LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from 14 March.

Clause 4: Part VID inserted -

Division 3: Form and content of EEA -

Debate was adjourned after Mr Grylls had moved the following amendment -

> Page 13, lines 14 to 30 and page 14, lines 1 to 3 - To delete the lines.

Mr GRYLLS: The National Party proposes to delete this entire proposed section, which provides that employees under the age of 18 years must have a parent, guardian or independent adult sign on their behalf. As discussed previously, I am sure I am correct in saying that if, due to a mental disability, those employees are represented by somebody, this proposed section would not apply. Younger employees should be able to make these decisions for themselves. I am constantly amazed at the maturity and knowledge of young adults today. In society, these young adults are capable of making many of these decisions for themselves. I do not believe that we should put this impediment in their way to signing off on an employer-employee agreement.

Just before Christmas, this House made a controversial decision to allow 16-year-olds to make decisions about their sexual relationships. At the age of 16 years, they can make decisions about their sexual relationships, whereas under this legislation, people under the age of 18 will need a parent or guardian to sign on their behalf. I am interested to hear the minister's comments on this point.

I refer the minister to his second reading speech, in which he stated -

> It is recognised that some young people signed workplace agreements without understanding fully the implications of those documents.

Will the minister explain some of the examples that he used to make that statement in his second reading speech?

Mr KOBELKE: I am happy to be corrected by my advisers and the former minister, the member for Kingsley. The general view is that people under the age of 18 years cannot sign contracts without parental approval, but this does not apply to contracts of employment. Therefore, people under 18 years of age have always been able to be parties to a contract of employment. For other contracts, people must be 18 years of age or more. We are suggesting that with EEAs, which are individual statutory contracts that do not have the same level of protection provided by awards or the collective approach, an extra guarantee should be given that at least those people have consulted with a parent or guardian - it can be wider than that - to double-check that they are happy with the agreement; and because the agreement has been countersigned, it makes it clear that those people have sought advice. We believe that is a reasonable and fair form of protection for young people. It does not mean that they would have any real difficulty in concluding an EEA, if that is their desire, but it is an extra check to make sure that they have considered all the possibilities by speaking to a guardian or a parent and that the guardian or parent has countersigned the agreement. We believe that is a worthwhile check and protection for people under 18 years of age. It in no way prevents them pursuing an EEA if they feel that is in their interests. That check has been included because there is not the same level of protection provided by an award or a collective agreement.

Mrs EDWARDES: I support the amendment for a number of reasons. First of all, young people have always been able to sign employment contracts. I have spoken with some young people over the past few days. We talked about democracy and how those young people can be involved in decision making. As young people, they would like to be involved in decision making far more. I put to them that the Labor Relations Reform Bill states that they will no longer be able to sign their contract of employment alone but must get their parent, guardian or other independent adult to sign it as well. Then another independent adult must witness it. Three sets of signatures are required for the employee, and then the employer must sign it and have that signature witnessed. Two signatures are required from the employer, and three from the employee, when he or she is under the age of 18. The minister says that, under workplace agreements, some young people signed agreements without fully understanding the implications. In this House, we have debated, at length, changing the laws to allow 16-year-old males to enter into homosexual relationships. That is a very serious issue, but in that instance the Government was claiming that such young people would understand the implications of entering into homosexual relationships. They do not, in those cases, need a note from their parents, or from an independent adult, and they do not need a witness. The Government is being hypocritical in its protection of young people. To validate an agreement about working arrangements, young people not only need the signatures of their parent or guardian and an independent adult, but also their signatures must be witnessed. What an insult to those young people! That is what I was told by young people who wished to work at a supermarket for only a couple of

hours each week. They were concerned that they would have to get their parents to sign the document, and then get it witnessed as well. The timing of that is a major issue, which will be dealt with later in this debate.

This section is a clear attack on employers. This Government hates employers with an absolute passion, while mouthing the fact that small businesses are the engine room of Western Australia and provide the largest number of jobs. Government members pride themselves on that when they are talking up the economy, and talking to small businesses. However, as I will continue to point out, throughout this legislation employers are regarded as the bogey. In a media release at the time this legislation was introduced, the minister said that only a few employers were unscrupulous. I am not sure whether he used the word "unscrupulous", but he did say that there were only a few. If this is so, why use a sledgehammer to crack a few nuts? The Government is increasing the level of bureaucracy. The flaw in the Government's argument is that, although this legislation recognises that many young people did not fully understand the implications of workplace agreements, it brought into this House legislation that implies that young people, at the age of 16, would fully understand the implications of entering into a homosexual relationship. I absolutely dispute that a person of that age would fully understand those implications. Dealing with workplace agreements would have fewer implications for the health and body of a young person than would entering into a homosexual relationship.

Mr BOARD: I support the amendment. I understand that the Minister for Electoral Affairs and the Minister for Youth are looking at the issue of lowering the voting age in Western Australia to 17 or even 16. Does the minister support that measure; and, if so, does he see an inconsistency with the provisions in this legislation? In this legislation the Government is saying that young people below the age of 18 are not capable of signing an EEA, and yet it considers that they may be capable of electing the Government of this State.

