. I am not talking about whether a person gets assessed at the time; I understand that process. I am concerned about a person who five years, 10 years or 15 years down the line asks for a reassessment because he is five per cent or 10 per cent under the threshold and must argue about the deterioration of his condition.

The DEPUTY SPEAKER: Just before I pass over to the member for Kimberley, I want to check on a couple of administrative issues. First, I understand that there is an agreement to have a half an hour break for lunch at 1.30 pm. Second, for those who have come in a little late, you need to understand that Hansard is having some difficulties hearing in this room. Therefore, the rustling of paper needs to be kept to a minimum and it would be appreciated if members used the microphones. On that note, I notice a number of members are having a problem with their Blue Bill. If they wish, we can ring bind them during the lunch break to make it more user friendly. Members can let us know during the break if they want us to do that for them, which might help to clear some of the materials off the table and make the Blue Bill more user friendly.

Mrs C.A. MARTIN: Are section 31 and schedule 2 applicable for not only the time lines but also the types of injuries and the table of mains? For example, some of the Agriculture Protection Board workers in the Kimberley are claiming for workers compensation at the moment. Would the time lines and some of the scheduling apply to them?

Mr J.C. KOBELKE: Yes. Page 427 of the Blue Bill refers to a loss of the senses of taste and smell. However, those people will have to show that their impairment was due to the work they were doing.

Mrs C.A. MARTIN: If we were to put a time line on it of, say, 10 years before they could make a claim, that would have impacted on these people.

Mr J.C. KOBELKE: There is no time limit; we are not putting one in.

Mrs C.A. MARTIN: That is great. That is all I wanted to have clarified.

Dr J.M. WOOLLARD: Partly carrying on from what the member for Avon just said, under the current system a person may get compensation under schedule 2. Earlier we discussed the scenario of a nurse who could no longer have children. If a nurse is taking something for a back injury and secondary complications develop for that nurse or manual worker who had no secondary complications, can that person go for common law damages and then pay back any money that was received under the statutory scheme? The member for Avon was asking what happens if a person suffers an injury and five or 10 years later the injury deteriorates and that person gets other problems. In the new scheme, if someone accepts the statutory benefits, I believe he or she can no longer go to common law. If that is the case, what happens when that sexual dysfunction or that psychological harm that only developed post the injury and post the assessment under schedule 2 becomes apparent six months later? Can the person go back and double dip under this schedule? Can the person go back and seek adequate compensation for that injury? What happens to that person? Is it just tough that that person develops a secondary complication later?

Mr J.C. KOBELKE: If the injured worker takes a redemption, I think it is universal. When a person signs a redemption, he accepts the redemption payment in the statutory benefits and is excluded from going to common law. That is not true for a schedule 2 payment. If he accepts a schedule 2 payment, he does not forgo his rights to take common law action. That gets caught up with all the requirements for common law, but the acceptance

of a schedule 2 payment of itself does not exclude the worker from then seeking to take common law action. Of course, if he then took common law action, the schedule 2 payment would be taken into account.

Dr J.M. WOOLLARD: I thank the minister for that clarification. There is something in my briefings notes that indicates that when a person has accepted something, he can no longer take common law action. I know that applies if a person has received extra medical money or more training, but I thought there was another issue that came from this Bill whereby once a person had received some assistance he could not go to common law.

Mr J.C. KOBELKE: The two examples are, firstly, the exceptional circumstances of major increases in medical expenses, which is designed to look after those people who cannot go to common law. That is why they are excluded. Secondly, the specialised retraining program is designed for people who do not go to common law. If they take up that option, they are also excluded from common law action.

Dr J.M. WOOLLARD: In relation to those extra medical benefits -

MR J.C. KOBELKE: That is not relevant to this section. We are dealing with schedule 2.

Dr J.M. WOOLLARD: I will come back to that later.

Mrs C.L. EDWARDES: In relation to proposed section 31C(1) and (2), I might have inadvertently led the minister down the wrong path, particularly concerning subsection (2). I suppose I would like clarification about how proposed section 31C(1) and (2) relate. Subsection (1) refers to an aggravation and subsection (2) states -

> such an impairment at the date of the accident by which that injury was caused to the worker . . .

It does not refer to an aggravation. Subsection (2) refers to an impairment, excluding noise and aids. It refers to all those other injuries. Why do people then still have a lifetime to elect?

Mr J.C. KOBELKE: My advice is that the draftsman is seeking to express it more clearly by breaking it up rather than making any change.

MR M.W. TRENORDEN: It is as clear as mud.

MRS C.L. EDWARDES: Who is that draftsperson? Hilarity aside, is it the impairment at the date of the accident? What about aggravation? Why does the worker then have a lifetime to elect?

Mr J.C. KOBELKE: It is not the impairment at the date of accident. The prescribed amount changes with the inflation factor, and the date of the accident sets what the prescribed amount will be, not the injury.

Mrs C.L. EDWARDES: I understand. I will move on to proposed section 31D. Subsection (2) states -

> If compensation is payable under section 31C but the degree of permanent impairment from the injury of the worker is less than 100%, a percentage of the full amount -

Which is described under subsection (1) as "if the degree of permanent impairment resulting from the injury is 100%" -

> equal to the degree of permanent impairment is to be awarded in lieu of the full amount.

Does that mean he gets 100 per cent even though the permanent impairment is less than 100 per cent?

Mr J.C. KOBELKE: This does not change what currently exists. If he loses 25 per cent of his finger, he gets 25 per cent of the payment for loss of a finger.

Mrs C.L. EDWARDES: Does the legislation say that?

MR J.C. KOBELKE: That is what I am advised.

Mrs C.L. EDWARDES: The "full amount" is defined as -

> the amount payable under this Division if the degree of permanent impairment resulting from the injury is 100%.

Subsection (2) states -

> If compensation is payable . . . but the degree of permanent impairment from the injury of the worker is less than 100%, a percentage of the full amount -

Which I have just described -

> equal to the degree of permanent impairment is to be awarded in lieu of the full amount.

Is the definition of "full amount" incorrect?

Mr J.C. KOBELKE: No. The full amount is 100 per cent -

if the degree of permanent impairment resulting from the injury is 100%.

MRS C.L. EDWARDES: Is it 100 per cent of the 25 per cent?

Mr J.C. KOBELKE: No, the full amount. Let us take the example of the loss of a finger. On page 427 of the blue book, loss of forefinger is 17 per cent, loss of thumb is 35 per cent, loss of middle finger is 13 per cent, loss of ring finger is nine per cent. If we are dealing with the ring finger, the full amount is nine per cent, but if a person lost only a third of it, he would get three per cent.

Mrs C.L. EDWARDES: I move onto proposed section 31D(4), which states -

An arbitrator to whom an application to determine a question is made under subsection (3) may -

That is where there is no agreement -

(a) determine the degree of permanent impairment; or

(b) refer the question as to the degree of permanent impairment for assessment by an approved medical specialist panel . . .

Proposed subsection (5) states -

If a determination is made that the worker's degree of permanent impairment arising from the injury concerned is not less than that alleged by the worker, the arbitrator may order the employer to pay all or any of the costs connected with the dispute, including any costs connected with referral to an approved medical specialist panel.

If a worker says that he has a particular degree of impairment but the employer says he does not, there is obviously a dispute. If it goes to arbitration and the arbitrator determines that there is a degree of uncertainty about the level of impairment, the employer is required to pay all the costs. There is no equal or corresponding power by the arbitrator when the worker claims a greater level of impairment than he actually has.

Mr J.C. KOBELKE: First of all, the issue revolves around the word "may". The arbitrator "may" order the employer to pay all or any of the costs. It is not saying that employers will or have to, but that they may. If it is based on full person impairment, we will expect to see less disputation. Injured workers clearly have the right to seek - one would expect it - to obtain a schedule 2 figure for their particular injuries. If they have attended an approved medical specialist, they will receive an assessment. If an assessment is contested, a worker has the right, through the insurer, to obtain another assessment. If the other assessment is done by another doctor, it is expected there will not be too many cases of variation. If a case is disputed further, and it appears to be dragged out, proposed subsection (5) will give the arbitrator the power to say that what the worker is being put through is unreasonable and, on that basis, it is expected that all or some part of the costs will be paid by the employer.

Mrs C.L. EDWARDES: Why is the arbitrator not given the authority to award costs against either of the parties?

Mr J.C. KOBELKE: It is because the person who, of necessity, has to initiate the matter is the injured worker. We wish to speed up these matters. If an employer has a basis for believing that a claim is somehow not valid and disputes it, it is highly unlikely that the arbitrator will award any costs. The delay comes through an employer or insurer seeking to delay matters. This is one of the problems we currently have in the system.

Mrs C.L. EDWARDES: Delays are more likely to occur when solicitors and legal representatives come into the system.

Mr J.C. KOBELKE: There is a range of sources of delay but the source of delay here is by challenging a case when it is fairly clear cut that a person does have a claim.

We are seeking to speed up the whole thing. We do not want insurers seeking to use the WorkCover dispute resolution processes as a way of managing claims. We expect them to manage, and to manage well. That is picked up in a number of things we are doing in the Bill. Potential penalties are included in the legislation to discourage insurers from seeking to use a dispute as a way of managing a claim. I am sure good insurers would not do that.

Mrs C.L. EDWARDES: I will add to that. I am suggesting to the minister - as I have done in the past - that allowing lawyers back into the system at the very early stage will create a change of behaviour in the management of injuries by injured workers and/or their representatives. Therefore, representatives of injured workers will also manage a claim through the dispute resolution process. Is the minister able to show in the Bill

where there is similar provision for representatives of workers to better manage a dispute? If he cannot, we will have a one-sided process.

Mr J.C. KOBELKE: We are certainly doing that with the lawyers. However, we will come to that later.

Mr M.W. TRENORDEN: Proposed subsection (5) uses the word "may". Is there any criteria for how the word can be applied?

Mr J.C. KOBELKE: It is a matter of discretion for the arbitrator. If it is a line call, decent management and objectivity by the arbitrator would ensure that costs are not awarded. If there is any sense that there is a delaying tactic or a frivolous obstruction to accepting a claim made by an injured worker, there is potential for the arbitrator to award costs.

Mr M.W. TRENORDEN: I refer to the matter raised by the member for Kingsley, which I think is quite fair. An insurance company may be dealt with unfairly by the process. The Bill should represent some form of equality, but it does not.

Mr J.C. KOBELKE: The member for Kingsley raised concerns about lawyers. That issue is addressed in other parts of the Bill. In making changes, we were conscious of the sorts of concerns she has expressed. We have tried to take account of that. An instance of that is the fees that lawyers will be able to claim from the system. They will not be based on the time spent by lawyers on a case; they will be for the particular task undertaken. We are seeking to remove any incentive for lawyers to put in place obstructions or to drag things out.

Dr J.M. WOOLLARD: I refer to proposed new section 31 and the degrees of permanent impairment described in proposed sections 146A and 146B. My concern is that, at the moment, medical panels are selected on a certain criteria. For example, a female injured worker requires a female member on the panel. A back injury will require an orthopaedic surgeon and, possibly, a lawyer. The panel requires three -

Mr J.C. KOBELKE: No. The panel consists of medical practitioners.

Dr J.M. WOOLLARD: There is a requirement for a specialist in the area of the worker's injury. I am aware that some doctors will travel to the east to undertake the course of study for the new assessment procedures. That will not give those doctors the same skills as other experts, such as orthopaedic surgeons, who may have 20 or 30 years experience. How will the new system account for the lack of expertise? Doctors who have undertaken the course will be able to use a checklist for general injuries. However, the checklist does not refer to finer complications that might arise through an injury. Will experts such as orthopaedic surgeons be encouraged to undertake the assessment course?

Mr J.C. KOBELKE: That is not relevant to these provisions. The proposed section that the member alluded to refers to scarring and provisions for that. However, there will need to be specialists in different areas of medicine. They will be approved upon having completed the assessment course on the guides.

Dr J.M. WOOLLARD: Will there still be specialists?

Mr J.C. KOBELKE: Specialists will undertake the course and will be available as part of the specialist medical assessment panel.

Dr J.M. WOOLLARD: In the past, if someone had a back injury, he would see an orthopaedic surgeon. Under the new system, will an orthopaedic specialist be a member of the panel that assesses a worker's injuries?

Mr J.C. KOBELKE: It is envisaged that the panels under this new system will follow on in the same way as they currently exist. The only proviso is that the special medical advisory group that we have set up will be involved to give guidance to the panel. Currently some criticisms have been made that the medical assessment panels are somehow not objective and that there is no transparency. We are seeking, in part, to address that by having a group of doctors who have expertise in this area and who are across a breadth of medical practice advise how the panels are working. Through that process, some improvements might be made to how the panels function.

Mrs C.L. EDWARDES: I refer the minister to proposed section 31F, which deals with the lump sump compensation payments for AIDS. Proposed section 31F(6) states -

> A worker is not entitled to compensation under this Division in respect of an impairment that is AIDS if the impairment resulted from the unlawful use of any prohibited drug -

which is defined -

> or from voluntary sexual activity.

Will the minister advise why this provision is limited to the unlawful use of any prohibited drug? I did not think it is the drug but the needle that causes people to contract HIV. What does voluntary sexual activity mean and how will it be determined with regard to the workplace?

Mr J.C. KOBELKE: The New South Wales Government has introduced these provisions in legislation and we have picked up the way it has handled this issue. That was seen as the best way to tackle it, given it is a new area. We are not aware that the wording in the NSW legislation has run into any problems. That is not currently evident and therefore it seems to be the way to go. With regard to involuntary sexual activities, someone might have been raped at work, in which case if the person contracted AIDS, he or she would be covered because the sexual activity was involuntary. However, if the sexual activity was voluntary, compensation would not be awarded.

Mrs C.L. EDWARDES: I can accept that the minister has adopted New South Wales' version in many circumstances, but surely the minister's advisers have thought about it. People do not contract AIDS by using a prohibited drug. I wonder why the minister has not given that matter further consideration.

Mr J.C. KOBELKE: The draftspeople clearly considered it was the best way to deal with it. I am accepting their advice that to legislate for the use of needles etc may open a range of legal problems about how the issue is dealt with. We are simply setting out to make sure that AIDS is covered in the schedule. Therefore, it comes down to technicalities as to how that can be done in a reasonable and proper way.

Mrs C.L. EDWARDES: If a worker uses any drug in an unlawful way and contracts AIDS in a workplace, will the worker then be able to get the lump sump compensation under proposed section 31F?

Mr J.C. KOBELKE: Can you say that again?

Mrs C.L. EDWARDES: A worker would not receive a lump sum payment if he contracted AIDS through the unlawful use of a prohibited drug. What if the person contracted AIDS from the unlawful use of any drug? A person would not be excluded from the lump sump compensation for AIDS if he contracted it in that way.

Mr J.C. KOBELKE: It must be work related.

Mrs C.L. EDWARDES: It could be that a person in a workplace used a needle to inject a drug that is not prohibited and contracted AIDS. The needle rather than the drug causes the AIDS virus. Even though the person had used the drug, which was not unlawful because it was not a prohibited drug, the worker could contract AIDS and receive a lump sump compensation payment. That is what the minister is saying.

Mr J.C. KOBELKE: Proposed subsection (7) states -

> Subsection (6) does not limit the operation of section 22.

Section 22 of the Workers' Compensation and Rehabilitation Act has provisions for serious and wilful misconduct. Therefore, a person could be excluded from receiving a lump sum payment under that section.

Mrs C.L. EDWARDES: How broadly is "serious and wilful misconduct" determined? The relevant people might not be affected by that provision.

Mr J.C. KOBELKE: The contraction of the virus must be work related. We are seeking some clear exclusions, but they must be work related. The member is asking about a person who shot up serum or sugar or something and then sought to claim compensation. That is not work related.

Mrs C.L. EDWARDES: It might have occurred in the workplace. We will see how the Government goes in the event of such a case.

