WORKERS' COMPENSATION REFORM BILL 2004

Second Reading

Resumed from 5 May.

MRS C.L. EDWARDES (Kingsley) [12.31 pm]: I will very firmly and strongly put the position of the Opposition on this legislation: the Opposition absolutely and totally opposes this legislation in its entirety. I have no doubt that the reason for the delay in this legislation coming before the Parliament has been the obvious problems experienced by the Government in offering workers greater benefits at the same time as containing costs. I suspect that the Minister for Consumer and Employment Protection has found that three into two does not go. The premise of this legislation is a direction statement published by the Labor Party when it was in opposition in December 2000. It is now June 2004. No-one pretends that the issue of workers compensation is simple. The Government should not make promises that it cannot keep. A number of statements are made in the direction statement that are clearly contrary to the Bill before us today. I will return to the direction statement later and show where promises have not been kept. The fundamental objective of any workers compensation system should be to provide and maintain fair and adequate cover for injured workers and to keep costs affordable for employers. The coalition in opposition supports those principles as strongly today as when it was in government. However, both principles are under threat because of this Bill. Any extra statutory benefit that has been provided to an injured worker will be needed because the system undermines a worker's return to work. In the early stages, injured workers not only do not want to be injured, but also want to get back to work as soon as possible. They want their lives back; they do not want to stay in the system. This Bill puts both those issues in jeopardy.

The Government acknowledges that this Bill will increase premiums despite having stated previously in this Parliament that it would not. I refer to question without notice 405 asked on 4 December 2002, which refers to the Government's intention to reform the workers compensation system and the estimation of the Guthrie report of the increases at the time. On 12 December 2001 the minister replied to a question without notice -

> The Government's undertaking is that the costs and expenses will balance out so that the net effect will be that premiums will remain the same, or hopefully continue to reduce.

Given the minister's promise at the time, he needs to explain the cost increase that this legislation will create. Page 8 of the direction statement states -

> A Gallop Labor Government will open up greater access to common law for injured workers. This will be in a measured way and based on the cost savings derived from reform of the system to prevent it causing upward pressure on premium rates.

Again, the minister needs to be able to explain to this House why the Bill he has brought before the Parliament contradicts his comments in the direction statement. The actuarial report of May 2004 firmly puts the increases between 30 and 51 per cent in the first year. I will refer to the actuarial report at a later stage. This Bill will put enormous pressure on premium rates. When we were in government, we were able to reduce them. Quite cleverly, the Government tries to take credit for that. I refer to the minister's media statement of 24 March 2004 in which he states -

> . . . the premiums, set by the Premium Rating Committee, would reduce the average gazetted rate for the year 2004/05 from 2.34 per cent to 2.25 per cent of an employer's payroll.

Interestingly, he goes on to state -

> "This is well down on the disastrous costs of the previous Liberal Government, when average workers' compensation premiums peaked at 3.44 per cent . . .

The reason that, as of 1 July 2004, the average premium rate set by the Premium Rates Committee will be 2.25 per cent of an employer's payroll is due to the changes that the coalition Government introduced and this Parliament passed in 1999. It has nothing to do with anything this Government has done in the past three years. In fact, in the past three years the Government has delayed introducing this legislation until the very last minute. It will cause enormous pain in the community to injured workers and employers. Businesses fund the entire cost of the workers compensation system. Any increase in premium costs will be bad news for jobs and businesses. There is no virtue in drastically changing the entire workers compensation system if the only outcomes will force businesses to close, workers to lose their jobs, the unemployed to stay unemployed and community service organisations servicing the frail, aged and disabled to have their services reduced or abolished altogether. All that will happen without any real benefit to workers. The Government needs to appreciate that there is no magic pudding or panacea; there is only the delicate balancing act between what is fair for employees and what is affordable for employers. The system we have has gone a long way towards achieving that principle. Today's

system has stability and predictability and it is working for everyone. Although some minor changes could improve the system even further in the areas of conciliation, review and service delivery, this Government should heed the old adage: if it ain't broke, don't fix it. At the time of the Pearson review, premium rates had increased 35 per cent. Members should remember what I said about the actuarial predictions as a result of this Bill; that they will increase by anywhere between 30 and 51 per cent in the first year. During the Pearson review, actuarial estimates forecast future increases of the order of 50 per cent. Does that sound like the current forecast by the actuary on the effect of the Bill before the House today?

I remind the House of some of the newspaper headlines of the time. On 26 October 1999, *The West Australian* published an article headed "Clash over work compo premium cut". There were huge concerns at the time from the insurance industry, the employers and the Australian Plaintiff Lawyers Association. On 30 September 1999, the newspaper carried the headline "Bosses to wait for compo cost to drop". On 16 September 1999, the headline was "Compo fees to rise, bosses warned". On 9 September 1999, an article appeared headed "State agrees to bail-out to cover compo". That was because the workers compensation premiums had increased by $2.2 million a year, with a crippling effect on the disability services sector. The Government at that time put extra funding into the Disability Services Commission to prevent funded non-government agencies from shutting services because they could not afford the big premiums. That was when the Labor Party, in opposition, refused to accept the pre-1999 changes the Government had introduced, even though there was an agreement between UnionsWA, representing workers; the Chamber of Commerce and Industry of Western Australia, representing employers; and the Government. The Labor Party in opposition caused the massive increases at that time. I am talking about the premium increases of 35 per cent to 50 per cent. Major community service organisations were forced to consider closing services, and the Government had to come in with $2.2 million to save them from closing their doors. What will the Government do about those community service organisations?

The disability services sector was not the only one affected. Another headline in *The West Australian* on 8 September 1999 read "Elderly fear homes will close". The article read -

> More than 40 residents of a Wanneroo retirement village and nursing home took to the steps of Parliament House yesterday to protest against rising workers compensation premiums.
>
> . . . premiums had risen from $46,000 to $237,000 in two years and another increase would force the homes to close.