Mr KOBELKE: The member for Murdoch has invited me to go outside standing orders. It is not for me to comment on an inquiry into a totally different matter.

Mr Board: Do you support it?

Mr KOBELKE: Whether I support lowering the voting age is irrelevant to this Bill. It is appropriate to consider whether that measure has implications for this clause. I do not think that it has, because, as I have already indicated, people under the age of 18 can enter into a contract of employment. However, the Government is providing an extra check if they enter into an individual contract.

Mrs Edwardes: According to proposed section 97UM, a signature of the guardian is required, and that signature must be witnessed. That is three checks, not two.

Mr KOBELKE: Once the agreement is signed, the signatures are simply witnessed.

Mr Board: Does the witness need a witness?

Mr KOBELKE: I have answered the member for Murdoch. I will return to the points made by the member for Kingsley. In some of these areas, employers wish to make sure of a level playing field. I often attend functions with employers and small business people, many of whom are upset by these issues because of the fear campaign, but it is amazing that in every case someone approaches me and tells me to keep on with it, because he wants a level playing field. This is not just for their children, because it will also mean that their businesses will not be undermined by the very small number who seek to lower standards. They want everyone to play by the same rules.

Mrs Edwardes: Even members of the cleaning industry, who might support that position, think that this legislation stinks. In a large numbers of areas, employers do not like it.

Mr KOBELKE: They are certainly not using the words the member for Kingsley is using, but they strongly support certain elements of the legislation. The Government believes that this proposed section is simply a reasonable check and balance.

Mr BOARD: The minister did not answer my question. He indicated that, in this instance, extra protection was being added for young people because they were acting individually, and therefore needed support in signing an EEA; in other words, it had to be a check and balance. I understand the Government may be seriously considering lowering the voting age; I believe it is Labor Party policy. Young people vote individually, not collectively, and they make an individual decision. In line with the Government's policy in this legislation, those young people should have to sign off on their intention to vote and have some other person approve the way they vote. It is a total backflip in the Government's attitude, and this seems to be a clause more about coercion and trying to stop young people from signing individual agreements, in favour of staying within the award.

Mr GRYLLS: I refer the minister to my original question about the claim in his second reading speech that in some situations young people sign workplace agreements without understanding the full implications. From his personal experience, can the minister explain what those situations were?

Mr KOBELKE: There is evidence that more young people than older people are exploited under workplace agreements. Because of all the checks and balances provided in this legislation, such as the no-disadvantage test, I do not see a carryover of this problem. It may be a young person's first job, or that person may not have been long in the work force before moving to another job. The simple fact of getting a job may blind people to the conditions under which they are being employed. If they are employed under an award, or a negotiated enterprise bargaining agreement, it is standard, and they do not have a point to argue about the conditions involved. They are not experienced, however, and all the Government is providing for is that, when they sign individual contracts, they can seek advice from a parent or guardian, so that they have at least checked off the conditions of employment.

Mrs EDWARDES: The issue the member for Merredin raised is very important and relates to the employment of young people. The 15 to 19-year-old age group has always had the highest level of unemployment, and the latest statistics show that is still the case. In February, that category experienced unemployment of 23 per cent. Youth unemployment in Western Australia declined markedly under our Government, and went from being the highest to the lowest in Australia. However, unemployment in that 15 to 19-year-old age group was still significant. This proposed section will create an unnecessary level of bureaucracy and more paperwork. Young people will have fewer opportunities to get work. Why does the minister feel that it is necessary to not only require the signature of a guardian or independent adult, but also have that signature witnessed? Why go to that extra step? I think it is an insult, as would many other people, especially as other safeguards will be in place, such as the no-disadvantage test and the 14-day cooling-off period before registration. The Bill will provide so much bureaucracy that, in the long run, EEAs will not be very popular, and that unpopularity will be greatest in the 15 to 19-year-old age group.

I suggest that the minister remove proposed subsection (3), which prescribes that the signature of an adult must be witnessed. I do not believe it is necessary. It will be an extra requirement that will be seen as an insult by everyone involved in entering into an employer-employee agreement.

Mr BOARD: This issue, about the opportunities young people will have to gain employment and how they will be employed, is fundamental to the changes that will take place. My belief is that this will further intensify the major problems surrounding the employment of young people in Western Australia. The reason this State went from having the highest youth unemployment in Australia to having the lowest is that we introduced flexibility into the system and gave employers the opportunity to negotiate job creation directly with young people. I have no doubt that many thousands of jobs were created as a result of the ability of young people to enter into workplace agreements. I know, as the minister knows, that there have been some cowboy and renegade employers, as there have been some cowboy and renegade unions. Some employers have done the wrong thing by young people. I think of those that offer young people an unpaid trial for a day or two under the guise of a job interview, only to rotate those positions over a number of young people. Those employers are receiving free labour while exploiting young 15 and 16-year-olds who are energetic about getting their first job. I would like to see that practice prohibited. Some people, and some unions, do the right thing. Many employers, particularly small employers, have battled hard to create job opportunities for young people. They cannot afford time-and-a-half or double-time rates, so they use workplace agreements to provide opportunities for thousands of young people, particularly school, university and technical and further education students. They also provide opportunities for other young people who want second jobs to subsidise their income. Those people have found their way into the work force because the flexibility of the system has allowed them to negotiate. We fear that this proposed section will discourage young people from taking up such agreements and the flexibility they offer, resulting in the creation of fewer jobs and opportunities for young people. We are not about trying to exploit young people. We are worried about the cessation of the jobs that were created through the flexibility of our system.