I now refer to "subsequent injuries", which I want to raise later when we deal with specialised retraining. How will subsequent injuries be determined if under schedule 2 a worker has elected to receive compensation over his lifetime? A worker receiving a schedule 2 payment could suffer a subsequent injury and, according to proposed section 31G(2)(b) -

> . . . such subsequent injury is to be proportionate to any increase (resulting from that subsequent injury) in the degree of permanent impairment, and the compensation payable is to be calculated at the rates applicable at the time of the occurrence of each subsequent injury.

How will this work?

Mr J.C. KOBELKE: This provision reflects section 26(1) of the Act. We are not changing it.

Mrs C.L. EDWARDES: Is that the minister's answer?

Mr J.C. KOBELKE: The current arrangement is that a worker who suffers a subsequent injury and has already been paid for a prior injury would deduct from his payment what he had already been paid. That is how it currently works. The additional provision in this legislation is a transitional matter to pick up impairment. That is the change, otherwise the application is the same. If a worker who suffered a back injury made a claim and was paid and then suffered a subsequent injury and injured his back even further, the payment due for the level of the impairment he then had would be available to him less what he had already received for the payment for the earlier injury. This gets pretty complicated. I am sure the member is aware of cases in which a worker has had two or three injuries under different employers and insurers. That raises the issue of who will accept responsibility. We need to delineate who has to pick up the liability and responsibility for that injury. An earlier injury may have been the responsibility of a different employer and a different insurance company.

Mrs C.L. EDWARDES: I think that when we talk also about specialised retraining, it comes down to which employer pays for any subsequent injuries as a result of retraining. It comes back also to how this proposed section will be interpreted in that light, particularly as the employer at the time of the injury is the one who will be putting up the money for the specialised retraining. We will get to that later. With respect, I think it could be better operated.

Clause put and passed.

Clause 22 put and passed.

Clause 23: Section 32 amended -

Mrs C.L. EDWARDES: This clause deletes the words "disabled from earning" and inserts "rendered less able to earn". Can the minister explain what is meant by "rendered less able to earn"?

Mr J.C. KOBELKE: My advice is that "rendered less able to earn" is intended to have exactly the same meaning as that which is currently there. The other change made by this clause deletes the words "the disablement" -

Mrs C.L. EDWARDES: That cannot be done, because it is being changed from "disablement" to "impairment".

Mr J.C. KOBELKE: I will come to that. The other change clearly relates to the change from "disablement" to "impairment". That is the change; otherwise the wording will have the same effect.

Clause put and passed.

Clauses 24 to 27 put and passed.

Clause 28: Section 38 amended -

Mrs C.L. EDWARDES: This clause deals with questions for determination by a medical panel. We have just moved on from changing "disabled from earning" to "rendered less able to earn", and this section deals with industrial diseases. Section 38(1)(c) of the Workers' Compensation and Rehabilitation Act reads -

> to what extent if any does, or did
>
> (i) pneumoconiosis;
>
> (ii) mesothelioma;
>
> (iii) lung cancer,
>
> cause impairment of his ability to undertake physical effort?

That will be amended by this clause so that the last line reads -

> adversely affect the worker's ability to undertake physical effort?

The Act has been changed to replace a disability model with an impairment model, yet here the word "impairment" has been deleted. Can the minister tell us what the difference is there?

Mr J.C. KOBELKE: These are consequential changes - derivatives of the other changes made. The member quite rightly points out that the word "impairment" was already in section 38(1)(c), but it was taken not to have exactly the same meaning as is being included with the changes being made by this Bill. For that reason the draftsperson thought it best to go to the wording recommended by this clause.

Mrs C.L. EDWARDES: Does "adversely affect" narrow the definition of "his ability to undertake physical effort".

Mr J.C. KOBELKE: I thank the member for the opportunity to put this on the record, because I will now make it absolutely clear for the purpose of interpretation that it is not intended to effect change in the way it could be interpreted.

Mrs C.L. EDWARDES: The way that the words are written - "adversely affect" as against "cause impairment of" - would seem to strengthen it and therefore narrow the worker's ability to get compensation.

Mr J.C. KOBELKE: If the member reads that section as it was previously drafted, she will see that "cause impairment of his ability to undertake physical effort" represents a slightly different use of the word "impairment" from what is used in reference to the degree of permanent impairment, and the whole system being constructed around that concept. My advice was that the parliamentary draftsperson, in dealing with this, did not want any opportunity for the word "impairment" to appear there with a different meaning, even though it might only be slightly different, and has therefore sought to reword this section as suggested by this clause.

Mrs C.L. EDWARDES: However, "adversely" is not meant to imply a greater effect on the worker's ability to undertake physical effort - the inability to undertake physical effort?

Mr J.C. KOBELKE: "Adversely" means "with a diminution".

Mrs C.L. EDWARDES: Is there a degree of what that diminution is likely to be?

Mr J.C. KOBELKE: This is another situation in which the court will makes its judgment based on how that word has been used in other places in its normal dictionary definition.

Dr E. CONSTABLE: I want to be absolutely sure that I understand this. Is the minister saying that "cause impairment of his" means something quite different from "adversely affect the worker's"?

Mr J.C. KOBELKE: No; I am saying that it means the same thing.

Dr E. CONSTABLE: I was not sure whether that was what the minister was saying.

Mr J.C. KOBELKE: The word "impairment" as it appears in the existing Act has a slightly different usage from that which will now apply. The amending Bill will integrate the use of the term "impairment" through sections of the Act, and that use of "impairment" will be slightly different from the way the word is currently used in the Act.

Dr E. CONSTABLE: So does it all mean the same thing in the end?

Mr J.C. KOBELKE: The change we are looking at here is being made for the purpose of making it absolutely clear what is meant, and removing ambiguity; it is not to change the current application of this section.

Clause put and passed.

Clause 29 put and passed.

Clause 30: Section 40 replaced -

Mrs C.L. EDWARDES: Section 40 relates to death without prior incapacity. Apart from removing the word "disablement", the section has been extended, by my reading. Can the minister explain what is meant by the new section 40?

Mr J.C. KOBELKE: The amendment made by this clause has no intention of changing the effect of section 40. It is a consequential amendment on the new words that are being used, and seeks to make it clearer.

Mrs C.L. EDWARDES: The proposed new section will make reference to the date of the worker's death, which is not in the current section 40. Has that been done for a particular reason? Are there any recent court cases that have required the Government to include that? It would appear to be not simply a consequential amendment.

Mr J.C. KOBELKE: My advice is that that wording was put there to try to make the section more precise.

Mrs C.L. EDWARDES: The lawyers will have so much fun!

Clause put and passed.

The ACTING SPEAKER (Mr A.P. O'Gorman): Before we continue with other clauses, I remind members that it is almost 1.30 pm, and I believe we are due for a break at that time. The blue copies on the table will be removed.

Mr J.C. KOBELKE: Not mine; I prefer mine the way it is.

The ACTING SPEAKER: They will be put into ring binders. There will also be power boards on the tables after the break, so that members can use their laptops in here.

Clauses 31 to 36 put and passed.

Sitting suspended from 1.30 to 2.00 pm

Clause 37: Section 49 replaced -

Mrs C.L. EDWARDES: I will pre-empt the minister, who will say that this is just a transitional clause and will not have a different meaning from that of current section 49. Given that the wording is quite different, will the minister confirm or otherwise the meaning of proposed new section 49?

Mr J.C. KOBELKE: The consequential amendments reflect a change in the definition of "disability" to "injury". The next few clauses have the same purpose.

Clause put and passed.

Clauses 38 to 40 put and passed.

Clause 41: Section 57A amended -

Mrs C.L. EDWARDES: Proposed section 57A is very important. It deals with the claims procedure. The changes are picked up again in the amendments to section 57B and proposed new section 57BA. For the sake of expediency, can the minister explain what the amendments to section 57A will do?

Mr J.C. KOBELKE: Clause 41(1) creates a new section 57A(3) to reflect the insertion of proposed new section 57BA, which specifies the presentation and content of notices issued under sections 57A and 57B to the worker and employer accepting liability for weekly payments claimed, to the worker and employer disputing liability for weekly payments claimed and to the worker, employer and director advising that liability is not able to be accepted within 14 days. A new penalty of $1 000 has been inserted for breach of this section. New regulations will provide an option to issue an infringement notice and apply a modified penalty. Subclause (2) creates an offence provision with a maximum penalty of $1 000, which can be levied against insurers that fail to provide the information in a machine-readable format. The option exists for WorkCover WA to issue an infringement notice and modified penalty for this offence. Subclause (3) amends section 57A(5) by deleting the words "to the Directorate". Subclause (4) provides for arbitrators to determine applications for entitlements when an employer fails to provide appropriate notification under section 57A(3). This reflects the fact that arbitrators will specifically deal with applications under section 57A(5). Subclause (5) specifies that arbitrators may order the commencement of payments under section 57A(7) when the employer has not commenced payments as soon as practicable after being notified that the claim has been accepted.

I have given the explanation provided to me by the officers. We have been very keen to ensure that injured workers are not kept waiting for ages, as unfortunately happens in a small number of cases now. It is to make sure that there are provisions so that people are notified on time and therefore can receive their eligible payments.

Mrs C.L. EDWARDES: I understand that currently a requirement of WorkCover - it is not in legislation - is that insurers are to have an internal dispute resolution mechanism. Given that the minister wants to improve the process and all the rest of it, why has he not included in the Bill as part of the process a referral to the insurers' internal dispute resolution process?

Mr J.C. KOBELKE: The internal dispute resolution process, to which the member has alluded, is set up and my advice is that it is showing reasonably good results. Although that is mentioned in regulations, it is really just putting the onus back on insurers to ensure that they manage their cases better. There is ample evidence that some of the key insurers - I think it is throughout the industry - have improved their game in recent years. Case management means that they are looking after their clients better and are trying to move things more quickly. However, there are still cases in which workers have valid claims and they are frustrated or delayed and the processes are dragged out. These provisions have been provided to try to ensure that there is a remedy so that the timeliness issues that are covered in this clause are complied with.

Mrs C.L. EDWARDES: Will it still be incorporated in regulations to deal with the insurers' internal dispute resolution panel? Is that what the minister has said; that is, it is part of the regulations?

Mr J.C. KOBELKE: No. We are not changing that; it will continue.

Mrs C.L. EDWARDES: Clause 43 refers to regulations that relate to the proposed section we are currently dealing with. What regulations is the minister looking at developing in relation to section 57A?

Mr J.C. KOBELKE: That regulation-making power, which is included in this clause, is to make provision should regulations be needed. We do not currently envisage specific regulations, but, as I have already indicated, the issue is to ensure that there is timely compliance. One way of ensuring timely compliance is to have penalties. It may be that we want more specific regulations dealing with some aspect of timely compliance, which would then be the subject of a regulation with a potential penalty.

Mr M.W. TRENORDEN: I would like to talk about the process. I presume the penalty will be paid into the consolidated fund.

Mr J.C. KOBELKE: No. The whole system of WorkCover is independent of government.

Mr M.W. TRENORDEN: So it will go into the WorkCover general fund?

Mr J.C. KOBELKE: Yes. The general fund has expenses relating to the management of WorkCover through its advertising campaigns.

Mr M.W. TRENORDEN: That is fine. I do not have any argument with that. I just want to know where the money will go. Who will make the decision about whether the process of providing insurance cover has been reasonably expedient? Who will decide on the penalty, and when will it be applied?

Mr J.C. KOBELKE: If a penalty were determined, then the company could simply pay it; or it could refuse to pay it, in which case a prosecution would be initiated and the company would defend itself in the court.

Mr M.W. TRENORDEN: Is the minister saying that arbitrarily, after 14 days, a penalty would be imposed?

Mr J.C. KOBELKE: Yes, a penalty would be imposed. The current convention is that the penalty will be 20 per cent. In other words, there would be a $200 fine if the company was late. If the company thought that was unreasonable or it had been misjudged, it could seek to defend that by not accepting the penalty, and the matter would then go to prosecution.

Mr M.W. TRENORDEN: That would be a pointless exercise. No-one would go to prosecution when it would cost $5 000 to defend a penalty of $200, so that would not happen, would it?

Mr J.C. KOBELKE: That is how it currently works with parking infringements and speeding infringements.

Mr M.W. TRENORDEN: We are not talking about parking infringements. We are talking about making the system work. I think the minister will find that the insurers are not totally opposed to his view. I agree with the minister's argument that expediency is an important part of the workers compensation process. I am not saying it is not important. I am just trying to understand the process. The process is surely to encourage people to be expedient and act within the 14-day period, and we either encourage them or hit them with a big stick.

Mr J.C. KOBELKE: In many areas of the law currently there are very high compliance rates, and a penalty is not applied. We have a reduced number of insurers, which is another issue. The issue here is that we have insurers in the workers compensation area who are very committed to it and put a lot of time and effort into it. I think they would be concerned not so much about the $200 penalty but about the fact that there would be a black mark against them if they were not providing the level of service that was expected of them.

Mr M.W. TRENORDEN: That is the point I am trying to make. They might be handling 1 000 or 2 000 cases and mess one up because of whatever circumstance, and they would be hit with a penalty. It seems as though it is an arbitrary process.

Mr J.C. KOBELKE: I do not think it is arbitrary at all. The fact is that while that may be an administrative problem for the insurer, and perhaps also a slight embarrassment and a cost of insignificant magnitude, for the injured worker it is a very real issue if he has to try to survive without receiving his payment.

Mr M.W. TRENORDEN: He will still be paid by the employer.

Mr J.C. KOBELKE: The issue is that sometimes the employer may not be paying the employee as well because they may be in dispute or it is left open. We are seeking a quick resolution of the situation by making sure that things are done in a timely way.

Mr M.W. TRENORDEN: Is it not an offence under the current Act for an employer not to pay an injured worker?

Mr J.C. KOBELKE: Yes, it is.

Mr M.W. TRENORDEN: So what are we talking about, then?

Mr J.C. KOBELKE: The reality, though, is that a very small number of workers are left swinging in the breeze because perhaps they have used up all their holiday pay and the employer says they have to take unpaid leave, or

something like that, while it is fought out as to whether they have a valid claim, so timeliness is very important for a small number of workers.

Mrs C.L. EDWARDES: The key change in clause 41 is to amend section 57A by deleting the requirement for the insurer to give reasons for a notice under subsection (3)(b) and (c). I cannot see any reason that that requirement should be deleted. The worker is entitled to receive reasons as to why the payment is not being made, because that will allow the worker to decide whether he wishes to issue proceedings immediately or wait. Why delete the requirement for the insurer to give reasons?

Mr J.C. KOBELKE: It has not been deleted. It has simply been transferred from section 57A to proposed new section 57BA in clause 43, which strengthens the provisions.

Mrs C.L. EDWARDES: I can find paragraphs (a) and (b) but I cannot find paragraph (c).

Mr J.C. KOBELKE: It is covered in proposed section 57BA(2)(b).

Mrs C.L. EDWARDES: Is that in proposed new subsection (6)?

Mr J.C. KOBELKE: Yes, at page 74 of the blue Bill.

Clause put and passed.

Clause 42: Section 57B amended -

Mrs C.L. EDWARDES: I raise the same question in respect of this clause, but I take it that it is also incorporated under proposed new section 57BA.

Mr J.C. KOBELKE: That is correct.

Clause put and passed.

Clause 43: Section 57BA inserted -

Mrs C.L. EDWARDES: The drafting of clause 43 and the way it refers to regulations that relate to the previous two clauses etc will make it very confusing for people when they read the new provisions of the Act as they are being put forward in the Bill. I put on record that although the Bill itself is very complex, the drafting makes it even more confusing.

Mr J.C. KOBELKE: It is a complex Bill. Our overall intent is to make the Act work better and to simplify it where we can. I accept that in some areas of the Bill the drafting adds a level of complexity.

Clause put and passed.

Clauses 44 to 46 put and passed.

Clause 47: Section 60 amended -

Mrs C.L. EDWARDES: The member for Alfred Cove referred to the definition of "return to work" in an earlier part of the proceedings when she referred to overruling the Kenworthy case. This clause deals with not only section 60, but also sections 61 and 62. Will the minister confirm the current process under section 60? Does the minister deliberately intend to overrule the Kenworthy decision? I am talking about reviewing liability decisions and not so much quantums, as I understand it.