Those were real-life examples of how the rates were going up at that time. This is what the Government will face again. There will be enormous pressures on community service organisations, aged homes and disability services, which will be exactly the same as the pressures applied in the days of the crippling premium rate rises. On 1 September 1999 an article entitled "Aged, disabled bear brunt of increase" stated -

> The aged care and disability sectors have been hit hard by the blowout in workers compensation premiums and will soon shut services unless the cost is eased.
>
> Nulsen Haven, which houses 65 severely intellectually and physically disabled people in group homes, will have to close at least one property, forcing at least four residents back to the waiting list for government accommodation.

This is what the Government will face again. The previous Government found that increases of that magnitude were unsustainable, which is why we moved to bring greater transparency and accountability into the process. That worked. The actuary's report states -

- If the cost of the Western Australian workers' compensation system is measured in terms of the Gazette weighted average recommended premium rates set by the Premium Rates Committee (PRC) then the cost has declined by 32% since the October 1999 Act amendments from 3.3436% of wages to 2.342% of wages as at 30 June 2002.
- The 30 June 2002 level of premium rates at 2.342% of wages is:
    - close to where rates were before the adverse common law trends led to sharp increases in rates in the late nineties

That is what I was referring to. The pressures put on the system at that time were such that the previous Government needed to make major changes. The changes made in October 1999 have succeeded, and that is borne out by the actuary's report. The report continues -

    - just below the benchmark range targeted by the 1999 Pearson Review.

That target group came from a high base. The Government refers to rate increases from 2.4 per cent to 2.7 per cent as acceptable. That is not acceptable when, at 1 July 2004, the rate would be 2.25 per cent. If the

Government accepts 2.4 per cent to 2.7 per cent - and according to the actuarial assessment that will be unachievable - it will still be working on an increase. The actuarial report continues -

- The current costs of the system are driven by two key aspects:
    - increases in real average claim sizes after adjusting for wage inflation
    - significant reductions in claim frequency and the number of claims incurred.

  The reduction in claim numbers has been greater than the increase in average claim size, leading to a net reduction in system costs over the period. The cost reductions are largely due to the impact of the October 1999 Act amendments. We note the reducing claim numbers trend stabilised during 2002/03.

The system has stabilised; it is predictable, so why are we changing it? The report continues further on -

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

Therefore, the increases that will come out of this Bill will ensure a major upheaval of the sort the previous Government faced back in 1999. There will be enormous pressures. The escalation in costs experienced by the previous Government has been contained, and the costs have been subsequently reduced, as the actuary reported, to the figures we will have at 1 July.

At the same time, with the Pearson review, the previous Government introduced significant changes to work practices through WorkSafe. In May 1999 it introduced new injury management procedures - another significant step forward. The starting point was the desire to help workers back into the work force after they had been injured. A new team approach was introduced, involving employees, employers and doctors. Although there are some issues about when rehabilitation providers should be brought in, those issues could be fixed around the edges without throwing the whole system up into the air and looking at what will result. The changes in injury management introduced by the previous Government in 1999 involved some cultural and behavioural changes from both stakeholders and service providers, but it has been worth the effort. The statistics I will present later, and what the actuarial report has said about the reduction in claims, will demonstrate that it has been worth the effort. Workers are being treated more effectively and are returning to work more quickly as a result. There are strong indications that workers are redeeming their claims, moving out of the workers compensation system and getting on with their lives. It should be remembered that 97 per cent of cases in Western Australia never go to common law, and these injured workers do not need a changed system that will be complex, difficult to understand and expensive. They do not need something that will cause greater aggravation and disruption in their lives.

No-one likes this Bill - not the unions, the Injured Persons Action and Support Association, the Australian Plaintiff Lawyers Association, the Law Society, the rehabilitation providers, the Australian Medical Association, employer groups, small business, injured workers or self-insurers. The reasons that no-one likes this Bill are pretty simple. It is not rocket science. Everything is being changed all at once. It is too complicated. It is not user friendly. Injured workers will need legal representation, because although the Government will put lawyers back into the system, it will also complicate the system so much that people will need to have representation before the conciliation review body. The rules will be more legalistic. Everyone will need to anticipate what is going to happen with the injured worker. It will be administratively expensive. The time frame is too tight. There are good reasons for having a tight time frame. We can understand the logic behind all these things. However, there is no synchronisation in how it will work once it all comes together. It will increase costs overall. The up-front costs will be enormous.

As I have said, this Bill will be bad news for everyone. I will read out a little of what people have said about this Bill. The Housing Industry Association said in a letter to the minister dated 20 May 2004 -

> HIA is concerned that the Government's changes will destabilise a workers compensation system that, for the past 3 years, has been performing well.

It said also -

> HIA notes that the Government's proposals will increase the average premium rate . . . HIA does not agree with any increase in premium rates because, in many cases, contractors are already paying well in excess of the current average premium rate.

I turn now to small business. One of the common complaints from people who would be regarded as stakeholders is the lack of consultation and the tight time frame that they were given for consultation. The Council of Small Business Organisations of Australia believed it was a stakeholder in the review process. As I

was told in an e-mail from Oliver Moon from COSBOA on 4 February, the reason COSBOA believed it was a stakeholder is that it was sent both the Laing and the Guthrie reports and was asked to make submissions on those reports, which it did, and thereafter it was invited to attend meetings with the minister. However, it did not receive a copy of the final workers compensation package when it came out at the beginning of this year. When it subsequently contacted the minister's office, it was told that it was not a stakeholder and would not be provided with a copy of the final workers compensation package but should go to the minister's web site and get a copy of the summary. However, as Oliver Moon said in his e-mail, when COSBOA did look at the copy of the summary, it found that it was nothing but political rhetoric. Frankly, if COSBOA had been given a copy of the compensation package at the time, it probably would have done what I did with it; namely, put it in the bin. I did not get a copy of the workers compensation package from the minister's office either, because I was not regarded as a stakeholder. A copy was provided to me by another stakeholder. However, it was so disjointed that it was impossible to make any realistic assessment of the proposed changes. Oliver Moon went on to say that the Laing report made recommendations concerning special consideration for small business, about which COSBOA made submissions. Accordingly, COSBOA required a copy of the workers compensation package to see whether the proposed changes to the Act address the special needs of small business, and the effects of other proposed changes on small business, in order to be able to provide comment by the deadline of 10 February 2004. As we all know, these changes will be of no benefit at all for small business, because there is no link between occupational health and safety and workers compensation resulting in reduced premiums.