Mr BARNETT: I make a brief comment to support the member for Kingsley. Proposed section 97UM(3) is superfluous. I wonder at the motivation for such a provision. It is a reality of the employment economy that there has been a rapid growth of part-time and casual jobs, which tend to be filled by a high proportion of young employees. It is a fact that the union movement has always resisted what it describes as the casualisation of the work force. It has always said it wants more full-time jobs. That would be in the unions' interest. Full-time employees are more likely than part-time or casual employees to be union members. A casual or part-time job is the first working experience for many young people. This proposed section adds another piece of bureaucracy or, more importantly from the point of view of the unions and the minister, another barrier to people entering

into any individual employment contract. The proposed section represents a barrier to casual or part-time employment and to young people getting jobs. There is no doubt that despite all its rhetoric, this Government does not want the emergence of employment opportunities that involve casual, part-time, weekend or night-time work. For some strange ideological reason, it does not want young people to have their first job experience.

Mr GRYLLS: I support the member for Kingsley's comments on proposed subsection (3). The provision, with the aim of providing protection to those people aged under 18 years, sounds fine in principle. However, when this legislation enters the real world, we will see only a further impediment to employment.

Mr KOBELKE: We will not support the amendment moved by the member for Merredin. However, there is particular opposition to proposed subsection (3) and I accept that it is an impediment. I am happy to allow an amendment to that. We have procedural problems. We will be recommitting certain clauses at a later stage because of a technical oversight. I suggested to the member for Kingsley behind that Chair that if she puts an amendment for the deletion of proposed section 97UM(3) on the Notice Paper, she can move it during the recommittal. We will not support the deletion of proposed section 97UM.

Amendment put and negatived.

Mrs EDWARDES: I thank the minister for his recognition of our points, particularly those relating to the overkill that would be provided through the requirement of an additional signature for the registration of an employer-employee agreement. Accordingly, I will draft an amendment to delete proposed section 97UM(3), and we will deal with that when the Bill is recommitted.

Mr GRYLLS: Will the minister outline the meaning of proposed section 97UN? It is quite difficult to understand and I would like a further explanation.

Mr KOBELKE: I will comment generally and then come back to specifics. One of the attractions to some employers of workplace agreements is that the dispute resolution procedure remains totally remote from the Industrial Relations Commission. Some people have a strong view that there should be no involvement by third parties. They regard the Industrial Relations Commission as a third party, and they do not wish to resolve their disputes in the commission. We are providing something similar, but not identical, with employer-employee agreements; that is, employers can establish EEAs that provide that a dispute will not be taken to the commission unless that is written into the agreement. The two exceptions are unfair dismissal cases, which can go to the commission, and failure to follow the procedures for dispute resolution in the EEA. If the EEA is designed to sit totally apart from the commission, it will do so with those two exceptions. The Bill requires that, at registration of the EEA, certain standards of dispute resolution be contained in the EEA, and a person may not have recourse to the commission to resolve the problem. We are setting out the requirement that before the EEA can be registered it must contain dispute resolution procedures. The member for Merredin may have specific questions arising from that overview.

Mrs EDWARDES: What is the minister's intent in using the words "any question, dispute or difficulty"? The words "any question" and "difficulty" in particular are not in common usage in a dispute resolution clause.

Mr KOBELKE: We are trying to make this a catch-all provision. We are basically leaving it to the employer who designs the EEA to configure the dispute resolution process. This provides that the employer cannot say that only certain things can be resolved. An easy way to cover all possibilities would be for the dispute resolution procedure in large part or in total to refer the matter to the commission, which would reduce the dispute resolution procedure in the EEA to a couple of lines. However, if employers decide when designing the EEA that they wish to stay out of the commission, the onus is on them to set out somewhat more fully the dispute resolution procedures. However, they must cover any potential dispute that arises. I still hope that can be done in a couple of pages, so the clause is reasonably short. However, employers cannot preclude a range of potential problems from the dispute resolution process and say they have no way of dealing with those. We are trying to cover the field with the words "any question, dispute or difficulty". We are saying that employers must allow for all those possibilities. That does not mean the EEA would provide lengthy dispute resolution procedures; it means employers cannot exclude certain issues that might arise.

Mrs EDWARDES: The minister has said on a couple of occasions that this could apply to potential disputes. Is the minister implying that rumour and innuendo are likely to be the subject of dispute resolution procedures, thus requiring employers to be involved in the expensive exercise of arbitration? For example, a dispute may not be specified in the interpretation clauses of the agreement but perhaps may involve a rumour that the business will be transferred to another site or be closing down, or any of the other types of matters that will not be incorporated into the EEA but could be the subject of any potential dispute action.