Mr J.C. KOBELKE: The amendment to section 60 is a consequential amendment to reflect the new dispute resolution procedures. The advice I have received is that we are largely dealing with that in another place; that is, with injury management, which is really very much targeted at achieving a worker's return to work. I am not saying that we set out to overturn the Kenworthy decision. We set out to make sure that injured workers could return to work; therefore, there are issues of placing obligations on employers to find work for them, whether it be in the same job or another job. That was at the heart of the Kenworthy issue.

Mrs C.L. EDWARDES: How does section 60 relate to section 62? We are dealing with whether there is an interim order or a final order and whether, in that instance, section 60 can override the decision made under section 62.

Mr J.C. KOBELKE: Sections 60, 61 and 62 will basically operate the same way they do now. The difference is that the role of arbitrator will change. Whereas those sections previously referred to the directorate, they now refer to an arbitrator. When we come to the section on the arbitrator, we can go through that change of role. The amendments to sections 60, 61 and 62 reflect the change in the dispute resolution procedures.

Mrs C.L. EDWARDES: Section 60 provides for final orders, which could overlap with section 62.

Mr J.C. KOBELKE: The arbitrator can give final orders.

Dr J.M. WOOLLARD: The minister said that the Government did not set out to make that change. Does he accept that given the way this legislation is written, that change is affected by this legislation?

Mr J.C. KOBELKE: There was no drafting instruction to overturn that legal precedent. The clear drafting instructions sought to ensure that the opportunity for return to work is maximised, which is in keeping with our injury management processes. It is a key focus right throughout the amending Bill and, to the extent that the legal case being quoted could prove an impediment to return to work, we have sought to ensure that we maximise that opportunity to return to work.

Dr J.M. WOOLLARD: Previously a person would return to work in the same area and in the same capacity. Under the changes in this Bill, a person who worked as a manager can return to work stacking shelves. Is that acceptable under this legislation?

Mr J.C. KOBELKE: That was dealt with in an earlier debate when we considered the definition of "return to work", which opened the possibility that a person may not return to work doing the same job. We are not dealing with that in this clause. We have already considered that. It is an important matter, but we do not need to go back over it. It was discussed when we dealt with an earlier part of the Bill.

Dr J.M. WOOLLARD: When I tried to ask questions during the debate on that part, the minister told me that it was not the right part, which is why I am now seeking clarification. The minister says that it should have been dealt with in another part; however, he would not answer my questions in the debate on that part of the Bill.

Mr J.C. KOBELKE: I did not say that when the member for Alfred Cove asked about return to work, because the definition of "return to work" is set out and it was discussed.

Dr J.M. WOOLLARD: For the record, can an arbitrator determine that a person who was in a highly paid position and carried out professional duties before a work-related accident can return to work if a job is available sweeping, stacking shelves and the like and that payments be discontinued?

Mr J.C. KOBELKE: The definition of "return to work" will be inserted by the amendments that have already been dealt with. When we get to injury management, which is in a later section, the apparatus that applies to this can be dealt with. I have already dealt with that aspect of the definition. Paragraph (b) of the definition of "return to work" states -

> if the position is not available, or if the worker does not have the capacity to work in that position, the worker taking a position -
>
> (i) for which the worker is qualified; and
>
> (ii) that the worker is capable of performing,
>
> whether with the employer who employed the worker at the time the injury occurred, or another employer;

The definition is further broadened to include "another employer". That is the definition of "return to work". When we get to injury management we can determine how that plays a part.

Dr J.M. WOOLLARD: I want to know not so much about the schedule 2 claims but about someone who is looking for a common law claim as a result of an injury. This could have a big effect on that person.

The DEPUTY SPEAKER: We will continue with clause 47. Perhaps the member for Alfred Cove can find a suitable time to pick up on her point.

Dr J.M. WOOLLARD: The minister seems to be running circles around me. He tells me that we will deal with it later in the Bill or that it has already been debated. Under what clause can I raise this issue?

Mr J.C. KOBELKE: Clause 119 on page 117 deals with injury management. The member might like to note that and we will discuss it under that clause.

Clause put and passed.

Clause 48: Section 61 amended -

Mrs C.L. EDWARDES: This clause deals with the arbitrator taking into account, where appropriate, the return to work program that is established under proposed new section 155C(1) and whether the worker is participating in that program; and, for the purpose of determining the application accordingly, treating the worker's incapacity as being of such degree as the arbitrator sees fit. This is in the section of the Act that deals with unlawful

discontinuance of weekly payments. Will the minister explain what is the role of the arbitrator under this section and, particularly, how he will take into account the worker's incapacity?

Mr J.C. KOBELKE: I am not sure whether we are talking about the role of the arbitrator so much as the intent of the changes to the provision, which the arbitrator will be guided by. Am I correct in rephrasing it that way?

Mrs C.L. EDWARDES: Thank you.

The DEPUTY SPEAKER: I am sure I heard the member for Kingsley ask exactly that.

Mr J.C. KOBELKE: The amendments replace "directorate" with "arbitrator". It is a system used in dispute resolutions; it is not central to clause 48. The amendments in clause 48 are to ensure that there is greater protection for workers who could be dismissed while they are on workers compensation. If the member really wants me to talk about the arbitrator's role, I would be happy to do so. However, we have discussed that under another clause. That change applies throughout the Bill.

Mrs C.L. EDWARDES: I am happy for the minister to continue.

Mr J.C. KOBELKE: The intent is to provide an incentive for workers to participate in a return to work program and for the employer to establish the program in accordance with the injury management code. Under proposed section 61(2a), it is an offence not to notify the worker of the insurer's or employer's intent to discontinue or reduce weekly compensation payments at least 21 clear days before discontinuation or reduction is applied. WorkCover WA can elect to issue an infringement notice and a modified penalty for the offence. Proposed section 61(4a) is being amended to recognise that the arbitrator can determine matters involving unlawful discontinuance of weekly payments under section 61. Section 61(4a) also provides that an arbitrator may, when reviewing an application by a worker disputing the employer's right to discontinue or reduce his weekly payments, take into account whether the employer has established a return to work program, the program is in accordance with the injury management code and the worker has participated in a return to work program. It is intended to provide an incentive for workers to participate in a return to work program and for employers to establish the program in accordance with the code.

Mrs C.L. EDWARDES: Yes. Proposed subsection(4a)(a)(iii) refers to the arbitrator taking into account whether the worker has participated in the return to work program, and for the purposes of determining the application accordingly, treating the worker's incapacity as being of such degree as the arbitrator sees fit. I am not sure how that relates to whether there has been participation in a return to work program and the discontinuance of weekly payments.

Mr J.C. KOBELKE: This detail is in the context of the employer, or the insurer in the employer's stead, seeking to discontinue or reduce weekly payments. It will then be a matter of dispute. One of the factors on which the arbitrator would base a judgment is whether the employee should suffer that reduction or discontinuance of weekly payments, with potentially quite dire consequences for the injured worker, who must maintain himself and, potentially, his family. The issue the member pointed to in proposed subparagraph (iii) is whether the arbitrator, on the evidence available to him, could see that the worker had simply refused to participate. That could be a matter that would help form the arbitrator's judgment that perhaps the weekly payment should be discontinued. There is an obligation on employers to establish a return to work program so that they cannot simply seek to stop payments because the matter is too hard and they do not want to have to seek to get injured workers back to work. There is also an obligation on the worker to seek to participate in the program. The last part to which the member drew attention reads -

> for the purposes of determining the application accordingly treat the worker's incapacity as being of such degree as the arbitrator sees fit.

That underlines it all. The judgment would be whether the request of the injured worker that he be expected to participate was fair and reasonable in the circumstances given his injury. Again, is it fair and reasonable for the employer, taking into account the degree of incapacity.

Mrs C.L. EDWARDES: Does it mean incapacity to work?

Mr J.C. KOBELKE: Yes.

Clause put and passed.

Clause 49: Section 62 amended -

Mrs C.L. EDWARDES: Given what the minister said about proposed new section 60, why does the minister now have a new section 62? He does not need it.

Mr J.C. KOBELKE: The section 62 amendment provides that in addition to powers to discontinue, reduce or increase a worker's weekly payments, arbitrators will also be empowered to suspend weekly payments from and to a date of an order.

Mrs C.L. EDWARDES: Is "suspension" not available under section 60?

Mr J.C. KOBELKE: That is correct.

Mrs C.L. EDWARDES: Is the minister sure about that?

Mr J.C. KOBELKE: I am advised that is correct.

Dr J.M. WOOLLARD: Section 62 provides that any weekly payment may be reviewed by the arbitrator at the request of either the employer or the worker and, on such review, may be discontinued. I refer the minister again to where this clause fits in with new section 238(2) and (6). I believe that the payments can be discontinued again and again. Where in the Bill is there a provision containing a limit on the number of times that payments can be reviewed?

Mr J.C. KOBELKE: No limit currently applies on the number of reviews that can take place. These can be initiated by the insurer, the employer or the worker. The Government has included as an amendment "nor more often than is prescribed" in relation to medical examinations. Again, the number of times that a worker can be sent for medical examination by the insurer or employer is to be limited.

Dr J.M. WOOLLARD: It is open-ended at the moment. Does the minister plan to stop it being open-ended? A worker may face examination for 48 weeks or 60 weeks, and be told every 12 weeks that the payments are no go. That would be a big drain on a family's income.

Mr J.C. KOBELKE: It would be a huge drain on people emotionally as they would be at risk through examination, but they will not pay for the examination. It is only when payments are reduced that people will feel a financial pain. A lot of emotional pain and stress is involved with workers being told to go for another medical assessment knowing that weekly payments may be stopped as a result. The amendment to section 66 adds the words "nor more often than is prescribed" with reference to the number of medical examinations. The issue in this clause is reviews, which are generally driven by medical examinations. The number of medical examinations is to be limited. However, no limit will apply to the number of reviews that can take place.

Dr J.M. WOOLLARD: Is there anything, minister, other than the medical examination under the current powers that will give the arbitrator the right to discontinue weekly payments? Is it purely medical views or do other aspects come into play?

Mr J.C. KOBELKE: No. The issue under consideration is the review of weekly payments. These are primarily initiated by the employer or insurer who believes that the injured worker is fit for work or is not complying with requirements placed on the worker. It may be that the end of the period at which the employer can keep the position open has been reached. A range of issues arise from such sources that can lead to a move to cease or reduce weekly payments. The mechanism by which the decision is arbitrated is under consideration. The member asked how often it can happen. No limit currently applies. It is generally, although not always, initiated with a medical examination. Some limit is to be placed on the number of medical examinations. An arbitrary number cannot apply. In some complex cases, a person's medical situation may change from time to time, and an assessment may be needed. The injured worker may feel it is in his or her interest to have further medical examinations. The Government does not want to preclude them from such examination.

Dr J.M. WOOLLARD: The minister stated that a changed work situation or other factors may be involved. I am concerned about what the "other factors" may be that may induce the arbitrator to stop the weekly payments. Therefore, I would love to see the regulations and guidelines that will accompany the statute, as these matters might be spelled out -

Mr J.C. KOBELKE: It will not be in this area. The Government is clearly seeking to provide additional benefit and protection to injured workers.

Clause put and passed.

Clause 50: Section 63 amended -

The DEPUTY SPEAKER: I believe the member for Kingsley wanted to speak on this provision.

Mr J.C. KOBELKE: Do you think, Madam Deputy Speaker, that this is consequential to earlier provisions; that is, it involves changing the directorate to the arbitrator? This is part of the reform to the dispute resolution procedure.

Clause put and passed.

Clause 51: Section 64 amended -

Dr J.M. WOOLLARD: The following words from section 64 are to be deleted -

> . . . without reasonable excuse, proof of which is on him, refuses to submit himself to such an examination . . .

Will the minister explain the reasons for the changes in this clause?

Mr J.C. KOBELKE: I welcome that opportunity. Subclause (1) recognises that it is unfair that an employer alone should be able to determine what constitutes a reasonable excuse, and when it is appropriate to suspend payments. The power to suspend weekly payments pursuant to an alleged breach of section 64 by the worker will now be vested in the arbitrator under proposed section 72A(1)(a). Subclause (2) reflects existing section 64(2) with appropriate consequential amendments to take into account the new impairment methodology that applies to schedule 2 assessments. Subclause (3) makes a consequential amendment.

Dr J.M. WOOLLARD: This provision will take power away from the employer and give the arbitrator more power.

Mr J.C. KOBELKE: It will provide greater protection for the injured worker.

Mrs C.L. EDWARDES: Why has the minister removed the majority of section 64(1), which required the employee or injured worker to participate in such examinations? I know that the minister was saying earlier that he did not want injured workers to go all over the place, and I agree with that view. However, that should reduce in any event under the system of impairment. There will be no requirement for injured workers to attend examinations, which will be paid for.

Mr J.C. KOBELKE: Subsection (1) reads -

> Where a worker has given notice . . . he shall, if so required by the employer, submit himself for examination by a medical practitioner provided and paid by the employer . . .

Mrs C.L. EDWARDES: The minister has removed the rest of the section. I refer to -

> . . . and if he, without reasonable excuse, proof of which is on him, refuses . . .

There will then be no consequence.

Mr J.C. KOBELKE: That consequence is shifted to new section 72A and it is also referred to in clause 58.

Mrs C.L. EDWARDES: What is that consequence, just as a matter of completeness? It refers to the suspension or cessation of payment for failure to undergo a medical examination. Why was it put there? Why does it not just flow, so we can understand it?

Mr J.C. KOBELKE: I accept that while we are making the changes it is discontinuous and therefore it is hard to follow the existing and the new, but as drafted it will be simpler and easier as a new provision.

Mrs C.L. EDWARDES: New subsection (3) of section 64 states -

> A reference in subsection (1) -

Which is the one we have been talking about -

> to the employer is, where the employer is insured against . . .

No, that is not the section I wanted to talk about. I want to refer to new subsection (2)(b), dealing with the back, neck or pelvis. I know that this is a rewrite of subsection (2) and I take it that it is just broken up, except that paragraph (b) states "for impairment of the back, neck or pelvis". Given the changes in relation to the back, neck or pelvis, why are they excluded?

Mr J.C. KOBELKE: I cannot see the relationship of the back, neck or pelvis to the section we are currently dealing with.

Mrs C.L. EDWARDES: It is in clause 51(2), which provides a new subsection 64(2)(a).

Mr J.C. KOBELKE: I thought the member was talking about new subsection (3).

Mrs C.L. EDWARDES: I said I was referring to the wrong section.

Mr J.C. KOBELKE: If I can deal with new subclause (3) first, that is a standard practice and it makes it absolutely unequivocal that the insurer stands in the place of the employer. New section 64(2) reflects what is set out in existing section 64(2), with appropriate consequential amendments to take into account the new impairment methodology that applies to schedule 2 assessments.

Mrs C.L. EDWARDES: How does it work together with the new scheduling process dealing with backs, necks and pelvises? Why is it excluded? It states -

> Subsection (1) does not apply in relation to an election made by the worker -

Section 24 deals with the election for schedule 2.

Mr J.C. KOBELKE: This does not change how the Act currently operates. Subsection (1) gives the employer the power to require the injured worker to submit to a medical practitioner for examination. Subsection (2) states that the employer does not have that power for the purposes of a schedule 2 payment; that is, if the worker wants to seek a schedule 2 payment, he can seek the medical examination, but under this provision the employer cannot require that person to undergo a medical examination for the purposes of a schedule 2 payment. That is how the Act currently is; we are not changing it.

Mrs C.L. EDWARDES: Why are backs, necks and pelvises excluded?

Mr J.C. KOBELKE: It is a longstanding provision and we are not changing it.

Dr E. CONSTABLE: The question still stands. Why are those three body parts excluded? Can the minister explain that?

Mr J.C. KOBELKE: No, I cannot. It is an existing provision. Our drafting instructions to effect the improvements we are making did not hit on this as something that we should change to make an improvement, so it stayed as it is.

Dr E. CONSTABLE: Can we not be enlightened why it was there in the first place?

Mr J.C. KOBELKE: I will try to get that information for the member at a later stage.