The Self Insurers Association of Western Australia was also invited by the Government to comment on - wait for it; this is the consultation - "technical issues and inconsistencies" in the draft workers compensation Bill. There were a number of inconsistencies in the five drafts of the Bill that were provided in January and February 2003. The impairment model for medical assessment was constantly confused with the term "disability" throughout the five drafts. Further, the drafts were prepared by different people, so there was a difference in the language. It is absolutely amazing that a Bill was able to be put together out of those five draft pieces of legislation that were circulated at that time. Stakeholders were asked to comment not on the policy or direction of the Bill but only on technical issues and inconsistencies. The Self Insurers Association of Western Australia said in a letter to the minister dated 16 March 2004 that it was greatly concerned that -

> The Government acknowledges that costs in the current workers' compensation scheme are reducing and that proposed changes will increase costs to employers. We believe the costs will exceed the Minister's forecast.
>
> Increased costs with no improvement in outcomes is an issue of great concern to self insurers.

It said also, in a letter to the minister dated 9 February 2003 -

> . . . the Association is greatly concerned that the Government knows proposed changes will increase costs to employers by 9.3% initially and 16.1% in the long-term.

The actuarial report puts paid to that. The costs will be greater. The letter goes on -

> Further initial costs will be even greater for self insurers -

Again, the Government has put everyone in the same pot -

> given they are unlikely to gain any saving from new injury management requirements. Self insurers are already required to have in place comprehensive injury management policies and procedures in accordance with WorkCover guidelines.

The letter goes on to say to the minister -

> In your summary of key elements you have also indicated that Insurers will absorb the cost of increased benefits to injured workers currently in the system with no increase in costs to employers. This will not apply to self insured employers who do not make profits from workers' compensation insurance and do not have the benefit of having an insurer to absorb these costs which from your summary would appear to be in the vicinity of 7-8%.

The letter says also -

> The Self Insurers Association of WA represents employers who employ approximately 78,000 workers in this state.

The letter says also -

> The Association is disappointed that the current workers' compensation system which is stable and fair is to be replaced with one that is likely to increase costs, create instability and offers no guarantee of improved fairness in the distribution of entitlements to injured workers.

An article in *Medicus*, the Journal of the Australian Medical Association Western Australia, of April 2004 made the comment that -

> Regrettably despite the AMA's approaches the Minister has failed to grasp the opportunity and recent consultation has been "cursory" reflecting a seeming indifference to the Medical professions concerns. The following summarise some of the points made:
>
> 1 Contrary to the Governments Direction Statement the Government does not appear to have provided a "second gateway threshold to that of degree of disability". It is proposing a single gateway predicated upon impairment.

It said also -

> A proper process of engagement and genuine good faith and consultation must be entered into to ensure that appropriate amendments are made.

It concluded with the comment -

> . . . the Association will be campaigning very vigorously against the Ministers proposals which in the Associations opinion would have the effect of increasing the bureaucracy and control over practitioners undermining their independence and alienating practitioners who have sought to give injured workers priority to reduce costs to employers and insurers and assist workers early return to work.

The Chamber of Minerals and Energy of Western Australia said in the letter to the minister dated 10 February -

> On the whole, CME is concerned at the lack of time that has been provided to stakeholders to review the working drafts and is alarmed that the Reform Bill will be introduced into Parliament without thorough consideration being given to the cost implications of the proposed amendments.

The letter said also that the CME also has considerable concern about the potential increases in premium rates that will result from the Government's intention to proceed with the major reforms. The letter goes on to say to the minister -

> You have repeatedly provided assurances both publicly and privately that ". . . *any reforms would be based on appropriate actuarial analysis so that changes, while improving the system, would not increase premium rates.*"
>
> Given the estimated initial increase in premiums and costs and the projected erosion figure, it is essential that a sufficient amount of time be provided to analyse and comment on the details surrounding the proposed amendments.

The Insurance Council of Australia has identified that -

> As highlighted over the past 12 months, the industry has major concerns on the impact of unfunded retrospective liabilities of almost $50m being imposed on the industry as a result of this Bill.

The actuary has pointed out that it will be greater than that $50 million. It continues -

> This is of particular concern with regard to the significant financial, licensing and administrative issues raised in compliance with the revised standards and solvency requirements of APRA.
>
> The Government's intention to artificially suppress the premium rates by regulating the Premium Rates Committee's consideration of the costs imposed on the system by the changes is a precedent which will undermine the confidence of not just insurers but all business and employers in Western Australia.

However, I understand it is not such a precedent. The last time this was done was when Labor was in government back in 1992, and the then responsible minister is the current Premier. In the lead-up to an election, which is the same time frame that we find the Government in today, the then Government gave a direction and artificially suppressed workers compensation premium rates. It does not work. It puts even greater pressure on the system. The Insurance Council of Australia also wrote to the minister on 12 May and stated -

> The insurance industry is becoming increasingly concerned at the escalating costs to the system of the proposed changes . . .
>
> . . .
>
> Businesses will quickly lose confidence in investing in Western Australia if the Government establishes a record of legislating for increased liabilities on a retrospective basis.