Mr KOBELKE: I cannot answer in detail the hypothetical cases raised by the member. The member need not worry too much because the wording is similar to that in section 21 of the Workplace Agreements Act, which is headed "Agreement must provide for resolution of certain disputes" and contains provisions for dealing with "any question or dispute". The only additional word is "difficulty".

Mrs EDWARDES: That highlights the difficulty. The concern of the business community is that this is an expensive exercise. I will get onto the cost issue shortly. I see potential problems in attempting to implement the Government's policy. The Government is trying to provide a dispute resolution clause that, essentially, will cover anything that arises out of or in the course of employment. That will encompass past, present and future disputes; it does not limit disputes to the definition contained in words on a page of the agreement. Potentially it will encompass disputes about relationships between people that are outside the words on a page of the agreement. This broad approach could increase the level of disputation and the number of arbitration cases, which will be a cost to everybody.

Mr GRYLLS: I move -

> Page 14, line 6 - To delete "any question," and substitute "a".

The broad approach in this proposed section will cause a lot of problems for industry and employers. Although the National Party agrees with the concept of a dispute resolution process, disputes and difficulties should be resolved in a less formal manner with the employer. This broad-brush approach will open a Pandora's box of problems.

Mr KOBELKE: I sincerely suggest members opposite are jumping at shadows. The words "any question" have been in the Workplace Agreements Act for some time. This is about any question or dispute and difficulty that arises in the course of employment. It is not about what "may" arise. Let us separate the dispute resolution procedures in the EEA from the provisions in the Workplace Agreements Act. Parties to an EEA must go to the agreement for the procedure to resolve a dispute. The document may say that Uncle Tom Cobbly is to be consulted. The Bill leaves it open for the employer to design the procedures. It is simply providing there must be some method of dealing with dispute resolution. Normally the first recourse is that the matter be put to the employer. If the parties wish, there may be some method of consultation or it may go to a mediator or an arbitrator. It is up to the employer to design the procedure. The Bill provides that there must be a method for dealing with disputes for good workplace relations. Further, proposed section 97UN(4) states that the regulations may prescribe model provisions as a guide to the kind of provisions that may be inserted in the EEA for the purposes of subsection (1). Proposed subsection (5) states that an EEA that sets outs the model provisions in the way provided for by the regulations is to be taken to comply with subsection (1). If the employer has problems and does not want to get involved in a dispute, I am sure the Chamber of Commerce and Industry or other employer groups will design the provisions, and the commission can design them as well. They could be standard provisions registered with the Industrial Relations Commission. A model of one or five pages, which might suit parties, could be taken off the shelf and included in the EEA. Proposed section 97UN(2) will meet the requirements of proposed subsection (1) by a prescribed model from that which would be available from the Industrial Relations Commission as set out in proposed subsections (4) and (5). Alternatively, people could design models as part of their business. They could then have a set that was acceptable to an employer.

Mrs EDWARDES: We have received an explanation from the minister of the purpose of this proposed section. It will deal with anything that arises from past and future relationships, not just dispute resolutions that arise over the interpretation of the EEA. The Opposition wanted to clarify with the minister the scope of the proposed dispute resolution section. We were not seeking an explanation of the model provisions, which we realise are in proposed sections that have been added since the draft legislation was circulated. The model provisions will give some guidance, particularly to small business players, of what should be incorporated in an EEA. The more the Industrial Relations Commission is involved, the more likely it is that small businesses will save costs. The Opposition is concerned that a dispute might be about something that arises from a relationship, not just from the agreement. The minister used the words "jumping at shadows". That is precisely what this proposed subsection has the potential to cause employees to do. As a result, an employer could incur unnecessary costs.

Mr AINSWORTH: The National Party is concerned to ensure that the Bill contains no unnecessary complications that detract from the ability of either the employer or the employee to reach a satisfactory resolution to issues that arise in the workplace. I am concerned about the words, "An EEA must include provisions for the resolution of any question". The proposed section is headed "EEA must provide for resolution of disputes". A number of issues could arise in the workplace that are not disputes. If such an issue were not satisfactorily resolved or the discussions that arose from it did not resolve the issue for the employee, the issue could become a dispute. However, it will not automatically fall into that category at the initial inquiry. Perhaps

the inclusion of that aspect was an error that occurred when the coalition Government drafted the workplace agreement legislation. It is, nonetheless, an error in this legislation and it should, therefore, be removed.

Amendment put and negatived.

Mrs EDWARDES: Proposed subsection (2) indicates that EEA dispute provisions cannot deal with a certain level of jurisdiction. It provides that an EEA cannot confer jurisdiction on an arbitrator, including the Western Australian Industrial Relations Commission acting under a provision mentioned in proposed section 97UP. That section allows for the appointment of the Industrial Relations Commission as the industrial authority. Jurisdiction cannot be conferred to enforce an EEA by making an order or determination that an industrial magistrate's court may make under section 83 of the Industrial Relations Act, which will shortly be amended. It will be amended to expand the scope of an industrial magistrate's jurisdiction. Will the minister please explain what is likely to be the interaction?