Mrs C.L. EDWARDES: Particularly given the fact that some changes have been made relating to backs, necks and pelvises. When the minister is refers to the 10 to 15 per cent changes, how does it apply to schedule 2 and the like? We are dealing with medical examinations, but given the fact that changes have been made to backs, necks and pelvises, they ought to be incorporated where they are referred to in the Act.

Mr J.C. KOBELKE: I will seek an explanation. If we can find one, I will pass it on.

Dr J.M. WOOLLARD: Can we come back to that clause?

The DEPUTY SPEAKER: Are you suggesting that this clause be postponed?

Mr J.C. KOBELKE: We are not amending it.

Clause put and passed.

Clause 52: Section 65 amended -

Mrs C.L. EDWARDES: All of these sections do not encourage a worker to return to work, and that is because the minister is removing sections, such as that covering a worker refusing to submit himself to such an examination. The minister referred to a later clause. Until we get to that later clause, I want to put it on the record that some of these sections actually discourage workers from returning to work and taking some level of responsibility.

Mr J.C. KOBELKE: I cannot make that connection from the facts in front of me. The amendment in this clause recognises that it is unfair that an employer alone should be able to determine what constitutes a reasonable excuse and when it is appropriate to suspend payments. The power to suspend weekly payments pursuant to an alleged breach of section 65 by the worker will now be vested in the arbitrator. The issue is that there are many disputes in which a worker is suspended and he then has to go back into the system to have his weekly payments reinstated. That puts him and his family under huge stress. In the small number of cases in which there are reasonable grounds for suspension, it should be done working through the arbitrator. That is referred to in this amendment and a few other amendments that are consequential and provide greater protection. Yes, there will be an extremely small number of cases in which the employer and the insurer are quite right to seek suspension. It will then be done through the arbitrator, not by the employer.

Clause put and passed.

Clause 53 put and passed.

Clause 54: Section 66A inserted -

Mrs C.L. EDWARDES: Clause 54 adds a new section 66A, which deals with additional medical examinations. Section 66 deals with regulations to do with medical examinations and it states -

> A worker shall not be required to submit himself for examination by a medical practitioner under section 64 or 65 -

Which is what we have been talking about -

> otherwise than in accordance with the regulations, nor at more frequent intervals than are prescribed.

Nor more often than is prescribed in the amendment. Proposed section 66A adds additional medical examinations; that is, an examination by a medical practitioner in addition to those permitted under the regulations that are outlined, as I have just pointed out, in section 66 of the Workers' Compensation and Rehabilitation Act. Will the minister explain how this process will work and why it has been incorporated? Why is it necessary to the new system?

Mr J.C. KOBELKE: Proposed new section 66A will enable an arbitrator to require an injured worker to submit for further medical examination or examinations than may be allowed under the regulations if the employer is able to prove that further examination is warranted. This follows through on another provision that seeks to set a limit on how many medical examinations an employer can request an injured worker to have. This is an out. If the examinations reach that limit and the circumstances meet this criterion, they can proceed beyond that limit and the worker can be directed to undergo a further additional medical examination or examinations.

Mrs C.L. EDWARDES: Under the regulations, does the minister know how many times under proposed new section 66A a worker shall be required to submit himself to examination by a medical practitioner? Under this clause, will the number of additional medical examinations that may be required be limited?

Mr J.C. KOBELKE: The current intention, which has been stated publicly already, is to set the maximum number of examinations at three for a particular specialist. If a worker who has injured his back has seen three orthopaedic surgeons, three is the limit that is set by regulation. However, the worker could have good grounds for undergoing further examinations. The intent of this provision is to stop insurers from doctor shopping.

Mrs C.L. EDWARDES: Further to that, under proposed new section 66A(5) the regulations may limit the number of additional medical examinations that may be required.

Mr J.C. KOBELKE: That is what I am saying. The current intention, which has been stated publicly and on which we will follow through, is to put into the regulations that the maximum number of medical examinations will be three.

Mrs C.L. EDWARDES: Is that under section 66?

Mr J.C. KOBELKE: The restriction of three medical examinations is set out under section 66. Proposed new section 66A provides for flexibility if it is needed.

Mrs C.L. EDWARDES: Proposed new subsection 66A(5) states -

> The regulations may limit the number of additional medical examinations that may be required.

Has the minister yet drafted the regulations or does he have in mind what the limitation will be?

Mr J.C. KOBELKE: No. As I indicated, the regulations that relate to section 66 will set a maximum of three medical examinations for a given type of specialty for an injured worker. However, under proposed new section 66A, we are saying that there will be cases in which this blanket limit may need to be exceeded. That is why we are providing for that in proposed new section 66A. It allows for an additional medical examination, but it may be more than one additional examination. Therefore, proposed new subsection 66A(5) may set regulations. We have not thought through what they may need to be. However, it will provide flexibility so that if we want to set a limit on additional examinations, there is the potential to do that. We have not thought through what the need might be in that area.

Mrs C.L. EDWARDES: Further to that, how did the minister decide that three medical examinations was the appropriate figure?

Mr J.C. KOBELKE: That was decided almost back in the early aeons of time. It was decided upon in the earlier drafting or formulation of a policy position when we were in opposition. From talking to people involved in the

area, it was generally thought that we would have to allow for three medical examinations. That figure was decided on during those early days of policy formulation.

Dr J.M. WOOLLARD: The minister has said that this clause has been inserted to stop doctor shopping. Constituents have come into my office and told me that they are unhappy with the way WorkCover treated them for various workers compensation injuries. Will this provision purely stop the number of medical examinations that may be required if an injured person is assessed by a panel and is not happy with that assessment? Can injured workers choose to have another medical assessment? Will this provision stop only the insurer from sending somebody off for more than three medical examinations? Will it not stop an injured worker who feels he has not been assessed properly from getting another assessment?

Mr J.C. KOBELKE: That is what we are dealing with. Section 64 relates to a worker who is required to submit himself for examination by a medical practitioner on the request of the employer. We are saying that those requests for a medical examination by the employer are limited to three. It does not relate to requests by the injured worker or the treating practitioner for the injured worker.

Clause put and passed.

Clause 55: Section 67 amended -

Mrs C.L. EDWARDES: This clause will amend section 67 of the Act, "Lump sum in redemption of weekly payments". From what the minister has said, I understand that the changes are basically consequential on the changes of the dispute resolution process. Will the minister confirm that there has been no change in the process to be followed for an injured worker to redeem his claim for a lump sum payment?

Mr J.C. KOBELKE: The operation of the provision is the same except for a technical issue, which is seen to be of some significance. My understanding is that currently if there is consent between the worker and the employer, a payment is made. The arbitrator cannot issue an order to that effect. The provision will ensure that the arbitrator will have the power to issue a consent order when the employer and employee agree. Under the current system involving conciliation and review, if there is consent between the employer and the employee, the matter would not go to a review. Under the amended legislation, the arbitrator will do both. Therefore, some issues may be partly in dispute but the parties are largely in agreement and a consent position is arrived at in the early stages. In those cases it will be open to the arbitrator to make an order to recognise that consent.

Mrs C.L. EDWARDES: Proposed new subsection 67(6) states -

> The regulations may make provision as to details that are to be specified in a consent order, or an agreement registered under Division 7, for payment of a lump sum.

Is that just following through on current practice or will changes be made to what is currently in an agreement?

Mr J.C. KOBELKE: With regulations?

Mrs C.L. EDWARDES: Yes. The regulations are to make provisions. Will they reflect current practice or have changes been made?

Mr J.C. KOBELKE: The provision provides for flexibility. Regulations may be required regarding the form of the information that must be submitted.

Mrs C.L. EDWARDES: Is there a form at the moment?

Mr J.C. KOBELKE: Currently, because of the different structure of consent agreements, they are not formally recognised by an order, as I have indicated. Currently, the details of the agreement are recorded in a regulated form but a consent order is not made. We are not aware of any regulations that directly impinge on this provision.

Mr P.D. OMODEI: Is the minister making a provision just in case regulations are needed? Is that what he is saying?

Mr J.C. KOBELKE: Yes, because the issue may be that we want the information in a certain form - there is a standard form to be gazetted - that shows that it is signed by both parties. There seemed to be a need for that. We will now have the head of power to do it.

Mr P.D. OMODEI: Has work been done on regulations?

Mr J.C. KOBELKE: It has in some areas, because, as I said earlier, policy clearly indicated that the number of medical visits to which an employee could be forced to go by the employer is to be limited to three. That is laid

down as a policy, so regulations will be developed to do that. This area is not driven by the fact that we have any view on the regulations; it is just seen as good drafting to have the power to do that.

Clause put and passed.

Clause 56: Section 70 replaced -

Mrs C.L. EDWARDES: Proposed new section 70 deals with furnishing medical reports. It has long been argued within the system whether all medical reports have privilege and whether they can be given to the other party. Basically, this proposed new section provides that workers will not always have to give copies of medical reports. However, sections 64 and 65 of the Act and proposed new section 66A deal with medical examinations that are required by the employer, which the employer must pay for. Obviously those reports are to be handed over to the injured worker. There appears to be a lack of balance in the new wording. Can the minister explain the reason for that, particularly given that the medical practitioner is to be paid by the employer? Why will all medical reports not be handed on?

Mr J.C. KOBELKE: I am not exactly sure what the member is asking. The last part of her question was why would they be paid by the employer.

Mrs C.L. EDWARDES: That has to be the case under proposed new section 66A(4).

Mr J.C. KOBELKE: The costs are borne by the system and are designated against the employer. That is how the system works. Clearly, at the end of the day the employer is responsible for the costs. The insurer stands behind the employer, and if the employer is properly insured, as is required, the insurer picks up the costs for the employer. I think that part is clear. However, the member said that on her way to asking the last part of her question. I have tried to clarify why it would clearly stand against the employer. That is the way our system works. However, the member went on to the second part of her question and I got a little lost. I do not see how the last part of the question relates to what I presume is generally well-known knowledge of how our system works. The member suggested that perhaps it was not fair, but I am not sure in what respect.

Mrs C.L. EDWARDES: Does proposed new section 70 require that medical reports obtained by the injured worker be referred to the other party, the employer?

Mr J.C. KOBELKE: Proposed subsection (3) provides that the employer or the employer's insurer must furnish a copy of the report within the period referred to in proposed subsection (1), which is 14 days.

Mrs C.L. EDWARDES: This requires the employer and/or the insurer to forward copies of the report.

Mr J.C. KOBELKE: Proposed subsection (4) places the requirement on the worker and states -

> Where a worker has been examined by a medical practitioner selected by himself, -

In sexist language -

> the worker shall, within 14 days after receiving the report of that practitioner as to the worker's medical condition, furnish the employer with a copy of that report.

Mrs C.L. EDWARDES: Will the worker always be required to hand over the medical report?

Mr J.C. KOBELKE: Proposed subsection (4) is fairly clear. The only complexity is that the injured worker often needs to see a medical practitioner for the purpose of his or her own health and treatment. That does not necessarily come into matters of dispute or decision making. Eventually most of those matters may come into the medical file on which a decision is based, because clearly the employer would want to see the full history of medical treatment. However, the fact that an injured worker goes to the doctor is not a matter that has to be reported within a certain time. There is a distinction between matters that go to treatment and matters that go to reporting for the purpose of the workers compensation system, and of course the two overlap.

Mr P.D. OMODEI: Proposed section 70(2) states -

> If a person is required to furnish a worker with a copy of a report under subsection (1) and fails to do so within the period referred to in that subsection, that person commits an offence.

The penalty is $2 000. Proposed subsection (4) states -

> Where a worker has been examined by a medical practitioner selected by himself, the worker shall, within 14 days after receiving the report of that practitioner as to the worker's medical condition, furnish the employer with a copy of that report.

Why is it that there appears to be a penalty for the employer but not for the employee?

Mr J.C. KOBELKE: It rests on what I said a moment ago. An injured worker may be required to consult a medical practitioner simply for his treatment in the hope of recovering, getting well, getting back to work and getting on with his life. When the insurer requires the worker to attend a medical practitioner for a consultation, the issue is that the employer is seeking to manage the financial side of the issue and, hopefully, would not willy-nilly send a worker to a medical practitioner for a report. When an employer does it, it is more a management decision. There is an obligation on the employer to provide that report, and there is a penalty if the employer does not do so. It is a very different issue for the injured worker, because the medical practitioner may be required to issue a report for the proceedings of the case, but may also do it simply as part of the treatment. I will not penalise injured workers if they do not report.

Dr E. CONSTABLE: I refer to proposed subsection (4), because this could be quite complex in certain circumstances. As the minister said a moment ago, sometimes there can be overlap between a more formal assessment and ongoing treatment. At some point, reports of ongoing treatment might become important in assessing compensation for the worker. Who decides which visits to the doctor initiated by the worker should be reported on? How is the overlap teased out?

Mr J.C. KOBELKE: Because of the complexities, we do not seek to regulate that more than is necessary. We are making it a requirement, but we are not seeking to draw a detailed line. Another provision in the Bill provides that medical reports cannot be withheld using legal professional privilege. When the matter is disputed or there are different views on the interpretation of the reports on the medical condition, a lawyer for one party or the other cannot seek to hide those reports and not present all the information so that a proper judgment can be made. That picks it up after the event. We have not sought in this proposed section - currently the Act does not work in that way - to try to draw a detailed definition of whether the consultation is for treatment or whether it is in part or in whole for assessment for some purposes of the Act.

Dr E. CONSTABLE: When a worker decides that he wants an assessment or a report to be sent to the employer and the insurer, who will pay for that?

Mr J.C. KOBELKE: The employer, which generally means the insurer.

Clause put and passed.

Sitting suspended from 3.20 to 3.30 pm

Clause 57 put and passed.

Clause 58: Section 72 replaced by sections 72, 72A and 72B -

Mrs C.L. EDWARDES: This clause deals in part with what we were talking about previously; namely, a suspension or cessation of payments for failure to undergo a medical examination. Proposed new sections 72, 72A and 72B provide for a suspension of payments if a person is in custody, has failed to undergo a medical examination, or has failed to participate in a return to work program. Previously it was a very simple process. We now have almost four pages to deal with the same sort of process, which could quite easily have been dealt with by the proposed changes to the role of the arbitrator. The process that is outlined in these proposed new sections will make it extremely difficult to suspend payments. Although that might be a policy decision on the part of the Government, it will add to the cost of the system. As I have outlined previously, that will not necessarily support the injured worker in his or her return to work. The process will be very resource intensive and expensive. I suggest it will cause a great deal of frustration.

Mr J.C. KOBELKE: The member has put her point of view. It is not one with which I concur. We are seeking to provide a greater level of protection for injured workers with regard to suspension. Clearly a range of circumstances will need to be taken into account in determining whether suspension will occur. I believe these proposed new sections set out reasonable rules by which these processes will be dealt with.

Clause put and passed.

Clauses 59 to 61 put and passed.

Clause 62: Section 76 amended -

Mrs C.L. EDWARDES: Section 76 deals with the registration of a memorandum of agreement. The amendments in this clause appear to be mainly consequential, until we get to proposed new subsection (7a), which reads -

> A medical practitioner nominated by the Director under subsection (7) to examine a worker who has made an election under section 31C in respect of an impairment that is not AIDS must be an approved medical specialist.

Subsection (7) of section 76 reads -

> For the purpose of carrying out his duties under subsection (6) the Director may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation pursuant to an election under section 24 or 24A payable under the agreement, the Director may require the employer to have the worker examined by a medical practitioner nominated by the Director, . . .

This is dealing with the director, not the arbitrator. Why has AIDS been excluded? Why do people with AIDS not need to see an approved medical specialist?

Mr J.C. KOBELKE: The normal procedure leaves it open for the approved medical specialist to make a range of potential judgments about the impairment. However, a person clearly either has AIDS or does not have AIDS. If a person is diagnosed as having AIDS - which I think I am correct in saying is a notifiable disease - he or she does not need to get caught up in the process of assessment by a panel of approved medical specialists.

Mrs C.L. EDWARDES: Can the minister explain the flow chart whereby now the employer will require the injured worker to go to an approved medical practitioner; the arbitrator will require the injured worker to go to an approved medical practitioner; and if the injured worker wants to register an agreement, the director will require the injured worker to go to an approved medical practitioner? We are supposed to be reducing the number of medical practitioners whom the injured worker will be required to see.