The council gives the example of the Tasmanian Government that recently -

> . . . recognised these principles in enabling the retrospective costs to be funded through the nominal insurer and it is proposed this is appropriate for funding of the WA retrospective impacts proposed in the 2004 Bill.
>
> Insurers are concerned of the increasing erosion and cost impact within the current system of recent court decisions such as the 'Short' and 'Henderson' decisions which will compound the impact on the current financial outcomes significantly.

I will come back to those later because the Government has made no changes with regard to those cases, which will clearly undermine the current system.

The Insurance Council of Australia wrote to the minister on 19 May and stated -

> As evidence following the collapse of HIH Insurance, liabilities continue for a number of years following the cessation of premium collection for insurers in long tail business such as workers' compensation. In Western Australia should the current insurers cease to collect premiums as at 30 June 2004 in excess of $1000m of claims payments would be required to fulfil the financial obligations of insurers for exposures already incurred from policies written and premiums already collected. Following the collapse of HIH, which had approximately 8%-9% of the workers' compensation business in Western Australia in 2001, claims payments in excess of $90m will be made before their liabilities for business written up to March 2001 are fulfilled.

It continues -

> WA has a fully funded independent workers' compensation system with no potential liabilities on the Government or taxpayers envied by other mainland jurisdictions.

The Chamber of Commerce and Industry of Western Australia has sent out an alert to its members saying that the Bill is very complex, is difficult to interpret, lacks a disciplined and logical approach in many areas and will be extremely resource-intensive to implement for both small and large employers. If implemented, it would affect all major areas of the workers compensation system. Most of the changes are not needed given the very sound and stable system currently operating in Western Australia. The CCI refers to all the complex changes, the higher costs and the greater administration for employers and concludes that the existing system is sound and stable. It basically says that a better system could be provided with some minor changes in those areas of inefficiency of conciliation review without the major disruption and substantial costs the proposed changes are likely to cause.

The CCI also refers to the fact that on 22 December 2000 the ALP stated that in government Labor would lower average premiums in a substantial way. The letter quotes Minister Kobelke, who said in Parliament on 22 May 2001 that any changes "will result in premium reductions". Further, this was reaffirmed by his commitment at a meeting with the CCI in September 2001. The Premier wrote to the CCI on 15 October 2001 confirming the Government's commitment and said that premiums would not rise as a result of changes to the workers compensation system. The minister must be able to explain why, after all those public statements, commitments and promises were made, he is prepared to accept increases in workers compensation premiums of the sort that the actuary has identified.

Brian Nugawela, from the Australian Plaintiff Lawyers Association, has written to the minister on several occasions. On 6 May 2004 he said that he lamented -

> . . . the then apparent secrecy surrounding the disclosure of the proposed legislation as follows:

He referred to a letter he wrote on 29 April 2004 from which he quotes the following -

> "It is neither desirable nor satisfactory, from a democratic perspective, that stakeholders (like APLA and IPASA) who actually represent the interests of workers, can be kept out of the information loop unintentionally or otherwise. Nor is it, with respect, in keeping with loudly professed ideals of openness, accountability and transparency".

Apparently the next day after that letter was received a copy of the marked-up version of the Workers' Compensation Reform Bill was forwarded. It is a 487-page document. The letter continues -

> . . . in order for us (indeed anyone) to understand how these substantial proposed changes will actually affect the lives and rights of Western Australians workers and their families, can you please forward to us immediately:
>
> (a) all draft Regulations referred to in the Bill [as past experience has shown and even our Full Court of the Supreme Court has pointed out . . . the Regulations must be read with the Act in order to understand how the "scheme" works, before rights can be truly ascertained];

(b) all Rules;

(c) all medical Guides . . .

(d) all Codes of Practice referred to in the proposed legislation, Regulations and/or Rules.

Two of the codes were released or made public last week, but the actuarial report and the draft regulations are yet to come. Brian Nugawela wrote to the minister again on 31 May -

> APLA is still awaiting the draft Regulations and Guides to be used in assessing impairment. We have repeatedly asked and/or written to you since January this year in these respects, but have been ignored. We will now record, somewhat laboriously, the important reasons why we have been so persistent in this respect.

I will point out APLA's concern with regard to disability and impairment now rather than when I get to those specific issues, because it is important to explain why he needed the draft regulations and guides. Brian Nugawela's letter further states -

> Why we need the Guides now
>
> The Guides will demonstrate the extent to which the Gallop government's proposed change from "disability" to "impairment" will annihilate common law access. Medical advice we have received (based on the NSW Guide) indicates a discount factor of approximately 50% in most cases [so that presently a 30% disability will only be assessed as a 15% impairment under the proposed system; or a 25% impairment under the proposed system is in reality presently a 50% disability under the current system]. This is such a fundamental paradigm shift affecting past, present and future injured workers and their loved ones, that we think (naively perhaps) that it should be open to public scrutiny and debate at least shortly before it is democratically rammed through one of our two houses of Parliament.

APLA is a key stakeholder in the workers compensation system. It believes that its needs are being ignored so that it cannot properly advise its clients.

I will now refer to some of the specific changes in more detail. In particular, I will refer to one of the biggest changes - the step-down from four to 13 weeks. That will have a major impact on behavioural change, and that has not been adequately addressed under the assessment by the actuary. In the draft Bill that went out in January-February this year, the period was originally identified as being eight weeks. When the Bill came into this Parliament, it was 13 weeks. Obviously, somebody flipped a coin and said that it would be 13 weeks. That does not make sense. Why was it eight weeks? What statistics support the change from four to eight weeks? Why was a change from eight to 13 weeks supported? Was that just a sop to the union movement? There does not seem to be any logic in or basis for the changes. In addition, it will be retrospective. Therefore, as soon as the Bill is proclaimed, it will apply automatically.