Mr KOBELKE: Proposed section 97UN(2) seeks to ensure that no overlap occurs. A person will be unable to appoint an arbiter to enforce the conditions of an EEA by making an order or determination that an industrial magistrate's court may make under section 83.

Mrs Edwardes: Does it mean that if there is an order by the industrial magistrate, a person cannot go back to the dispute resolution provisions under the EEA to enforce that industrial magistrate's order?

Mr KOBELKE: No. The Bill provides that if an arbitrator made a determination, and one of the parties did not wish to comply with that, enforcement must be through an industrial magistrate's court.

Mrs Edwardes: It is broader than that.

Mr KOBELKE: This links with other parts of the Bill. My advice is that if a dispute were referred to the Industrial Relations Commission, to which reference is made further on in the Bill, enforcement by an industrial magistrate's court of the arbitrator's decision would be automatic.

Mrs Edwardes: Could an arbitrator's decision be appealed?

Mr KOBELKE: No. If the commission were the arbitrator, it would flow through to the magistrate's court for enforcement. If an arbitrator were set up by the EEA, but the arbitrator was not the commission, the determination of the arbitrator could be entered into an industrial magistrate's court if that were so decided. That would be an additional step. The parties could request that the arbitrator lodge the dispute with an industrial magistrate's court for enforcement.

Mrs EDWARDES: I do not think the proposed subsection provides for that. It provides that EEA dispute provisions cannot confer jurisdiction on an arbitrator, including the Industrial Relations Commission. The Bill deals with them in exactly the same way.

Mr Kobelke: Are you referring to proposed section 97UP?

Mrs EDWARDES: Yes. That proposed section provides that the commission could be appointed as an arbitrator.

Mr KOBELKE: The distinction is between enforcement of the instrument, which would then go before an industrial magistrate's court. We are making this more complex than it needs to be.

Mrs Edwardes: You should have given us those decent explanatory memorandums.

Mr KOBELKE: I have three people with me to provide advice. If the arbitrator makes the decision and the parties seek to comply with it, there is no problem. However, there is a problem when there is an issue of compliance. This provision sorts out the jurisdictional issues and how that problem can be taken forward.

Mrs EDWARDES: The proposed new section does not say that. Sections other than section 83 of the Industrial Relations Act might support that. However, section 83 relates to a person contravening or failing to comply with the provision of an instrument, and that could be an employer-employee agreement. An application for the enforcement of the instrument shall not then be made, but provisions deal with a contravention or failure to comply. There is a gap in the legislation. Proposed new subsection 97UN(2) states -

> . . . dispute provisions cannot confer jurisdiction on an arbitrator, . .

Whoever it may be. It further states -

> . . . to enforce an EEA by making an order or determination that an industrial magistrate's court may make under section 83.

The arbitrator cannot make an order or determination that an Industrial Magistrate's Court can make; it is simple. Why did the minister not say that? An arbitrator cannot make an order or determination that an industrial magistrate's court can make under section 83, whoever the arbitrator may be. There is a gap between the orders that can be made by an arbitrator and those that can be made by an industrial magistrate's court and that gap is not covered in the legislation. That will be evident when we deal with section 83 of the Industrial Relations Act, unless in the meantime we determine what EEAs will be enforced by the industrial magistrate. The arbitrator cannot make those orders. We do not know which orders the industrial magistrate can make; nor do we know which orders or determinations he can enforce. Under proposed section 97UN(2), he certainly cannot enforce one made by the arbitrator. There is a major flaw and gap in these provisions.

Mr KOBELKE: My advice is that this provision was put in at a latter stage on the technical advice that it clarified matters. I hope it does for the practitioners as it certainly does not for me. I accepted, by nodding, what the member for Kingsley said, but I am not sure if that makes it clear for her.

Mrs Edwardes: I now understand this proposed section. However, section 83 of the Industrial Relations Act, as amended, will not clarify the link between the EEA, the orders and the determinations that the industrial magistrate can enforce.

Mr KOBELKE: Perhaps that can be clarified when we deal with section 83 of the Act.

Mr GRYLLS: We have another amendment that affects proposed section 97UO. Can that be dealt with now?

Mr Kobelke: We defeated that amendment earlier. Does the member need to move it, as it is subsequent to the amendment that was defeated?

Mr GRYLLS: This amendment is about -

Mr Kobelke: It is to the same effect as the one that has already been defeated. The member has the right to move it, but we have debated that issue and defeated it. The amendment applies to the same issue, but it is in a slightly different place.

Mr GRYLLS: I will move it anyway. On behalf of the member for Avon, I move -

> Page 14, lines 26 and 27 - To delete "any question," and substitute "a".

The provision is left too open when it indicates referring "any question" to a single arbitrator.

Mr AINSWORTH: The difference between the amendments as they apply to the two proposed sections is evident when considering the provisions of proposed section 97UO, subsection (1) of which states -

> EEA dispute provisions must . . .
>
> (a) provide for -
>
> (i) the referral to a single arbitrator of any question, dispute or difficulty . . .