Mr J.C. KOBELKE: The issue is that the director is given the power to require a medical examination in cases in which the matter does not go to the arbitrator, because it is supposedly by consent, but there is a concern that there has been some fraud or inducement. If there is any disputation, it will go to the arbitrator. This is dealing with cases in which the injured worker is seeking the registration of the memorandum of agreement, and there is no evidence from anyone else, because it is just between the two parties, but there is a need for the director to ensure that the agreement has not been obtained by fraud or undue influence, or some other untoward mechanism, and he therefore seeks a medical assessment.

Mrs C.L. EDWARDES: The proposed amendments to section 76(8) will allow the arbitrator to set aside an agreement within six months of an agreement having been entered into if there has been fraud or undue influence. Is the minister saying that the arbitrator can arbitrate and get a consent agreement, and that can be registered, or that the parties can themselves get a consent agreement and that can be registered, but that must go through the director?

Mr J.C. KOBELKE: If the arbitrator gets involved in a consent agreement, it is normally because there is some level of disagreement. However, it may be the case that there is no disagreement and the matter never goes to the arbitrator, but the director feels that there is the potential for some undue influence or something that is untoward. The director is given the power to require the worker to undertake a medical examination and receive a certificate if there is some question about the validity of the case.

Clause put and passed.

Clauses 63 and 64 put and passed.

Clause 65: Section 83 amended -

Mrs C.L. EDWARDES: This deals with the amendment to section 83, headed "Industrial award and partial incapacity". I take it that the provision will update the sections under the relevant commonwealth Acts. Will the minister confirm again that he is limiting its application to any certified awards or industrial agreements but not including Australian workplace agreements?

Mr J.C. KOBELKE: I can confirm that. This provision updates the reference to commonwealth industrial relations legislation. Amended subsection (2) will ensure that when there is no agreement between the employer and the worker on the wage to be paid in light of the worker's earning capacity, an arbitrator may determine the proportion to be applied. The matter the member quite rightly raised is the exclusion of Australian workplace agreements and employer-employee agreements. They are picked up in the definitions. That will hold. They relate to this clause but they are not contained in this clause.

Mrs C.L. EDWARDES: Given the amendments to section 83, why are EEAs and AWAs excluded, given that section 83 refers to whether a worker is less able to earn full wages? What is the guide?

Mr J.C. KOBELKE: They are not excluded. The situation relates to the step-down provisions for weekly payments. The current step down that applies to Australian workplace agreements and employer-employee agreements will not change. However, it has been enhanced for people on awards, and other industrial instruments, on the basis of how much we could afford in light of those benefits being updated. The decision was made to enhance others but priority was not given to covering Australian workplace agreements.

Mrs C.L. EDWARDES: Is the minister saying that injured workers currently on EEAs and/or AWAs are not covered under the new provisions, step-down or otherwise?

Mr J.C. KOBELKE: No. They are covered. We are somewhat at cross purposes. Amended subsection (2) of the Act will read -

> In default of agreement as to the appropriate proportion in any case that proportion may be determined by an arbitrator.

We are saying that if a dispute arises, the arbitrator will have the powers to determine it. The member led me off on a bit of a chase into other areas that are related to this section; namely, the definitions of an industrial award. We changed the industrial award definition. However, these amendments in clause 65 will not change that. All workers on industrial awards and other forms of contract of employment have rights under the Act. Some of them differentiate when it comes to the step-down provisions, which we are not dealing with here.

Mr P.D. OMODEI: The minister referred to amended subsection (2) "the appropriate proportion in any case that portion may be determined by an arbitrator". The appropriate portion of what - the industrial award?

Mr J.C. KOBELKE: The appropriate proportion is determined by the arbitrator. Amended subsection (2) will read -

> In default of agreement as to the appropriate proportion in any case that proportion may be determined by an arbitrator.

Subsection (2) provides a remedy if a dispute is not clearly captured by other provisions.

Mrs C.L. EDWARDES: What benchmark will be used to measure the wage of an injured worker on an AWA or an EEA who is rendered less able to earn full wages?

Mr J.C. KOBELKE: The member must elaborate what is exactly meant by her question. That is not what we are dealing with in this section.

Mrs C.L. EDWARDES: Amended subsection (1) will read -

> Notwithstanding any industrial award -

It excludes EEAs and AWAs -

> or industrial agreement, other than any award or certified agreement as those terms are defined in the *Workplace Relations Act 1996* of the Commonwealth, where a worker is rendered less able . . .

Therefore, any worker under an EEA or an AWA will not be covered under section 83. What benchmark will be used to determine whether that injured worker is earning full wages?

Mr J.C. KOBELKE: The main effect of this provision will remain. The changes will update the reference to commonwealth industrial relations legislation. Subclause (2) will provide that when agreement cannot be reached between the employer and the worker on the wages to be paid, the arbitrator will have the potential to determine the wages. However, section 83 is about apportionment. If the worker, regardless of his contract, is working only a certain number of hours a week, an estimation or judgment can be made about what portion of his full wages will be paid by the employer.

Mrs C.L. EDWARDES: Why are EEAs and AWAs excluded? I do not understand. If a worker on an EEA is injured, why is he excluded under this legislation? Why is it not mentioned here when the issue is about whether he will be able to earn full wages? How do we know what is the benchmark? Why is any award mentioned?

Mr J.C. KOBELKE: Subsection (1) states "notwithstanding any industrial award or industrial agreement, other than any award or certified agreement . . ."

Mrs C.L. EDWARDES: EEAs and AWAs have been deliberately excluded by way of the definition of industrial agreement.

Mr J.C. KOBELKE: I do not see the problem but as the member needs clarification, I will get a fuller explanation of this. I understand that the amendments will update the reference to the commonwealth industrial relations legislation. We are not changing it.

Mrs C.L. EDWARDES: If that is the case, I would not have a problem with this clause, but under proposed new section 5, the definition of industrial agreement excludes EEAs and AWAs. If an injured worker had been earning far in excess of an award rate, what benchmark will be used as a full wage if his EEA is excluded?

Mr J.C. KOBELKE: I will get advice on this. By my interpretation, the words "notwithstanding any industrial award or industrial agreement" clarify the matter. I will seek an interpretation of that.

Clause put and passed.

Clause 66: Section 84AB inserted -

Mrs C.L. EDWARDES: This is a very interesting clause, which has serious ramifications in its interpretation and the reasons for its introduction. Proposed section 84AB outlines that the employer is to notify the worker and WorkCover WA of an intention to dismiss a worker. This is to take place 28 days before the dismissal takes effect and is to be in a certain form etc. Why has this provision been included? As I understand it - maybe the minister can tell me differently - the situation is not a major problem in Western Australia, which was not the case in South Australia, from where I understand the provision is derived. Therefore, I do not understand why it has been included. What if the injured worker is dismissed for stealing or any other matter other than being injured - I refer to quite an appropriate reason? What will WorkCover do with that information? There appears to be no reason for giving WorkCover notice of intention to dismiss. What if the award or other agreement under which the worker is employed requires less than 28 days to dismiss the injured worker? It would appear to overlap somewhat with industrial law. It is not clear what the effect will be over and above the obligations an employer already faces. What did Guthrie state in respect of this provision?

Mr J.C. KOBELKE: Although only a small number of people in the workers compensation system may be dismissed while on workers compensation, such situations are a real concern and impose incredible hardship on people who believe they are covered by the workers compensation system. Some people may be back at work and are then dismissed. Some people may be away from work for an extended period, but are not properly informed that they have been dismissed. They may find they have been dismissed, and then have difficulty making a case for unfair dismissal. It is a problematic area, even if only a small number of workers face this difficult situation. The Government sought to address this issue.

The member asked whether this matter was raised by Guthrie. I cannot answer that specifically. It is one of the matters we asked Guthrie to address. I vaguely recall that his suggested way of addressing this issue raised too many problems; therefore, we moved to this model. I will get advice on that issue. We were talking about how to best address this matter. The Government is addressing the concern that certain employers may terminate the employment of a worker who has suffered a compensable injury. The amendment requires employers to notify such workers and WorkCover in advance of the intention to terminate employment to allow WorkCover to advise the worker and employer of the employer's other obligations under section 84AA. A penalty will be imposed; that is, the offence is created if the employer does not comply. The intention is to ensure that employers and employees are aware of their obligations when it comes to an employer dismissing a worker on compensation payments. The member raised in her question that there are good reasons in some instances for employees to be sacked for stealing etc. That will not hold up the matter. The 28-day notice will be given. The process will proceed on the basis of the other, unrelated factors to the workers compensation case; that is, those factors that made it inappropriate for that person to be maintained in employment. It is a great concern that we find too often - even though the number of instances may be small - that an injured worker who seeks to return to work finds that his employer does not recognise or understand his responsibility to maintain the worker's job for 12 months. That results in an unfair dismissal case, which is a difficult matter given that the worker has been a workers compensation case. To get around that difficulty, employers must notify WorkCover of an intention to dismiss. WorkCover will then notify both the employer and the employee of the requirements of the Act, and will direct people if they seek advice.

Mrs C.L. EDWARDES: Proposed section 84AB does not outline what WorkCover will do. Will that be covered by regulations? Returning to the case of an injured worker who has been dismissed for stealing, the employer will not want to keep paying that worker for 28 days after all the proper notifications etc have been followed. What happens if the employer dismisses the injured worker before the 28 days for what he regards to be proper reasons after having given the appropriate and correct notifications as required under any agreement - this may be instant dismissal?

Mr J.C. KOBELKE: Proposed subsection (3) makes it clear that nothing in this Act limits any other obligation of an employer or the rights of the worker to any other written law. Therefore, other laws dealing with dismissal are not interfered with by the section. There is a clear responsibility for notification 28 days prior to the dismissal.

Mrs C.L. EDWARDES: That is before the dismissal is to take effect. However, if one deals with it appropriately, and one operates under an award, and dismissal is within seven days or instant, does that also require 28 days notice?

Mr J.C. KOBELKE: The requirement will be to give 28 days notice before the dismissal takes effect.

Mrs C.L. EDWARDES: If one has a right to dismiss a worker for other reasons, proposed subsection (3) does not prevent the employer being dismissed in a reduced period of time.

Mr J.C. KOBELKE: My understanding is that 28 days notice will be required.

Mrs C.L. EDWARDES: Subsection (3) reads -

> Nothing in this section limits any other obligation of an employer or rights of a worker under this Act or any other written law.

Therefore, the dismissal provision, whatever it is under any other agreement, award or whatever, will become 28 days. The minister is overwriting all other employment agreements and laws.

Mr J.C. KOBELKE: The requirement is to give the 28 days notice before the dismissal takes effect.

Mrs C.L. EDWARDES: If operating under an award providing for seven days notice or 24 hours notice for dismissal, this section will be overridden. Less than 28 days notice can be given for dismissal if the award is seven days notice.

Mr J.C. KOBELKE: The award sets a minimum period required for notice. This provision sets a minimum period required for someone in the workers compensation system as an injured worker; namely, 28 days notice will be given before dismissal can take effect. Notice can be given, but it will not take effect for 28 days, in which time both parties will be advised of their obligations under the statute.

Mrs C.L. EDWARDES: The minister is overriding all industrial awards, certified agreements or whatever in the dismissal of an injured worker, even though it may very well be for stealing.

Mr J.C. KOBELKE: An employer may have the right to remove a person from the workplace, but a dismissal will require 28 days notice.

Mrs C.L. EDWARDES: This clause will override all industrial awards and agreements. An employer will have to provide 28 days notice even if a dismissal relates to stealing.

Mr J.C. KOBELKE: Twenty-eight days notice will be required before a dismissal can take effect.

Mrs C.L. EDWARDES: How many workers in Western Australia have been inappropriately sacked?

Mr J.C. KOBELKE: I am not sure about those who have been inappropriately sacked. I am advised that we do not have any statistics available on the number of people in the workers compensation jurisdiction.

Mrs C.L. EDWARDES: That is a disgrace. Why is the minister changing the system and overriding laws that provide sufficient protection under existing employment arrangements when he cannot provide any statistics for Western Australia? South Australia has a major problem; however, that is not the case in Western Australia. It has been proved that the laws protect injured workers in this position. In the past the employer had to keep the position available and WorkCover was very diligent following up complaints. Why is the Government requiring every single employer who wants to dismiss a worker under those arrangements to give notice to WorkCover? The Government is setting up a bureaucratic system whereby notification must be registered and logged and given to the injured worker and his or her employer. That will cost money. How many workers are we talking about?

Mr J.C. KOBELKE: The member has blown this matter out of proportion. Section 84AA already requires that a position be held for 12 months; therefore, the obligation already exists. The reporting is really a safety mechanism for both the employer and the employee to avoid unnecessary disputation.

Mrs C.L. EDWARDES: I intend to call a division on this clause because it is unnecessary. Sufficient protection is provided under existing employment laws. The minister cannot provide the statistics to support incorporating the new requirement for employers. That is an absolute disgrace. This will cost money and the minister cannot tell us the number of injured workers who have been affected by this in the past.

Mr J.C. KOBELKE: I alluded to section 84AA. Subsection (1)(a) deals with what is reasonably practical. That has been a highly contentious area. There is more likelihood that people will determine whether the employer and employee are on reasonable grounds in a certain situation if 28 days notice is given. That could lead to less disputation and avoid an imposition.

Dr J.M. WOOLLARD: At the moment 28 days notice does not have to be given.

Mr J.C. KOBELKE: The current requirement is that a job be kept open for 12 months. The issue is whether it is reasonably practical to provide a position for the worker, and that issue has been highly contested. We are not removing that provision; however, we are requiring that 28 days notice be given. People can establish their rights in that cooling-off period. We may end up with less disputation.

Dr J.M. WOOLLARD: This clause will ensure that workers are not dismissed within those 28 days.

Mr J.C. KOBELKE: It will try to give effect to that. Section 84AA already requires that a job be kept available for 12 months. There is an out if it is not reasonably practical to provide that. At some stage the employer might decide that and the employee can mount a legal challenge, which complicates the matter. The proposed new section will require 28 days notice. If the employer thinks he or she has good grounds for ending employment on the basis that it cannot be continued for 12 months, people will be given 28 days notice to gain a better understanding of what is involved and, hopefully, there will be less disputation.

Dr J.M. WOOLLARD: Is the notice from the employer given only to the employee?

Mr J.C. KOBELKE: The employer will advise WorkCover and WorkCover will advise both parties of the requirement of the Act.

Dr J.M. WOOLLARD: The member for Kingsley wanted to know on what basis this provision has been included in the Bill. Does the minister have those statistics?

Mr J.C. KOBELKE: While no statistics are readily available, I have spoken to a number of workers who have been in this situation and who feel that they have been harshly dealt with. Therefore, we have sought to provide a remedy.

Dr J.M. WOOLLARD: They felt badly done by because their employment was terminated -

Mr J.C. KOBELKE: When they thought they were guaranteed a year's employment or that the position would be held open for a year.

Dr J.M. WOOLLARD: The 28 days is a cooling-off period and means that they have four weeks longer. An employer can still terminate a person's position; however, can it terminate and readvertise in those four weeks?

Mr J.C. KOBELKE: It simply means that the employer has an obligation to notify and that any dismissal will not take effect for 28 days.

Mrs C.L. EDWARDES: The issue is that although employers need to keep the position open for 12 months, that is not the requirement when a person has been terminated on the basis of serious or wilful misconduct as outlined in section 84AA(2). Under the Bill, a person who is dismissed for serious or wilful misconduct must be given 28 days notice, whereas in ordinary circumstances and under other employment laws, an employer is not required to give that notice.

Dr J.M. WOOLLARD: That subsection is for workers who have been dismissed on the grounds of serious or wilful misconduct. Is it an across-the-board measure or is it specifically designed for a certain group of people?

Mr J.C. KOBELKE: No, it relates to all workers on workers compensation, with the protection implied or guaranteed in section 84AA that they have a job for 12 months and that they are entitled to continue to work for 12 months. If there is a need to dismiss them, 28 days notice must be given before that can take effect.