The worst aspect of this, though, will be the behavioural impact when claims are made. It will have a negative impact on injury management. It will not encourage people to return to work. Apart from the complicated system for dispute resolution, there will be no encouragement for people to return to work with an extension to 13 weeks. Looking at the figures, I do not believe it was necessary. Sixty per cent of injured workers return to work within 20 days. Why was the system changed to provide a safety net for people to stay in the system instead of getting back to work? The average duration of a claim is approximately 58 days - eight weeks. That may have been why the Government looked at extending the period from four to eight weeks in the first instance. However, why did it extend it from eight to 13 weeks - unless it was a sop to the union movement at the time in an endeavour to get its support?

Another area of change is the assessment of disability versus impairment. Who will run the course in Western Australia? The change of the system to the assessment of impairment will not work, unless sufficient doctors are fully trained to carry out the assessment process. Currently, there is no course in Western Australia. I am led to believe that the system of impairment assessment operates pretty much around Australia. There must be proper training, and that training must be such that the practitioners are competent in the use of the guides. Those guides have been changed from those used in New South Wales, even though they are based on the New South Wales guides, to meet the Western Australian circumstances.

Under the common law proposals, the other problem is the removal of psychological overlay. I am not sure where the line is drawn. It was put to me back in 1999 that this was an issue of continuing concern with the common law. Where does one draw the line? When a bank teller has been subject to a hold-up, any psychological problems that flow from that should be covered. However, somebody may be severely injured and, as a result, be in the workers compensation system. That person may not be well, may be hurting all the time and may have suffered a family breakdown, with the kids running away from home. No wonder the bloke is having a mental breakdown. Yet, will that psychological problem be able to be assessed? When the minister

responds to the second reading debate, I would like him to give us practical examples of where the line will be drawn, because it is not clear. Is it fair that that person will be thrown out of the system because he is not able to use that as part of his assessment, given the fact that the Government's proposal will keep people in the system longer and make it more complicated for them?

Another concern is the extension of the election period. I know that this was the subject of some debate at the time of the 1999 amendments, which extended the period from six to 12 months. Where does one draw the line - at six months or 12 months? The figures that were given to me supported the fact that the majority of injured workers were able to have the extent of their disability assessed within six months. In those instances in which that was not possible, and those people still had to undergo major surgery, there was an ability to extend that period. Again, the minister needs to explain to us in practical terms why the period is being extended from six to 12 months - which does not meet the needs of the injured workers - rather than its being just a promise that he gave in 2000, which is not backed up adequately by the data that he now has at his fingertips.

Another issue that I will raise has also been raised by the Australian Medical Association. Its view is that there is a total lack of concern by the Government for injured patients and that the minister has not addressed these concerns. A media release put out by the AMA states -

> "The Government should not have the right to intervene in the way a patient is treated."
>
> "The AMA is committed to ensuring this legislation is amended to ensure appropriate treatment for injured workers and support for their ongoing care."

However, the AMA's media release also went on to say -

> "The patient's doctor is the best person to decide on treatment in consultation with the injured worker, not the Government," . . . . "Some of the proposed changes to the legislation are anti-patient."

The AMA has also said that clause 205 is a very important clause. It is one that we will ask the minister to adequately explain as well. Access to medical care will be restricted. The media release states -

> . . . the Government will have the power to tell injured workers how many times they can see their doctor and what treatment they can receive . . .

The AMA believes that the changes being put forward are anti-patient. In addition, there is no right of appeal from a medical panel. That matter has been raised with me on several occasions. The removal of rights of appeal is pretty appalling. Clause 205, to which I referred, deals with legal professional privilege in relation to medical reports. What will be the extent of their availability?

The only thing I can say about the proposed changes to dispute resolution relates to the increased level of complexity. The restructured directorate is supposed to provide an easier system. However, it is not user friendly. In fact, it provides for a far more adversarial system, with intricate and far more legalistic rules about legal representation. It will also provide unbalanced access to legal representation arising from the capacity of the arbitrator to refuse legal representation for the employer or insurer if an employee is not represented. I do not have a problem with that. If there is an imbalance, I do not have a problem with that. However, the Government has created an absolute nightmare of a system. It will mean that the arbitrators will be making many more decisions themselves, which are not based on clear representation and good advice being put forward to them. The processes that the Government has put in place for those early weeks are complicated. People will need representation. All injured workers should have that representation if the Government is to persist with the complicated system it is putting in place. I do not think there is any need for legal representation. I believe that there could be some tweaking at the edges of the conciliation review process under the current system. People need legal representation when they get to the common law, but I do not think they need legal representation before the arbitrators. The Minister for Planning and Infrastructure has put in place for the Town Planning Appeal Tribunal a system that is absolutely user friendly and that people can access without legal representation. The ordinary person in the street who gets injured will now require legal representation. The minister has not made the system available to them. Appeals have a limited right. People cannot appeal the arbitrator's decision, and I think that is scary for all participants in the system.

Injury management will be the biggest loser, even though the minister is saying that this legislation is the best thing since sliced bread for injury management. The legislation does not support injury management. It will be totally undermined at every position, from statutory benefits to step-downs to common law. It does not support the intent to place an emphasis on injury management and a return to work. Injury management is being seen to replace rehabilitation. Rehabilitation is a subset of injury management, yet there is no clear guidance in the proposed changes for injury management and rehabilitation providers. I have several stories from rehabilitation providers that indicate that if they had been involved at a much earlier stage in the injury management process, the injured workers would have gone back to work, and they gave examples in which that had occurred. I have

heard story after story in which everybody failed an injured worker and a rehab provider picked up an injured worker who was encouraged to go back to work or accept the fact that he or she could not go back to work. That is the critical issue faced daily by many injured workers. They do not want to get caught up in a workers compensation system; they want to get back to work, and without the hassle that this system will provide. This Government has introduced legislation that will make their lives so much more complicated and hassled that there will be no clear benefits for workers.