I presume that means that the dispute provisions would initially allow for the dispute between the employer and the employee to be resolved without reference to an arbitrator -

Mr Kobelke: Proposed subsection 2(a) under this section covers that point.

Mr AINSWORTH: However, given that that process does not resolve the dispute, the second step is then reached; that is, not just the ability to refer the matter, but the direction that the provision must include the opportunity for a single arbitrator to be referred "any question, dispute or difficulty". That is why the words "any question" are not necessary. If, as we have already agreed, the previous proposed section allows for the employee to raise with his employer "any question" as part of the dispute resolution process that cannot be resolved, then it is no longer a question but a dispute. Therefore, under proposed section 97UO, a dispute or difficulty that arose because of a question that could not be resolved under the provisions of the previous proposed section would be referred to a single arbitrator. It is not necessary to have the words "any question" in this proposed section. However, if they are included, it will then allow a question that may not have had the initial resolution process applied to it to go to the single arbitrator without it being dealt with in the workplace between the employer and the employee. For that reason we believe the words are unnecessary.

Mr KOBELKE: As already indicated, the word "question" is in the workplace agreements legislation; it is not new. The concern of the member is not well founded. Proposed section 97UO(2)(a) requires -

> . . . the parties to confer together and make a genuine attempt to settle any question, dispute or difficulty that arises out of or in the course of the employment;

The parties should first try to settle the dispute. The phrase "question, dispute or difficulty" is used on several occasions throughout this division and means that we want disputes to be resolved. We do not want them festering. An upset employee may want to know if his conditions provide him with leave loading. There may be a dispute over the matter and, with the holidays two months away, it must be resolved. The two parties should settle the dispute as soon as possible. We do not want a situation in which the procedures do not allow for it to be settled. If the matter cannot be resolved in a direct way between the employer and the employee, it may blow up into a bigger problem that is counterproductive to a harmonious workplace. We simply want to allow for the matter to be dealt with.

Mrs EDWARDES: Leaving the words in would widen the scope of the matters that could be referred to an arbitrator. I will not repeat the points I made previously. However, in some of the subsequent provisions relating to the production of documents and the like by the arbitrator, the scope of the phrase "question, difficulty or dispute" is wide and may even be outside the terms and conditions of the EEA. Does that mean small businesses may be required to provide sensitive commercial documents on issues; for example, whether the small business intends to shift its place of work - the location of its site - or whether it will be closing down?

Mr KOBELKE: The employer has the first choice of arbitrator in setting up the agreement.

Mrs EDWARDES: That is not the issue. It refers to the breadth of the dispute, the question and/or difficulty contained in the dispute resolution clause and the consequences that flow from that. It does not matter who is the arbitrator. Are we talking about partisan appointments?

Mr KOBELKE: If there is anything partisan, it will be because the employer makes the first call.

Mrs Edwardes: There is an agreement.

Mr KOBELKE: Yes, they must agree. However, these provisions will be drawn up by the employer, and he or she will have an idea about who will be a fair arbitrator. Obviously, there must be an agreement with the employee, but the employer has the ability to set it up.

We are coming at this from different directions. The Government assumed that if we did not have pervasive dispute resolution procedures, we would have a problem when an issue cropped up that could not be dealt with. That would be likely to lead to major problems in the workplace. These problems should be resolved between the employer and the employee. However, if they are not resolved, all matters should be open to resolution using a process. We do not want the resolution process to have a gap that produces a catch-22 situation; that is, the problem cannot be resolved because no means exist to do so.

Mrs EDWARDES: The arbitrator's powers are extensive. However, the basis upon which he must hear and determine the issue is any question, dispute or difficulty. My difficulty is the breadth of information that could be referred to an arbitrator and the powers that flow from that. Would that extend to the production of documents containing commercially sensitive information?

Mr KOBELKE: Generally, no; but I cannot say that categorically. If a person has his employment conditions wrapped up with other information that is commercially confidential, there could be an issue.

Mrs EDWARDES: A business might close down and the case might be taken to an arbitrator, who could ask the employer to produce documents and answer questions. That might extend to commercially sensitive information.

Mr KOBELKE: It must be a difficulty that arises out of or in the course of the employment.

Mrs Edwardes: If a business were about to close down and people were about to lose their jobs, would that not constitute a question, dispute or difficulty that arose out of the employment?

Mr KOBELKE: The issue is the extent to which that could be addressed without going through the company's books.

Mrs Edwardes: There is a real possibility that that will be the case.

Mr KOBELKE: There must be an issue of relevance to the difficulty or dispute that has arisen. The powers of the arbitrator are the same as those in the Workplace Agreements Act.

Mrs EDWARDES: I am talking about the provisions before us and their breadth. The minister has included the word "difficulty" without providing an explanation of its meaning. There does not appear to be anything in this legislation that would prevent the employee raising that issue before an arbitrator or the arbitrator requiring the production of commercially sensitive information.