Dr J.M. WOOLLARD: I have just re-read section 84AA(2). It states that that does not apply if a worker is dismissed on the ground of serious or wilful misconduct. It refers to all other workers except someone who has been dismissed on those grounds. Therefore, a hospital cannot tell a nurse who thought she might be returning to her position that she cannot go back to that position and then advertise that position.

Mr J.C. KOBELKE: Twenty-eight days notice is required and then the processes will continue in terms of what is appropriate in the given circumstances. There are many different sets of circumstances and 28 days notice must be given before any dismissal can take effect.

Dr J.M. WOOLLARD: Except in subsection (2), which states that this requirement does not apply if the worker is dismissed on the ground of serious or wilful misconduct. Does it apply to all workers except those who have been dismissed on the ground of serious or wilful misconduct?

Mr J.C. KOBELKE: My understanding is that all workers would be required to give 28 days notice.

Dr J.M. WOOLLARD: Could the minister explain what section 84AA means?

Mr J.C. KOBELKE: The whole of section 84AA is about the requirement to retain that position for an injured worker for 12 months and some of the conditions that apply and the variations that can take place. In that context, if the employer judged there were grounds for dismissal, he is to give notice and that dismissal would not take effect for 28 days.

Dr J.M. WOOLLARD: The minister has given me a general overview. However, I am still having difficulty understanding subsection (2), which states -

> The requirement to provide a position mentioned in subsection (1)(a) or (b) does not apply if the employer proves that the worker was dismissed on the ground of serious or wilful misconduct.

What does "does not apply" mean?

Mr J.C. KOBELKE: That is the whole year. He does not have to retain the position for the whole 12 months.

Dr J.M. WOOLLARD: It is not 28 days or 12 months. Can he be put out the door the next day?

Mr J.C. KOBELKE: No. If a worker were injured and after one month the employer felt he had grounds for dismissing the employee, he would have to give 28 days notice. He could start the process for the dismissal but it could not take effect until 28 days after that notice had been given.

Mr P.D. OMODEI: Is the minister saying that if an employer proves that a worker was dismissed on the grounds of serious or wilful misconduct, he still has to keep him on for another 28 days?

Mr J.C. KOBELKE: The dismissal cannot take effect until 28 days after notice is given. The fact is that the employer may not have been able to prove it. The proving of it might take months.

Dr J.M. WOOLLARD: But this section says that it does not apply if the employer proves it. Does that mean that as soon as the employer is able to prove it, he does not have to wait 28 days?

Mr J.C. KOBELKE: No. What does not apply is the requirement to maintain the position for 12 months.

Dr J.M. WOOLLARD: For a worker who has participated in serious or wilful misconduct, does the employer have to keep him on for 28 days?

Mr J.C. KOBELKE: Twenty-eight days after the notice of intention to dismiss.

Dr J.M. WOOLLARD: That 28 days would not necessarily be in the workplace. The employer would have to pay the employee for four weeks, but would not have to have the employee back doing light duties.

Mr J.C. KOBELKE: That is correct.

Clause put and a division taken with the following result -

Ayes (5)

Mr S.R. Hill	Mr J.C. Kobelke	Ms M.M. Quirk	Mr M.P. Whitely
Mr J.N. Hyde			

Noes (3)

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

Clause thus passed.

Clause 67: Part IIIA repealed -

Mrs C.L. EDWARDES: Clause 67 is a very important clause. It removes the whole of the dispute resolution process as we know it today. It might contain only four little words, but it is a major clause. As mentioned

before, the whole system as we know it today will be changed. Although there are some issues about the operation of the Conciliation and Review Directorate, by removing the whole of this section the minister is throwing the baby out with the bathwater when the better way would have been to just tinker with the edges. He says the arbitrators can now do everything; they just change hats and they can make all the orders - interim orders, final orders and consent orders. In fact, some of the dispute resolution officers have been very proactive in resolving disputes, and that is even without the legal profession, although not to the satisfaction of everybody, which will always be the case. We will always find in any court process that somebody will not be very happy about the decision that is handed down by an arbitrator, a conciliation review officer or whomever. We will not support this clause for the reason that although amendments need be made to the directorate as we know it today, they could have been minor changes rather than changes to the whole of the system. It will only add costs to a system that is already expensive and it will increase premiums.

Mr J.C. KOBELKE: I will comment on the general issue of dispute resolution. One of our promises prior to the last election was that we would seek to have a flatter system of dispute resolution. This was driven by a fairly wide consensus among people who were representing injured workers that the current system dragged things out too long and that it was just a bit of a playground for some lawyers on both sides. We really needed a dispute resolution procedure that was far more timely, would call the evidence in and give clear directions for the obtaining of that evidence, make judgments and help people get on with their lives. While people were being dragged backwards and forwards in dispute resolution, they could not focus on getting well, getting back to work and getting on with their lives, which not only is a cost to the system but also compounds it due to the fact that these people tend to deteriorate while they are in a position of anxiety and uncertainty trying to sort out their situations. We are trying to resolve some of the issues with the insurance companies themselves and their own methods of internal dispute resolution. If that can be fixed, all well and good, but when it formally comes in we want a system that will resolve their problems as quickly and as fairly as possible. We had already developed the basic structure, not on the basis that we were geniuses, because it was most probably in the milieu in which people were talking about it in other jurisdictions. It was quite well advanced before it was pointed out to us that the New South Wales system had gone down the same track 18 months or so before us. Given that it had made these changes, we looked very carefully at what it had done and we adapted our model. We do not apologise for the fact that we have copied a number of aspects from New South Wales. However, although the initial suggestion may have come directly from New South Wales, we were not aware of what it was doing; it was just a matter of consensus among a number of key players. We needed to make sure that our dispute resolution system worked a lot better. New South Wales is anecdotally claiming that it has saved hundreds of millions of dollars with dispute resolutions. Our actuarial analysis shows no savings; in fact, I think there is a slight increase in cost. Therefore, our financial assessment is very conservative. The chances are that it will save the whole system money, but that is not the primary aim. The primary aim is to get injured workers back to work more quickly and to not have them stuck in the system, with all the dire consequences that has for them. It is not a matter of tinkering around the edges but of putting in place a new system to deliver better outcomes for injured workers, to make the system more efficient and to save costs.

Mr P.D. OMODEI: The minister mentioned other jurisdictions, in particular New South Wales. Does the minister have evidence of his claims or is it just hearsay that the system in New South Wales works better? Will the minister make available to us his actuarial analysis? I find the minister's comments interesting in light of the fact that the Chamber of Commerce and Industry of Western Australia and other organisations, including those in the insurance industry - it can be expected that it would have a position - say that their actuarial advice is that this system will cost employers and workers a great deal more. They have suggested it will cost in excess of $200 million, and increase premiums by between 30 and 50 per cent. I am new in this business, but that caused alarm bells to ring in my head. Will the minister provide the Government's actuarial analysis and evidence from other jurisdictions? I presume the minister is saying that this legislation mirrors that of New South Wales. If so, how is its system working? Will the minister provide that information for our perusal and examination?

Mr J.C. KOBELKE: The actuarial report has already been provided to the Opposition, but we can provide another copy. The issue we are talking about is the dispute resolution. The cost of the changes will affect all the main areas. One area with which we are dealing is dispute resolution. I said earlier that our actuarial analysis does not factor in any cost savings for the whole system through having a more efficient dispute resolution system. The dispute resolution system has many similarities with the New South Wales' dispute resolution system. However, I am not comparing our system with the total system in New South Wales; I am comparing just the dispute resolution part of it.

Mr P.D. OMODEI: What about the claims made by sectors of the industry that workers compensation premiums will increase significantly?

Mr J.C. KOBELKE: I do not accept that. That is a debate for another day. I am happy to have that debate at another time. We are dealing with dispute resolution and I am happy to go through all the cost areas and explain what will happen. The overall effect is that premiums will stay within the 2.4 to 2.7 per cent band, which is down from the three per cent premium when we formed Government. However, the issue with which we are dealing is dispute resolution. This is a major change to make sure that injured workers get through the system more quickly and have their rights protected, and to make sure that the system is cost-effective. That will produce savings in the system, which means that, hopefully, upon re-election we can produce additional benefits through the savings we will have made. The actuarial analysis does not have any savings from this area of reform.

Dr J.M. WOOLLARD: Can the minister tell me where sections 84C and 84F of the Act are covered in the Bill, now that they have been deleted from this section?

Mr J.C. KOBELKE: Dispute resolution is dealt with in proposed section 176 on page 148. We will debate that later.

Dr J.M. WOOLLARD: I refer to section 84C with regard to dependants and section 84F relating to payment of compensation in respect of persons under legal disability or who are dependants. Where are those provisions covered in the Bill now?

Mr J.C. KOBELKE: In proposed section 191 on page 160 of the Bill. After quickly reading it, I do not think it has changed.

Dr J.M. WOOLLARD: Is that on page 160 of the blue Bill?

Mr J.C. KOBELKE: No, it is in the Bill.

Dr J.M. WOOLLARD: I refer to the proposed section headed "Dependants" on page 160, and the orders relating to payment for compensation in respect of persons under legal disability or who are dependants. Is the minister going to answer my question about section 84F? Where is that covered in the new Bill?

Mr J.C. KOBELKE: I said that we are repealing all this. The dispute resolution provisions start on page 148. A range of proposed sections relates to that, which we will be able to go through in detail later. The member asked about dependants, which are only one aspect of it. I pointed out that the whole of section 84F is reproduced in proposed section 191. We are talking about a whole new structure. It does not serve to advance the work of the consideration in detail stage if we try to take each section of this and map it across. We must look at the dispute resolution as a totally new approach and deal with the dispute resolution when we get to part XI on page 148 of the Bill.

Dr J.M. WOOLLARD: I am not asking the minister to provide an explanation clause by clause; I am asking about specific sections that I feel are relevant to people's and families' rights. I would like to know that section 84F is covered in the new Bill and has not been omitted.

Mr J.C. KOBELKE: I suspect the member will find that section is now proposed section 218 on page 174.

Dr J.M. WOOLLARD: I thank the minister.

Mrs C.L. EDWARDES: In trying to provide a flatter system, the minister has deleted the many appeal provisions that are currently referred to in this part and division. They have not been replicated in the new dispute resolution process. Will the minister explain why that is? Of particular concern is the fact that there is no avenue to appeal an arbitrator's decision. The minister has given the arbitrator so many hats under which he can make final orders, and yet the minister has not provided for an appeal mechanism. I am sure all those who will benefit from the ruling in the Hewitt v Benale Pty Ltd case will be most upset with the minister if they do not get a chance of doing something similar in the future.

Mr J.C. KOBELKE: The appeals are on questions of law and they are dealt with in proposed sections 245 to 254.

Mrs C.L. EDWARDES: To the Supreme Court?

Mr J.C. KOBELKE: It is to the new commissioner of the dispute resolution body.

Mrs C.L. EDWARDES: We will get to those provisions. Essentially, appeals on questions of law to the Supreme Court, and therefore to the Full Court of the Supreme Court, will be abolished. It is all in house from here on.

Mr J.C. KOBELKE: Most of it.

Mrs C.L. EDWARDES: What does the minister mean by "most of it" in terms of appeals?

Mr J.C. KOBELKE: We are limiting the basis for appeals, and we can discuss that when we get to the questions of law on appeals in proposed sections 245 to 254. Proposed section 254 provides for appeals to the Supreme Court, but we will come to that when we debate those clauses.

Clause put and a division taken with the following result -

Ayes (5)

Mr S.R. Hill	Mr J.C. Kobelke	Ms M.M. Quirk	Mr M.P. Whitely
Mr J.N. Hyde			

Noes (3)

Mrs C.L. Edwardes	Mr P.D. Omodei	Dr J.M. Woollard

Clause thus passed.

Clauses 68 to 71 put and passed.

Clause 72: Section 93A amended -

Dr J.M. WOOLLARD: This clause seeks to delete the definition of "AMA Guides". The previous guides were developed with input from the medical profession. The American Medical Association guides state that the impairment tool is not a tool that should be used for a work-related injury. These are the guides which will now be adopted and which are being used in New South Wales. The American Medical Association guides state that the impairment percentages derived from the guides' criteria should not be used as direct estimates of disability, and that impairment percentages estimate the extent of the impairment on whole person functioning and account for basic activities of daily living, not including work. The guidelines state that they should not be used in the work situation and that an impairment assessment is a necessary first step.

I know that the medical profession has written to the minister advising him of its view on the new medical impairment percentages. These changes have not come from the profession, and they certainly have not come from workers. Many workers will lose the old gateway 2 or step 2 with the threshold being raised. There is the American Medical Association and the Australian Medical Association. This clause refers to the Australian Medical Association guides and deletes those guides on disability and replaces them with the American Medical Association guides, which state that the tool that will now be used should not be used for work-related injuries. Will the minister explain why he is doing that?

Mr J.C. KOBELKE: Before I answer the question, I remind members that the definition of "AMA Guides" will be deleted. These AMA guides were developed about 1994. They were a good attempt to find a stopgap. Good people put a lot of hard work into them, but they do not have any international standing or recognition, and are not recognised in and have not been picked up by other States. We have sought to use the whole person impairment methodology, which is used by every other State that uses some form of medical test for access to common law. It is now widely accepted and recognised throughout Western Australia. Many doctors in other States, but only a small number in Western Australia, are trained in using them. The whole person impairment guides that will be used are based on the New South Wales guides. In establishing those guides, New South Wales went through a thorough process of consultation with a large number of medical practitioners and specialists to build on the United States guides. I think there was a central committee, which had not only medical practitioners but also others who were stakeholders in the system. About 14 specialty areas made up of medical practitioners worked through their areas of those guides before they were accepted as the New South Wales guides. A huge amount of medical input has gone into establishing the guides as a measure. That only builds on the work done by most other States that use some form of medical assessment for access to common law.

I do not have any problem with the short excerpt from the US guides that the member read in part. We are not using the impairment percentage as a direct reference for disability, because we have removed the reference to disability. I will not now try to explain the difference between disability and impairment. Because we are not using that reference, we are not in breach of the statement that the member read from the American guides.

Dr J.M. WOOLLARD: The American Medical Association guides state also that impairment percentages estimate the extent of the impairment on whole person functioning and account for basic activities of daily living, not including work. This is the Workers' Compensation Reform Bill, yet it does not include the situation

of people who are working. I will now tell the minister what the medical profession thinks of the new guides. A media release from the Australian Medical Association states -

> The AMA (WA) today slammed proposed changes to Workers Compensation legislation saying they would restrict access to medical care.

No-one knows how many doctors will do these courses, particularly specialist doctors, who are currently available to these panels and are nominated for their expertise and do not need to do a course in order to sit on a panel. It continues -

> "This arrogant and offensive legislation will mean the Government will have the power to tell injured workers how many times they can see their doctor and what treatment they can receive," . . .
>
> "This is a cynical attempt to restrict access to doctors in an attempt to reduce costs."

I must admit that it does look as though this will be a cost saving, or a cost win, for the insurance companies, at the expense of injured workers. It continues -

> "For the past 12 months the AMA (WA) has warned the Government of the problems with the legislation and has met several times with the Minister for Consumer and Employment."
>
> "We are extremely disappointed there is total lack of concern for injured patients and we are surprised the Minister has not addressed these serious concerns," . . .

I am hearing from injured workers who are unhappy with the legislation, from members of the medical profession who are unhappy with the legislation and from the thousands of people who were out the front of Parliament House at the rally the other week. It is interesting that workers are seeing this legislation as a boost to the coffers of the insurance companies. People are asking me if the Government is dealing with the insurance companies, if it is dealing with the current secretary of UnionsWA, who I am told will soon be moving to the Industrial Relations Commission -

The DEPUTY SPEAKER: Order! I have shown the member a great deal of forbearance as she has been speaking. However, the member is straying way off the clause. I remind the member that the same rules apply in this committee as they do in the estimates committee. Somewhere in what the member has been saying is a question. The member needs to focus on what the question will be.

Dr J.M. WOOLLARD: What would the minister say is the final result of the Government's negotiations with the medical profession on this Bill?