As I have said, every dollar that this Government will provide to injured workers will be needed, because the Government has not introduced legislation that will get them back to work as quickly as they should. The delays in the system will work against effective early intervention. The research clearly shows that the optimum period for effective intervention is within 14 days. All this will be undermined by unresolved tension in the legislation, arising from a focus on micromanagement issues, alongside increased statutory benefits, election periods and a lengthy extension to the step-down period. There will be government intervention in local workplace issues. The emphasis on injury management is no longer on the capacity of the person to return to work.

Another issue is unfair dismissal. Notification of the intention to dismiss a worker must be given within 28 days. It cuts across a lot of laws, awards and agreements. Will an employer be precluded from summarily dismissing a person? What if that person has stolen from the employer? Is it public information? These are issues that we need to raise.

Specialised training is a new provision that was not in the draft Bills that were released in January and February. The actuary has been told that there will be only 30 claims and therefore it will cost only $2.5 million. Where did the figure of 30 claims come from? That figure of 30 claims is an arbitrary figure. It will involve only those people with neck, back and pelvic injuries with impairment of between 10 and 15 per cent. Why not 16, 17 or 18 per cent? The specialised training will benefit those people with impairment of between 10 and 15 per cent but will discriminate against others with 16 per cent impairment. Again, I do not understand the reason that the Government has introduced an arbitrary figure and new class of 10 to 15 per cent impairment for neck, back and pelvic injuries. It shows that the Government was clasping at straws and throwing anything into the pot just to get some form of agreement. As I have pointed out, because there is no synchronisation with the changes that have been put forward, there will be no agreement whatsoever.

The claims figures that have been reported do not support the changes that will be made. I asked a question about the number of claims that had been dealt with according to their duration. In 2002-03, 84 per cent of workers who had made claims had had fewer than four weeks off work. I asked a question on notice of the minister about all the claims and how long they had been in the system. Amazingly, 63 262 claims that had been lodged since 1991 were active during the 2002-03 financial year. That tells us how long a claim can be in the system for. The minister's own data should not give him the idea that he can just look at premiums and expenses for a year and say that insurers can cop the increases, because, at the end of the day, we will not have a workers compensation system.

It is an absolute disgrace that the Premium Rates Committee will be disbanded. Although it was put to the Opposition and we considered it, the Government must ensure that premium rates are decided by those who are competent to do so. I certainly do not think that giving the minister the right to direct the new committee on premium rates will provide any form of comfort or level of independence in the determination of premium rates. Legal cases that have been heard have not been addressed in this legislation, such as Dossett and, subsequently, Short and Henderson. How many of those cases that are likely to be in the system could jump back? How many of those cases that are likely to be in the system and have had redemptions could jump back? It could be 700. That is a figure that has been plucked out of the air. As with most things, we are tossing coins. The data is not there. Maybe the minister can tell us. A decision was made on what constitutes making a claim. The door is still open. The minister has not addressed it. The Dutch decision will cost an enormous amount. In the best-case scenario we could be talking about $27 million and in the worst-case scenario we could be talking about $120 million. Why is that? The Government does not know how many claims are in the system.

One of the biggest issues that will arise is the potential lack of competition in the workers compensation system. In the 1990s, 13 companies provided workers compensation cover; now eight companies provide that cover. HIH Insurance fell over in 2001. The reason given for that in the summing up in the HIH case states -

> . . . the biggest single cause of HIH's collapse was, as I have said, the failure to provide properly for future claims.
>
> The provision for outstanding claims is the biggest single item on the liabilities side of a general insurer's balance sheet . . . **the inability to price risk properly was a serious problem**.

The Australian Prudential Regulation Authority has tightened its guidelines since that time. This minister and this Government will put at risk the number of players in the workers compensation system if the Government

funds all the retrospective payments that it will bring forward through this legislation. Section 3.1.3 on page 17 of the Premium Rates Committee report states that the financial year results show a very different picture from the accident year table, with underwriting losses arising up to 1999 followed by a generally increasing profit trend, but overall loss equal to seven per cent of gross earned premium over the seven-year period. I note that the inclusion of an allowance for an investment return would have reduced this loss to an estimated profit of 5.4 per cent, which is well below the eight per cent benchmark published by the Premium Rates Committee. The minister referred in his second reading speech to the level of profitability in recent years, and his expectation that the insurance industry will absorb the associated costs - estimated to be around $70 million, or has that changed? - in retrospective costs imposed by this Bill, but that is absolutely unrealistic as outlined in the examples with HIH and APRA.

I do not have time to go through the direction statement and pull out the broken promises. The abolition of the Premium Rates Committee was a broken promise. Two union representatives were to be on the committee, which was another broken promise. Delivering fewer bureaucratic procedures so people could understand the process was a broken promise. The alternative second gateway threshold to the degree of disability was another broken promise. I will go through them quickly. A quicker and procedurally fairer reform dispute resolution procedure was a broken promise, as was a more efficient and open administration. I could go through the entire direction statement and indicate where the Government has not delivered.

In conclusion, I ask the minister, in the interests of all concerned, not to proceed with these changes. They are too much all at once. The changes will upset the equilibrium for everyone with no real benefit to injured workers or employers. If any benefit was to be derived from these changes for injured workers, with an immediate increase in average weekly earnings and an extension of the step-down time, the minister might get away with it. However, they would be short-term effects. No-one can afford Labor's new workers compensation system, particularly not injured workers or employers.

DR J.M. WOOLLARD (Alfred Cove) [1.33 pm]: I will not support the Workers' Compensation Reform Bill 2004, which some say will make our workers compensation system the worst in the nation. This Bill is meant to protect workers injured at work; I refer to nurses, construction workers and people in the mining and transport industry or people doing heavy manual-type work. The Bill is 281 pages long. I believe the minister has sat on it for almost a year. Even so, when the Bill was introduced, the minister did not present the regulations and guidelines that should have been tabled so that people could understand the Bill's components. I ask that the minister table the regulations and guidelines, prior to our considering the Bill in detail, or its being directed to a legislation committee.