Mr KOBELKE: In the normal course of events, I do not believe such documents would be required. However, if a case involved the way the records were kept, the matters the subject of the dispute could cross into that area. I cannot guarantee that that information would not be required, but the Government does not intend the legislation to extend to matters relating to the commercial running of an enterprise.

Mrs Edwardes: I assume the minister will support my amendment.

Amendment put and negatived.

Mrs EDWARDES: Proposed section 97UO provides for the appointment of an arbitrator, naming of the arbitrator and, if desired, any alternative arbitrator and so on. Proposed subsection (2) requires the parties to genuinely attempt to settle any dispute and then comply with the requirements. Who does the referral to the arbitrator?

Mr KOBELKE: That is left to the EEA. Proposed subsection (1)(b)(ii) refers to the manner in which the referral will be made. As the member has stated, the provision refers to the nomination of the arbitrator or an alternative arbitrator. The manner must also be specified.

Mrs EDWARDES: Who is the "arbitrator"? Proposed section 97UP provides that it can be the Industrial Relations Commission. Who can be appointed?

Mr KOBELKE: There are no restrictions.

Mrs Edwardes: It could be any layperson, friend or colleague - any individual.

Mr KOBELKE: As we have already discussed, it is up to the employer, as the entity establishing the EEA, to suggest the appointment, which must then be accepted by the employee signing the agreement. Other than the procedures for the establishment, there is no restriction or required qualification.

Mrs EDWARDES: Will the model provisions suggest who might be considered for appointment as an arbitrator?

Mr KOBELKE: The Government does not intend to do that. Classes of people may be suggested.

Mrs Edwardes: Such as?

Mr KOBELKE: Depending on the site, it might be the local police officer in a country town, or whatever. It would cover only classes of people who may be appropriate in given circumstances. It is not the Government's intention to provide a specific list of names.

Mrs EDWARDES: I refer the minister to proposed section 97UO(2)(d). This is different from the provision contained in the Bill provided to the parties. The previous version caused some concern. It specified how any costs of an arbitration would be borne, with the proviso that an employee could not be made liable for more than one-half of those costs. The costs could be split up to 50-50, but not necessarily 50-50. The provision now states that an employee cannot be made liable for more than the share of those costs that is prescribed in the regulations when the EEA is signed. What is the difference? Essentially, this provision is the same.

Mr KOBELKE: The Government adopted this model because the previous version caused some concern. If the issues raised were covered by this legislation, it would have been too lengthy. It is much easier to cover those issues in regulations and, if problems arise, change the regulations. That is why the detail will be included in regulations. As the member has indicated, the regulations that apply at the time of registration will apply to what appears in the EEA.

Mrs Edwardes: In fact, you are going to prescribe a percentage under the regulations. Is that your intention?

Mr KOBELKE: We look for the simplest system; it may be a simple cap or it may be a percentage. We might say that the amount will be up to average weekly earnings. That would give a straight dollar amount from the figures of the Australian Bureau of Statistics and could be upgraded on an annual basis. We have not determined finally what it will be. However, we included it in this way to get over those complexities and make it simple.

Mrs EDWARDES: I do not envy the minister in coming up with a regulation that will be seen to be fair and reasonable, particularly if he is going to look at average weekly earnings and in light of how the arbitration is likely to be conducted. Arbitration for a couple of hours is a simple matter. However, if arbitration flows on over a couple of days, there will be a problem in setting a figure such as an average weekly earning. I would have thought that a figure relating the percentage to the cost would be far easier to implement.

From the Government's point of view, the issue is how it can be fair to the employee. The reason I say that is that the dispute resolution provisions etc have worked essentially for the employee - they can work for both

employer and employee - to determine any issue that arises out of or in the course of the employee's employment. Obviously, the minister does not wish to make the share of the cost so great that it will prevent people from taking a genuine dispute to arbitration. Also, it puts in place a mechanism that will prevent frivolous disputes being taken to arbitration. Was the minister looking at providing any public funding for employees to take those disputes to arbitration?

Mr KOBELKE: First, I agree with the member that the cost must be reasonable. A small cost also can be a driving factor in getting agreement under proposed subsection (2)(a); that is, the parties decide that they would rather not pay someone and sort it out themselves. That is a good thing. However, it must be a reasonable cost. If the parties opt to stay outside the Western Australian Industrial Relations Commission, the employer will probably have to share a bigger percentage of the cost if the arbitration becomes lengthy and results in a fairly large cost. I do not think we can do anything other than that. If the parties use the Western Australian Industrial Relations Commission, the public will pick up most of the cost. However, if the employer decides that he wishes to stay away from so-called third parties, and the arbitration was drawn out and a considerable cost was involved, there would be a limit on the amount the employee would have to pay and the employer would pick up the extra cost. That would be a risk that the employer would take when designing the dispute resolution procedures on the basis that the employer wishes to stay remote from the commission, which is publicly funded and therefore reduces the costs to the employer.

Mrs Edwardes: The issue of the regulations prescribing the share must be included in the dispute resolution provision in the employer-employee agreement. It is not just a model. Are you anticipating that employers and employees can change that, or are you going to require them to put that prescription in place?