Mr J.C. KOBELKE: Negotiations were ongoing as of last week about some of the detail that the medical profession is seeking, but that does not relate to this particular clause.

Dr J.M. WOOLLARD: So is the medical profession not happy with this Bill?

Mr J.C. KOBELKE: We will bring forward amendments next week that have been influenced by the input from the AMA. We are not dealing with those clauses of the Bill yet.

Clause put and passed.

Clause 73: Section 93B amended -

Mrs C.L. EDWARDES: This section deals with the case of Hewitt v Benale Pty Ltd, which we alluded to when we were talking about the definition clauses and who is the employer. The major amendment to section 93B is found in subclause (3), which seeks to insert a new subsection (5), which reads -

> In the context of a cause of action arising on or after the day on which section 80 of the *Workers' Compensation Reform Act 2004* comes into operation, a reference in the other subsections of this section to the worker's employer does not include a reference to a person who is the worker's employer only because of section 175.

Proposed new section 10A, which deals with working directors, states in subsection (3) -

> Section 175 does not apply in respect of a director referred to in subsection (2).

I put it to the minister, as have a number of senior members of the legal profession, that there is an inconsistency between proposed new section 93B(5) and proposed new section 10A(3). It has been suggested by the legal profession that section 175 should not apply to any matters that are yet to be determined, whether that be by agreement, by judgment or otherwise. It has been suggested that the wording of proposed subsection (5) be changed so that instead of saying "in the context of a cause of action" it says "in the context of a matter arising for determination on or after". That would take into account any of the matters still to be determined under

either section 175 or proposed new section 10A and would avoid the inconsistency that some members of the legal profession believe exists. If they believe there is an inconsistency, I suggest that the Hewitt v Benale amendment will not achieve what the minister is seeking to achieve.

Mr J.C. KOBELKE: This is a complex legal area, but my understanding is that a number of key legal people to whom we have spoken - not just the advisers to government - have ticked off on this. The amendment to subsections (1) and (2) of section 93B provides that this division also applies to the awarding of damages for gradual onset noise-induced hearing loss based on exposure to noise in the workplace. The inclusion of section 93B(5) stipulates that a worker will not be constrained from pursuing common law action against a principal employer, and the provisions of this division do not apply to the principal, even though he could be deemed an employer under section 175 of the Act. This is to address the problems arising out of the Supreme Court decision of Hewitt v Benale regarding the application of section 175. The court found in Hewitt v Benale that the provisions of section 175, which deem certain persons to be an employer for the "purposes of the Act", extend to all provisions of the Act, including the requirements for seeking damages at common law. It was never intended that the common law restrictions on an employer be extended to a deemed employer under section 175. The member made reference to section 10A. That deals with statutory entitlements, so I am not sure how she can confuse that with this part. Proposed new section 93B(5) is dealing with common law aspects and opening up the areas that have been quoted in light of the decision in Hewitt v Benale. It is a complex matter. I have not received advice that people do not find it workable and an improvement on the current situation. This section will apply only prospectively. It will not be retrospective. It is to ensure that the restrictions that could be seen to apply due to the Hewitt v Benale decision will not inhibit people from being able to take common law action due to that decision.

Mrs C.L. EDWARDES: This is a complex area of law, and of course the problem is that the more we try to correct it, the greater is the likelihood that it will open up another "what if". What we are talking about here is a cause of action arising on or after section 80 comes into operation, which is what the minister referred to in the generic sense as the election provision. It says further that a reference in the other subsections of this section to the worker's employer does not include a reference to a person who is the worker's employer only because of section 175.

Section 175(6) deals with the issue of principal contractor and subcontractor deemed employers. That is the deeming provision. Yet proposed section 10A(3) must still apply because it deals with basically generic provisions; it is not exclusive of common law. It incorporates common law because it deals with proposed sections 10A(3) and section 175 and now proposed section 93B(5) in clause 73. As such there is an inconsistency between proposed section 93B(5) and proposed subsection 10A(3). They are providing that in the context of a cause of action the relationship of which is already determined, rather than in the context of a matter arising out of a determination. Proposed section 10A(3) excludes section 175. I would be very happy for the minister to seek further advice from the Law Society on whether there is an inconsistency between proposed section 93B(5) and proposed section 10A and come back to the committee about that. I do not know when the minister last received advice from the legal profession. However, it has been suggested to me by people far more experienced in the interpretation of these matters than I that there is an inconsistency.

Mr M.W. TRENORDEN: There is an opportunity for the committee to move past this point and come back to it at a later date. Even though I have been absent for much of the day, I suggest that it would help the committee process if that were done. Even if the clause is dealt with at a later time, at least there is some evidence that due consideration has been given to it. I probably do not have the numbers, but I suggest to the minister that we postpone this clause.

Mr J.C. KOBELKE: I am seeking to work cooperatively to make sure we understand the details and that we have them right. An area like this that not many of us understand - I certainly do not - is a very complex matter of legal precedence. We are trying to make sure injured workers do not have their ability to access common law cut off by unforeseen mechanisms. My advice is that the proposed section will work and I must accept that. However, I am happy to check with the Law Society to see whether it has any further advice on this matter. I will give that undertaking to seek advice and if there is a problem we will recommit the clause. Does the committee prefer that we postpone the clause?

Mr M.W. TRENORDEN: If the clause is passed and the minister wants to amend it, that will create a problem. If we do not pass it, there is no problem.

Mr J.C. KOBELKE: It is not a major problem; we can recommit it.

Mr M.W. TRENORDEN: I agree that it is not a major problem, but given the technicalities, if we agree not to put this clause now, it can be put at the end of the process. The minister can still win the argument. If, by some chance, he wants to amend it, the process is simple.

Mr J.C. KOBELKE: Can we postpone the clause and deal with it at a later stage?

The DEPUTY SPEAKER: We can postpone but it cannot be revisited until the whole process is completed.

Mr M.W. TRENORDEN: I think that is what we should do.

Dr J.M. WOOLLARD: We have now moved on to common law issues and, given the minister said we had to wait until this stage to deal with queries I have, will the minister table the figures for how much in damages was paid out during the past three financial years in common law claims for stage 1 under the old system?

Mr J.C. KOBELKE: We can provide the member for Alfred Cove with data on the total claims of common law. We will also provide the committee with further cost data on aspects of common law. It is a complex area and I am not sure whether I have understood the question accurately.

Dr J.M. WOOLLARD: That is the information I am after. Once I have had a chance to look at the figures, to save time next week, perhaps I can discuss them with one of the minister's advisers.

Mr J.C. KOBELKE: I want to provide that information because it supports our case for making the changes.

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

Dr J.M. WOOLLARD: The minister agreed to table some information.

Mr J.C. KOBELKE: I said that I would provide that information. I am not sure that it will be tabled; we will wait and see what form it comes in.

The DEPUTY SPEAKER: We cannot table anything in this committee process.

Dr J.M. WOOLLARD: I do not want to do anything more until we get the common law figures. Can we move that debate be adjourned now?

Mr J.C. KOBELKE: No; we have another hour to go.

Dr J.M. WOOLLARD: Can I have those figures now, then? We are now moving into the common law section, which is covered in clause 77.

Mr J.C. KOBELKE: I have some data that I am happy to make available to the member for Alfred Cove.

Clause 74: Heading to Part IV Division 2 Subdivision 2 inserted -

Mrs C.L. EDWARDES: This clause deals with the proposed subdivision 2 entitled "Subdivision 2 - 1993 scheme". Will the minister alert the committee to the purpose of this clause? Subdivision 3 covers up to the 2004 scheme. What happened to the 1999 scheme?

Mr J.C. KOBELKE: The 1993 schemes applies to those cases in which the cause of action was prior to later changes. Obviously, those areas must be retained.

Mrs C.L. EDWARDES: Is that because people were in the system, or potentially were in the system, before the 1999 scheme came into existence? This provision deals with both the 1993 amendments, which includes section 93D etc with the second gateway, and the 1999 amendments.

Mr J.C. KOBELKE: That is correct. The changes being made to common law access will apply only to cases involving injuries that occur after the establishment of the changes. Therefore, if someone had an accident today, and brought his case in five years, that person would still be caught under the existing common law provisions.

Clause put and passed.

Clause 75: Sections 93CA and 93CB inserted -

Mrs C.L. EDWARDES: Proposed section 93CB will place a limit on the application of subdivision 2, which will not apply if the cause of action arises on or after the date at which clause 80 comes into operation. It also outlines that subdivision 2 will not apply to the awarding of damages to noise-induced hearing loss that is not an injury. As such, anything that happens as a result of this Bill will not be covered under this provision. I do not ask a question of the minister.

Mr J.C. KOBELKE: This is about preserving the situation with people whose cause of action was prior to the changes caught up in clause 80. Such people will work under the current system. That is why the clause on the Western Australian Branch of the Australian Medical Association guide that is removed elsewhere is retained in this area. That is the current system. People's action under the current system is required. We will come later to the new part of the common law system that will apply to cases in which the cause of action is after the date on which the changes will come into effect.

Dr J.M. WOOLLARD: Is it possible to have a further breakdown of the figures in the table provided by the minister? I would appreciate knowing the situation during the past three financial years. The table indicates that 560 cases that went under step one of the current system were finalised during the past five years. What was that figure in successive years, and what was the payout in common law damages for those successive years? It is not possible to work that out from the table.

Mr J.C. KOBELKE: I do not know whether Mr Victor Moate could obtain the annual reports for the member, but these indicate how much has been costed to common law. It is on the public record, and has been for ages. I do not have a copy with me. This table outlines the applications for common law between 1999 and 2004. Working down the sheet, there were 902 cases determined to be between 16 and 29 per cent disability, and 632 cases determined to be 30 per cent or above disability. Of the 902 cases in the former category, 561 had a weekly payment and common law payment recorded. The member can access these details. A sample was taken of those cases available, of which 42 per cent received less than $60 000, 26 per cent received between $60 000 and $90 000, 27 percent received between $90 000 and $150 000, and five per cent received greater than $150 000. I refer to second gateway claims under the current disability measure, and the table provides a breakdown of what people received under common law.

Dr J.M. WOOLLARD: These percentages must relate to the sliding scale between 16 and 19 per cent disability. To what part of the scale do they relate?

Mr J.C. KOBELKE: I am sorry; I do not understand the question.

Dr J.M. WOOLLARD: The five per cent must be at the top of the sliding scale for the 16 to 29 per cent disability, and the 42 per cent of cases that received $60 000 or less must be nearer to the 16 per cent disability level.

Mr J.C. KOBELKE: One would assume that to be the case, but we have not extracted that data.

Dr J.M. WOOLLARD: Would it be available in the reports?

Mr J.C. KOBELKE: No. This was a survey done of data available under common law cases. To help clarify, we do not have the data because it is not normally captured. To get to common law under the current system, a person must show at least 16 per cent disability. One need not show 17, 20 or whatever number per cent disability; one must show at least 16 per cent disability. Therefore, it is not ordinarily captured that a person has a certain percentage.

Dr J.M. WOOLLARD: Of the 561 cases that had weekly payments and common law payments recorded, how many of the 42 per cent were common law payments? I can get the calculator out. It refers to weekly payments. How much was spent on common law payments over the past few years?

Mr J.C. KOBELKE: That information is available in the annual reports. If the member wants the total on weekly payments and common law payments, the categories are captured each year, and the figures for total costs and the percentage of total costs are in the annual reports.

Clause put and passed.

Clause 76: Section 93D amended -

Mrs C.L. EDWARDES: This clause still relates to the 1993-plus amendments; that is, prior to the 2004 amendments. However, the minister is changing some wording; he will take away reference to "such a disability" and insert "an injury suffered by the worker". If these provisions are supposedly relating to the 1993-plus scheme, why make such a change in section 93D?

Mr J.C. KOBELKE: My advice is that parliamentary counsel has recommended that it should be the case.

Mrs C.L. EDWARDES: But why? The minister must have some understanding; he must have asked the question.

Mr J.C. KOBELKE: It is a matter of consistency and clarity; it has been done in changes throughout the Act.

Mrs C.L. EDWARDES: Section 93D has been in existence for some time.

Mr J.C. KOBELKE: Since 1993-94.

Mrs C.L. EDWARDES: As such, it has been interpreted and dealt with by the courts. Why change it to a worker who has suffered an injury instead of keeping a reference to a disability? Why make that change at this time?

Mr J.C. KOBELKE: The member has a good point. I will seek a detailed answer. My advice is that it was the advice of the drafting officer.

Mrs C.L. EDWARDES: What impact is that likely to have on any injured worker who falls within the system?

Mr J.C. KOBELKE: I promise the member for Kingsley that I will get a more detailed answer.

Dr J.M. WOOLLARD: I need to check with the minister whether I require the WorkCover annual reports. What is the name of the report required to get the information discussed? I want to ensure that the Legislative Assembly Papers Office gets the right documents.

Mr J.C. KOBELKE: They are the WorkCover WA annual reports.

Clause put and passed.

Clause 77: Section 93E amended -

Mrs C.L. EDWARDES: This is one of the most expensive clauses in the whole Bill. It incorporates the Dutch amendments. The actuarial advice on the Dutch amendments on page 3 of the findings shows that as a result of model costings the estimated impact of the Dutch changes is anywhere from $73-odd million to $120-odd million. That is an enormous increase over what was being talked about in the past year. I wonder whether this is a result of the fact that the minister does not know the full number of injured workers who will be affected by this decision and are currently waiting for these amendments. Can the minister outline why there has been such an increase in the cost impact of the measures to remedy the impact of the Dutch decision? I refer the minister to page 56 of the actuarial costings, which states -

> In mid 2001 the Full Court decisions in the matter of Dutch and WMC set precedence with unintended consequences for the operation of section 93D . . .

Which is what we have just referred to. It continues -

> The collective effect of these decisions is that some injured workers who are claiming a disability and who have referred a question under section 93D(5) may be unable to progress their referral because of the interpretation of the requirements of "medical evidence".
>
> The Director . . . now bases all decisions on whether medical evidence meets the Act requirements on the criteria set out in the Dutch decision and has applied these criteria on all cases since the Dutch decision was issued.

It continues -

> We have been informed that there are expected to be around 550 resubmissions of medical evidence with an upper range of 900 and lower range of 200 cases.

It is amazing that the Conciliation and Review Directorate itself has not been able to keep track of what has happened with these cases. Although it has known of the Dutch decision, it cannot tell the committee exactly how many cases are likely to have an impact on the system.

Mr J.C. KOBELKE: This is a mess that we inherited from the changes that were made in 1999. There is general agreement on all sides that these people have been denied any sort of justice, because the expectation right throughout the community among lawyers, whether they be for insurers or claimants, was that the Dutch decision would not throw out a whole lot of cases on the basis that the medical evidence was not of the standard required. The people involved in those cases now have to pursue litigation through a whole range of means. There has been a huge wastage on legal costs while those people have sought some protection for having been locked out of making a common law claim. Insurers have had to put money aside for these cases as part of their prudential management. They have largely put the money aside based on their best estimates in this area. The figures are not as accurate as we would like. One of the things we are doing with this Bill is making sure that we get better capture of common law cases, because although we should capture them within the system, we do not always have the full records we would like. Our analysis indicated that a maximum of about 660 people would fall into the category and up to 200 might come back through the Dutch gateway. The costs that the member referred to also include the over-30 per cent category. The over-30 per cent cases are not caught by the election and therefore will not have to go back and use the provisions included here; they can now make their claim if

they have 30 per cent or better. That is how we have taken those things into account. We have arrived at a best-case scenario figure of $26 million.

Mrs C.L. EDWARDES: That is an important point. The actuarial report should have been provided to all members of this committee prior to our going into consideration in detail. The Dutch decision included the 30 per cent disability award because, unfortunately, there was no breakdown of those cases at a common law access level. As such, it would appear that the information being given to the actuary was what was provided by the Conciliation and Review Directorate. I am pleased that the minister is so confident that it will be only a $25 million one-off cost, because that is the figure that he has been putting around. If that is the case, surely that is based on valid information that was not provided to the actuary, because he had to make a number of assumptions. He did not have any disaggregation of the data upon which he had to make the decision. He basically said that the best-case scenario was 200 cases at approximately $26.6 million, but the worst-case scenario was 900 cases at approximately $120 million. I keep coming back to the fact that the people who pay for this system are the employers - not the insurance companies. If there is to be any excess on what has already been anticipated by insurance companies, it will come back to the employers. We will get to the new body dealing with premium rates a little bit later and the impact that some of the decisions will have on premium rates, the viability or otherwise of insurance companies and the new guidelines. At the end of the day, the information being provided to the actuary is what is before the minister. I suspect that the minister is being overly positive about the best-case scenario rather than indicating what his own information shows, otherwise he would have provided that to the actuary.