This is the most complicated Bill I have come across. It was placed on the Table one day before the budget was presented. Thanks to the assistance of the Injured Persons Action and Support Association and the Australian Plaintiff Lawyers Association, I have an understanding of the Bill. I will comment on certain areas, although nowhere near the number of areas raised by the member for Kingsley. I will refer to the background of the Bill, summarise some of its key faults and show the imbalance between the minor advantages and benefits and the disadvantages and negatives. I will assess the rights to be lost under this Bill, by comparing the current system of workers compensation with that proposed under the Bill. I will discuss WorkCover's use of medical practitioner participation, which is an aspect referred to by the member for Kingsley. The Bill will have a devastating effect in that regard. I will comment on disability versus impairment; and I will consider doctors' independence. I will explain how the Bill interferes with natural justice and procedural fairness, and I will compare briefly this Bill with the Queensland and New South Wales legislation; that is, some benefits found in the NSW Bill are not part of the WA Bill.

Why do we have workers compensation? It is to assist people injured at work. In some States, the compensation not only applies to injuries at work, but also assists workers injured on the way to or from work. The statutory benefits conferred by workers compensation have always existed alongside common law rights, access to which requires that employers be at fault for a breach under the terms of the contract or for a negligent action at work. Common law has always acted as a deterrent against dangerous work practices under the control of the employer.

The minister said that this Bill will lead to increased statutory benefits. At my briefings - for which I thank the minister - I was given no tables to indicate where these increased statutory benefits can be found. I was told that the department has compiled the necessary figures, and that benefits are involved. As well as asking the minister to table the regulations and guidelines, I ask that a full economic analysis underlying that statement be tabled prior to the Bill's moving to a legislation committee. The community can then see whether the statements are truthful, or whether the minister and the Government have been led on this matter by bureaucrats with their own hidden agendas.

It appears that the increased statutory benefits under this Bill will be available to only a small minority of seriously injured workers. Many people believe that such people would be better off under common law. Who will be disadvantaged? As I said before, the people who require this assistance are nurses - my profession - and construction, mining, factory and transport workers. Many affected people have back injuries, and the dispute may involve multiple injuries for which people seek assistance through workers compensation. The minister and his advisers have said that this legislation is based on the New South Wales legislation. I have been informed that the New South Wales legislation has knocked out practically 99 per cent of common law claims. Therefore, an injured worker in New South Wales must practically be in a wheelchair to receive true assistance at common law.

The minister has claimed that statutory benefits will increase by $130 million in the first year under this measure. I ask the minister to table with the regulations and guidelines the dollar amount workers would have received in common law damages under the current scheme; that is, the money that will now bolster the statutory scheme.

The crux of the change to workers compensation is that the gateway to common law is to be changed from a system of disability considering the person as a whole - that is, the person at work, at home and in recreational activity - to a system of impairment. The impairment system is harsh and impersonal. Even the American Medical Association's document, from which the impairment guidelines have come, states that the guidelines should not be used in the way that this Government is introducing them. The Government is falsely claiming that it is making access to the common law easier by lowering the threshold from 30 per cent to 25 per cent. As the member for Kingsley has already pointed out, that is not true. In fact, during the briefings I was given with the minister's advisers, they seemed to accept that gateway 2 under the old system has become gateway 1 under the new system. This means that there has been an increase in the threshold, which will make the common law accessible to only a few people who have very serious injuries. Many people with serious injuries that will affect them for the rest of their lives will not be able to access common law under the new system. The new system means that if a worker agrees to participate in a retraining program or accepts the increase in the medical expense entitlements, he will lose his right to access common law. Some people will realise that they will need to be retrained in another area because of their injury, so may take up this system. They may realise too late that this retraining will not be sufficient and that they have lost their common law rights.

Under the new system a panel of doctors will use a checklist to look at a person's impairment. However, the checklist does not include psychological factors, such as the depression, anxiety or stress that an injured worker may suffer post injury, or secondary physical complications. For example, it does not include pain or sexual dysfunction resulting from an injury. The formula is very impersonal and harsh. It does not look at a person as a whole.

The Bill sets out a 12-month limit for a worker to pursue common law damages. Although this is an increase, it will still not provide enough time for some workers, who will not realise the extent of their injuries even within 12 months. WorkCover must have the current patterns of recovery for different injuries. I ask the minister to table that information, so that members can see and be aware of which injuries traditionally take longer to recover from and the complications that can arise post treatment, be that medical or surgical treatment.

The minister is presenting workers with an ultimatum: accept the statutory benefits that the Government is offering or go to common law. If workers choose to use common law, their weekly benefits will be stepped down for six months and will then stop completely. Workers - the breadwinners - cannot afford to take that chance. The medical panels will be appointed by WorkCover. However, they should be appointed from within the profession and be accountable to the profession, not to WorkCover. Bureaucrats within WorkCover plan to monitor and assess the doctors' decisions. Doctors' decisions on injured workers should be open to review by the profession and the courts.

This Bill also gives the arbitrators enormous powers. The Bill has a privative clause, which prevents natural justice. This is immoral, given that this Bill is all about helping people who have been injured at work. Coming from a Labor Government, this is disgraceful. The Bill also takes away the legal professional privilege that currently exists between a lawyer and his client. Lawyers will have to table documentation and medical record reports. That is a bit of a double standard when the minister has not tabled the guidelines and regulations. Under this legislation, the lawyers will have to table everything. Who will benefit from the tabling of those documents? If an injured worker has seen two doctors, WorkCover will be able to use one of those medical reports to stop that injured worker from receiving benefits. There are many penalty provisions within the Bill and that will intimidate some workers. They are very harsh. These penalties should be reduced during the consideration in detail stage.

The member for Kingsley mentioned consultation. I also brought letters from different people who had written to the minister about there not being consultation. The Bill has been around for 12 months. We know from some of the documents from which the member for Kingsley read that even the people who were sent a copy of

the Bill to look at felt that it was lip-service, because WorkCover did not respond to the feedback from those groups.

[Leave granted for the member's time to be extended.]

Dr J.M. WOOLLARD: The Bill contains minor advantages. Benefits to injured workers are improved under the Bill if they can return to work after 13 weeks, if their entitlements are not subject to dispute, and if they do not have a permanent disability or impairment. However, we know that some workers will not be able to return to work after 13 weeks, some claims will be in dispute with the insurance companies, and some people will have a permanent disability or impairment. How many of those will there be? How many claims will not be disputed once this legislation is passed? Other advantages include an increase in the contribution to funeral costs, an increase in benefits by up to $300 a week, and extended weekly payments for workers who have a permanent total impairment capacity at 75 per cent of the prescribed maximum income. However, the advantages do not weigh up against the disadvantages. The minister has said that a big advantage of this legislation is retraining. However, if injured workers accept retraining, they will lose the right to have their case heard at common law. The Bill states that there will be an increase in benefits from $50 000 to $250 000 for people who require additional medical treatment. However, when workers accept more than $50 000 for medical treatment they forgo the right to go to common law. A person must have a whole-of-person impairment of more than 25 per cent to get an additional sum of money for medical treatment. That is almost equivalent to gateway 2 in the current workers compensation legislation in which there is no cap. Who will benefit from these advantages? There appear to be many advantages for insurance companies but none for injured workers.

Currently a worker can seek damages within six months if he or she has a disability of 16 per cent or greater. There is a sliding scale of damages for workers with a disability between 16 and 30 per cent. The current disability-based system takes into account not only a person's work but also the person's general daily living and recreational activities. Under proposed section 93K(4) of this new Bill a worker must have an impairment greater than 15 per cent - that is the old step 2 percentage - to seek damages within 12 months. The old system had a step-wise process for damages, but in the new system full damages are not possible unless the disability is 25 per cent or greater.

The minister said that the threshold for damages has been reduced, based on claims by WorkCover's occupational health doctors. I have been informed, not by one but by several different distinguished medical professionals who have worked in the workers compensation area for a long time, that this is not true. They say that the threshold has, in fact, been increased. As I said before, the major deficiency in the Bill is that the Government has moved from a disability-based system to an impairment-based system. The Government has accepted the American Medical Association's guide on the evaluation of permanent impairment to determine a worker's impairment in Western Australia. Under the current disability-based system the impact of an injury is assessed on the whole person; whereas under the new system it will be assessed on impairment; it will become a technical process.

The American Medical Association's guide states -

> Impairment percentages derived from the ***Guides*** criteria should not be used as direct estimates of disability. Impairment percentages estimate the extent of the impairment on whole person functioning and account for basic activities of daily living, not including work. The complexity of work activities requires individual analyses. Impairment assessment is a necessary first step determining disability.

That guide refers to work-related injuries but that is not the reason the impairment system was introduced. It was not introduced for injured workers. Let us look at examples under both the old system and the new system. Under the old system a disability was assessed on the basis of a person's activities at work, home and recreation. The loss of two fingers to a pianist or surgeon in a work-related accident would be a grave difference in that worker's life. I am not sure what the percentage is for the loss of two fingers under the new system, but it is minor. The new system therefore does not consider the worker as a whole person; it is merely a checklist of boxes to see where that person fits into that checklist. There are no boxes in the checklist for assessing psychological problems or physical post-injury problems. This legislation will make it more difficult for injured workers to access common law for damages because issues will be determined according to the new guide for assessing an impairment level of 15 to 25 per cent rather than the disability rating guide for assessing impairment under the old system. As was said earlier, comparing impairment with disability, impairment equates to twice the disability percentage.

The new system will result in the inability of workers to mount a common law claim if after six months of weekly compensation they need additional medical treatment and elect to receive a lump sum under proposed section 93K(2) or receive retraining under the new statutory scheme. The WorkCover Guides, which the Bill refers to in proposed section 146A, have not been provided to members. The minister is asking this Parliament to make a decision in the dark on a completely new structure of workers compensation. There is no certainty for

a worker under the new system, even after the worker's impairment has been assessed. Under proposed section 93K(4)(d) of the new system, impairment must be greater than 15 per cent. However, proposed section 93K(5) states that to receive full damages at common law the impairment must be greater than 25 per cent. In other words, the Bill states that someone must be basically in a wheelchair to get damages. Under proposed sections 146A(1) and (2) and 146C the impairment will be assessed by a medical specialist or a medical specialist panel. If a worker is assessed as entitled to pursue a damages claim under proposed section 93M, the weekly compensation payments will be stepped down under proposed section 93Q(2) and (4) over six months and stopped. If the right to a claim is progressed and the claim goes to court, the judge is not bound by the assessment of impairment or the information that is presented to the judge. Under proposed section 93L, the judge can conclude that the impairment is less than 15 per cent, in which case the worker will not only be denied damages but also might have to pay the defendant's costs. I refer to participation. The doctors who look at this checklist and make the ticks will do so under proposed section 146F(1) and those who work on the panels will do so under sections 145B and 145C(1). A decreased pool of doctors will be available to assess a worker's injury. I am outlining these sections and clauses because I am hoping that some of the backbenchers who have not looked at this legislation will go through and look at some of the clauses.

Under proposed section 146F, WorkCover has the power to hire and fire doctors if their performance does not match up to its expectations.

Debate interrupted, pursuant to standing orders.

[Continued on page 3328.]