Mr J.C. KOBELKE: This covers a fairly narrow window of opportunity. This retrospective application is for a period of up to three months after the Dutch decision. By that time, people knew what the new level of medical evidence required was to be, and in those days, with the close-off of the old scheme, many people rushed in medical evidence - we cannot quantify it because it is a matter of them going back and getting reassessed - who potentially do not have a case, but they wanted to get their leg in the door. They put in medical evidence on the basis of what their local general practitioner said, and some of that will not stand the test. We require people to go back and get the medical evidence and see whether that meets the required test of no less than 16 per cent disability.

Mrs C.L. EDWARDES: The actuary said that there are expected to be around 550 resubmissions of medical evidence, with an upper range of 900 cases and a lower range of 200 cases. We understand that these figures were extracted by the conciliation review body from its records. What information does the minister have that is different from that provided to the actuary, given that the minister is confident that the figure will be only $25 million and that if most people resubmit their cases, they will not have their cases determined? What is the minister's evidence as opposed to that provided to the actuary? The actuary made the assumptions in his costings that 50 per cent of the cases that resubmit medical evidence will be submitted; therefore, he is saying that 50 per cent will not be. He is already taking into account that some cases will not be accepted. The fact is that he has already taken off amounts of money that have already been paid on these claims. He has taken into account all the information that has been provided to the minister, and yet the actuary has come up with totally different figures of between $26.6 million and $120 million.

Mr J.C. KOBELKE: The actuary was given the best figures at the time, but we have gone back and tried to match those numbers case by case. That is how we have arrived at the new figure of a maximum of 660 potential cases, of which we think about 200 have the potential to get up. That is newer data in light of the information that was given to the actuary when he started his work.

Mrs C.L. EDWARDES: I do not accept that because the actuary conducted this actuarial costing on the new Bill. He did not conduct his review into the old legislation; he did it on the new legislation. Otherwise he would not have been able to take into account specialised retraining because that was not in the old draft. He has conducted his report into the new Bill. I do not believe that the department has been able to give the minister more specific information than that which was given to the actuary. When I had a briefing, I asked the question and was given an answer that the actual figure could not be determined. I suspect that the minister is being overly positive and confident about this in an endeavour to read down what is likely to be the real cost impact of this amendment.

Mr J.C. KOBELKE: When the actuary conducted his review and looked at the new draft, he did not start the process from scratch; he looked at only the areas that had been changed. As this area was not amended, although we are working with more up-to-date information, he has not changed his basic assumptions in this area of the Dutch decision.

Mrs C.L. EDWARDES: Did the minister not give more up-to-date information to the actuary when he was to make a report? Is the minister saying that the actuarial costing report is based on out-of-date information?

Mr J.C. KOBELKE: It was not available when the actuary did this report.

Mrs C.L. EDWARDES: When was it available?

Mr J.C. KOBELKE: Since we got the actuary's report.

Mrs C.L. EDWARDES: This report came down on 3 May 2004. That is the date on the bottom of this page.

Mr J.C. KOBELKE: Yes.

Mrs C.L. EDWARDES: That is an absolute disgrace. I cannot believe that the minister would do that. Can the minister now submit to the actuary the up-to-date information and get a revised figure on the actuarial cost and present it to the committee because of the impact it will have?

Mr J.C. KOBELKE: We cannot do that for this committee, but I am happy for more work to be done before the Bill is sent to the other place.

Mrs C.L. EDWARDES: It is absolutely essential. How can the minister release the report and say that it is wrong because the Government has not given the actuary more up-to-date information since he completed his report?

Mr J.C. KOBELKE: Because the matter is a continuing issue of change. As we continue to do more work, we get more data. We will not keep working and hold things off until we have data in six or 12 months time.

Mrs C.L. EDWARDES: It is more a point of the minister being able to say that there is a little hole in this report because the Government did not give the actuary this information. That undermines the whole actuarial costings report. Frankly, that is appalling behaviour. I would like the minister to send back that information and ask for an up-to-date estimated cost impact of the changes that the minister will provide to the actuary.

Dr J.M. WOOLLARD: From what the member for Kingsley has just said, it sounds as though the actuary's report is not worth the paper it is printed on.

Mrs C.L. EDWARDES: The actuary is an excellent actuary. However, the information he was given was not.

Dr J.M. WOOLLARD: The information in the report is not sufficient. Neither the member for Vasse, the Leader of the National Party nor I were given a copy of the actuary's report. Last week I asked for some documents and was told they would be provided this week. I am now waiting for the bills and papers office to track down those documents for me. I am concerned that members of this committee and I have not had an opportunity to look at the actuarial report, and we will move on to another clause without having seen it. Therefore, we will not be able to fully join in this debate. Therefore, I ask the minister to adjourn this committee until all the documents are on the table so that this committee is worthwhile rather than a rubber stamp committee.

Mr J.C. KOBELKE: The fact is that we will continue to revise the data and make it available. We sent the actuary's report to the Opposition. At that stage I did not know that the member for Alfred Cove would be actively involved in the committee. We are happy to provide the member with a copy of that.

Dr J.M. WOOLLARD: Could this debate be adjourned until other members of the committee and I have had an opportunity to read it? I do not know about the government members -

Mr J.N. HYDE: We are happy.

Dr J.M. WOOLLARD: The government members are happy not to look at the report, but I would like to look at the report.

Mr J.C. KOBELKE: The fact is that there are truck loads of data. Most of it is hard to make sense of and must be looked through. We need to proceed with the consideration of the Bill because that is what we are here for.

Dr J.M. WOOLLARD: I asked for that report when I had a briefing several weeks ago.

Mr J.C. KOBELKE: We will supply a copy for the member tomorrow.

Dr J.M. WOOLLARD: Will we still be able to discuss it tomorrow or will the Leader of the House tell me that we have dealt with whatever clause I happen to raise?

Mr J.C. KOBELKE: The Legislative Assembly will be sitting next week. Currently, we are dealing with the section relating to the Dutch decision.

Mrs C.L. EDWARDES: I refer to clause 77, headed "Section 93E amended". An amendment has been made to subsection 93E(13) to take into account the change in wording from "disability" to "injury". Yet under the Dutch decision it would seem that the language in the Act is still fairly vague. Section 93E(13) states -

> If the liability for an incapacity resulting from the -

Amended to "injury" -

> has been redeemed under section 67, damages are not to be awarded in respect of the injury.

It is suggested by members of the legal profession, who have been involved in Dutch decisions and are much more experienced in these matters than I, that it would be preferable for the subsection to read "damages are not to be awarded in respect of the injury against the employer". They are assuming that the Government does not intend that a completely independent action of the plaintiff should be derailed because of the benefit the worker received from his employer. Therefore, they suggest that subsection (13) ought to be amended. Proposed section 93E(14) states -

> If a further additional sum has been allowed to the worker under clause 18A(1b) in relation to an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.

Will the minister explain that proposed subsection?

Mr J.C. KOBELKE: Proposed clause 18A(1b) covers the additional payment for medical expenses. I commented on that earlier. That is an exclusion for going to common law.

Mrs C.L. EDWARDES: And what about subsection (13)?

Mr J.C. KOBELKE: That relates to section 67, which in turn relates to redemptions. Those are the two exclusions in going to common law, which I commented on earlier.

Mrs C.L. EDWARDES: Yes, but did the minister hear what I said about the legal profession? It has said that it is extremely vague and that, essentially, damages for the injury should not be awarded against the employer. That would clarify things, particularly as a result of recent cases.

Mr J.C. KOBELKE: I am not sure what the member is getting at by saying that they must be against the employer. Although this provision will cut off any common law action if workers fall into either of those two categories, if we add the words "against the employer", it might still leave open third party common law actions.

Mrs C.L. EDWARDES: Can the minister say that again?

Mr J.C. KOBELKE: The effect of subsection (13) and proposed subsection (14) is that if action has been taken in the statutory scheme with respect to redemption or the large extension on medical expenses, the injured worker cannot get an award through common law. The member has said that we should add to that a provision that damages against the employer cannot be awarded. That would potentially leave open common law actions against third parties.

Mrs C.L. EDWARDES: Yes.

Mr J.C. KOBELKE: I am not saying that that answers all of the member's question, but it opens up the difficulty with the drafting in this area. If the member has some legal advice that indicates there is a problem with this provision, we will certainly have another look at it. The communication from the member so far indicates that it will potentially open up more problems than it will solve.

Mrs C.L. EDWARDES: I know that the minister will go back to the Law Society of WA on a couple of other clauses. Will he incorporate this clause as well?

Mr J.C. KOBELKE: We are happy to get further advice on this clause as well.

Clause put and passed.

Clause 78: Sections 93EA and 93EB inserted -

Mrs C.L. EDWARDES: Clause 78 deals with the major Dutch provisions. I suggest that they will result in great financial cost in the future. It will be not just the initial cost of dealing with the recent issues that are expected within the system; it could very well mean increasing costs as there will be new interpretations of proposed sections 93EA and 93EB in the future. Proposed section 93EA deals with referring questions with fresh evidence in particular cases, and proposed section 93EB deals with the extended time for commencing

proceedings. These proposed sections will deal not just with the resubmissions; they will result in new precedents being established and will add to uncertainty in the new scheme.

Mr J.C. KOBELKE: As I indicated earlier, clearly a major injustice has been done to people through the Dutch decision. We have sought a method to open up their ability to take a common law case if they can establish fresh medical advice or evidence that meets the requirements. A window of opportunity is available to a certain group of people, and these proposed sections provide the procedure by which they can seek to pursue a common law case if they meet the necessary requirements.

Mrs C.L. EDWARDES: Will the minister tell us how proposed sections 93EA and 93EB will change the process?

Mr J.C. KOBELKE: Given the complexity of this issue, I will refer to my notes. Proposed section 93EA(1) allows certain workers who were disadvantaged as a result of the Dutch decision, by having their referral dismissed by a review officer or overturned by a superior jurisdiction, to progress their referral subject to their referring a new referral of the same question and producing fresh medical evidence that complies with the requirements of section 93D. One requirement that workers will need to meet for lodging a new referral will be that the worker originally sought to refer the same question on or before 30 September 2001. Referrals lodged up to this time, which was two months after the Dutch decision was issued, also may have been supported by medical evidence that failed to meet the medical evidence requirements of section 93D(6). It is considered that, after this time, workers and medical practitioners should be sufficiently aware of these requirements in light of the Dutch decision.

Proposed subsection (2) provides that if the question relates to whether the worker's degree of disability is not less than 16 per cent, the worker can refer the same question only if the worker produced original medical evidence not fewer than 21 days before the termination day, as required by section 93E(6), or, if any day was fixed under section 93E(7), before that day. This will ensure that these requirements are complied with in order for the worker to refer the same question under proposed section 93EA(3).

Proposed subsection (3) enables the worker to refer the same question originally referred to the director under section 93D(5). The question must relate to the same injury, as the intent of the change is to address or validate the initial referral not to include secondary conditions or subsequent injuries that may have occurred since that time.

Proposed subsection (4) provides for a question to be referred only if it is in a form specified in the regulations. A new referral and supporting fresh medical evidence, if not already lodged, must be lodged with the director within three months after the day on which clause 78 of the reform Bill comes into operation or, if a superior jurisdiction overturns a decision of a review officer that dealt with the substance of the question, within three months after the day of the decision overturning the review officer's determination.

Proposed subsection (5) makes it a requirement for the director to notify the worker and employer as soon as practicable whether the fresh medical evidence complies with the requirements of section 93D(6) and the referral is properly made. The notification will also advise whether or not the referral is accepted and, if accepted, will advise of the requirements to make an election within 14 days, as required under proposed section 93E(6a). The term "if relevant" is used in paragraph (b)(i) because workers with a degree of disability of at least 30 per cent are not required to make an election under proposed section 93E(6a).

Mrs C.L. EDWARDES: When the minister talks about the conciliation and review decision being overturned by the court, he is talking about any subsequent decision that might potentially take a Dutch case.

Mr J.C. KOBELKE: That is correct.

Mrs C.L. EDWARDES: In fact, the minister does not have any idea of the impact of the Dutch decision, because it will not be just the resubmissions; there could be ongoing court cases.

Mr J.C. KOBELKE: However, they have only that window of opportunity.

Mrs C.L. EDWARDES: They have the three months from when they resubmit their medical evidence, but potential new cases within the system also could appeal the conciliation review officer's decision. That is new.

Mr J.C. KOBELKE: We have indicated that, after a certain date, we expect people to understand the new level of evidence required by the Dutch decision and, therefore, to have met that requirement.

Mrs C.L. EDWARDES: How many cases does the minister think are likely to be caught by a case being taken to the court to overturn a review officer's decision?

Mr J.C. KOBELKE: The fact is that we cannot give -

Mrs C.L. EDWARDES: I do not mean the old stuff; I mean new decisions. The minister is suggesting that it is likely that new cases will go to the Supreme Court, seeking to overturn a conciliation review officer's decision. How many cases does he think there are likely to be?

Mr J.C. KOBELKE: It can catch people only where the worker originally sought to refer the same question before 30 September 2001.

Mrs C.L. EDWARDES: So that is the minister's cut-off point. Therefore, would any new cases that were taken to the Supreme Court be only on a resubmission?

Mr J.C. KOBELKE: Yes. It might be someone who is stuck in the current system and for some reason his case has not proceeded because of other actions, and then he gets a review officer's determination that indicates that he sought the referral of the question on or before 30 September 2001.

Mrs C.L. EDWARDES: Do we have any idea of how many cases that is likely to apply to?

Mr J.C. KOBELKE: That is what we were discussing earlier, and of course as each month goes past we may become more aware of people who are in the system. We have done additional work to try to get a better picture of whom those people may be, but that is simply a matter of refining our estimates. We do not have any actual direct number.

Dr J.M. WOOLLARD: I have the WorkCover Western Australia annual report. Unfortunately the report gives a total for only common law and other actions. I would like the figures for how much it has cost over the past few years under the current system, and for how much the payouts have been under gateway 1 - the 16 to 29 per cent - and gateway 2. Gateway 1 has just been thrown out the window. Anyone who would have applied under gateway 1 for disability cannot apply under the new system for impairment. Will the minister be able to provide those figures next week, because they are not in the report? This is also something that I asked when we had the briefings. I have looked at the figures for common law. In 2001-02 it was almost $50 million, and in 2002-03 it was $57 million. The minister said during the second reading debate that in the next financial year an extra $130 million will be put into the system. What are the costings likely to be for this year? Will it be $130 million next year or will it go down, and will it go down again the year after that?

Mr J.C. KOBELKE: The costs are made up of a number of components. We are currently dealing with the Dutch component, which is one of those components. The Dutch component, in terms of the figures that we are using, is taken to be rolled out in the first year, although it may go a bit beyond that. We are looking at those transitional costs against the first year. After that it falls back to $60 million.

Dr J.M. WOOLLARD: This is in the actuarial report, so will I get those figures in due course?

Mr J.C. KOBELKE: Yes.

Dr J.M. WOOLLARD: I would appreciate it if next week I could be given a copy of that report. Can I also get from the minister next week how much has been paid out in common law claims in the past three years under gateway 1 and gateway 2?

Mr J.C. KOBELKE: That information is not kept in a summary form, so we will need to go back and try to find it. I will certainly get it for one year, and three if we can. I understand that we should be able to extract for both the 30 per cent or more and the 16 to 29 per cent disability categories the number of claims and amount of money in each category, to the extent that that data can be pulled out in a couple of days.

Clause put and passed.

Clause 79 put and passed.

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

Committee adjourned at 5.45 pm