Mr KOBELKE: The provision of this must be done by regulation. I do not think I can give the member an exact answer to that question at the current time. I say that to qualify what I am about to say. Currently my general view - it might be changed somewhat in light of advice I receive about the drafting of regulations - is that the employee would be required to meet up to half the cost of a set amount, which might be a week's wages or something like that. Beyond that, we would not expect the employee to keep meeting the cost if the dispute went on and on. I am not stuck to those amounts, but we cannot leave it open for the employee to meet half the costs if the dispute drags on and cost thousands of dollars; that would be well beyond what would be to the benefit of the employee. We must look at both those aspects; that is, apportioning it in a fair and reasonable way for small cases and looking at a limit on the amount an employee might have to pay in the case that the dispute dragged on. The way that I read it and the way that the regulations prescribe it might be different in light of the advice that I receive. There would be a ready reckoner or a set of tables. Then, if the parties opted for a certain model when the EEA is registered, it could be entered into the EEA as a fixed amount so that the EEA was easy for parties to read and so that they knew their commitments and would not have to go back to complex sets of tables that might be used at the time to counterbalance these things. In drawing it up, it might be more complex. However, once it has been established, hopefully a fairly simple dollar amount will be set or a very simple table will apply, which will be incorporated into the EEA to keep it simple.

Mrs EDWARDES: I recognise the issue that the minister has raised, but he is presuming that the employer would be the one likely to drag out the arbitration. Equally, the employee could drag it out. There is a real potential for crippling a small business - the mums and dads of this country. We have seen that with unfair dismissal cases. I am sure the minister is well aware of those cases as well. I implore the minister to think about fair and balanced regulations - he has used those words on many occasions when discussing this legislation. We may not always agree that he is achieving the fairness and the level of balance, but in this instance, although I recognise that a number of key issues need to be looked at in the development of those regulations, the minister should not make the presumption that it is always the employer who is the baddie. That is not always the case. We should not provide for a big sledgehammer with which to crack little nuts, but we should provide for easier facilitation. That would include cost sharing as well.

Mr GRYLLS: I support the member for Kingsley on this issue. This is an important issue for smaller country businesses for exactly that reason. They are extremely scared that arbitration could be used and dragged out against them and could leave them in dire financial straits.

Mrs EDWARDES: I turn now to proposed section 97UP, which we have already referred to in this debate. It provides that the industrial authority may be specified as the arbitrator. The minister has identified one key advantage in appointing the Western Australian Industrial Relations Commission as the arbitrator. He might further point out some of the other advantages of appointing the commission as the arbitrator. One of those advantages is reduced cost because the commission is a publicly funded organisation. I take it that the minister will not include those referrals for arbitration and then put in place the user-pays principle.

Mr KOBELKE: Obviously, regulations allow for the setting of fees. I am advised that there is no special regulation power - I do not envisage special regulations - which sets a particular level of fees because of the role of the commission in resolving disputes for EEAs. There will be filing fees etc. However, it is not the current intention to have additional fees for cost recovery on the cost of arbitration.

Division put and passed.

Division 4: Commencement, duration and variation -

Mrs EDWARDES: It becomes a little confusing when dealing with different divisions. Proposed section 97UQ deals with the commencement of a new EEA employee, and states -

> (1) An EEA made with a new employee may take effect before it is registered under Division 5 . . .

That is different from an existing employee. Will the minister highlight the philosophy behind that proposed subsection, and I will then move on to some of the other questions?

Mr KOBELKE: With an existing employee a longer period is required for notice. A new employee can start straightaway, prior to registration. We want to make the system work so that people can be taken on straightaway when there is a real need. The offer of employment can be taken up and the employer can then move to the terms and conditions of that employment. In another section there is a choice between the award and the EEA. That question becomes secondary to the contract of employment and underpins the basis of that contract, but the person has a job. The person can be taken on. The employer-employee agreement then has to be negotiated, and there are time lines on different aspects of that, but it is a different procedure from that for an employee who is already in the job. The time lines are different in a number of respects.

Mrs EDWARDES: The proposed section proceeds to mention section 97UZ, which will automatically terminate the EEA if it is not lodged for registration in accordance with the provisions in that section. Why has the minister incorporated this in proposed section 97UQ? He did not need to do so. Proposed subsection (2) states -

> An EEA referred to in subsection (1) takes effect on -
>
> (a) the day on which the employment commences; or
>
> (b) a later day provided for in the EEA.

Why did the minister incorporate the reference to termination?

Mr KOBELKE: A key aspect of this legislation is to flag to the employer that agreement must be reached within the 21 days, otherwise the EEA is terminated. The member will be aware that a large number of workplace agreements are currently not registered and we have no idea whether they fulfil the minimum requirements or not. We want to ensure that these EEAs are registered and that people are not operating under the misapprehension that something is a properly constituted and registered EEA when it is not. That could result in problems involving status, claims for underpayment of wages and those sorts of issues. We need to ensure the EEA is registered, and it is clearly set out in the third line that automatic termination will occur if it is not lodged for registration as mentioned, which is 21 days.

Mr BOARD: It might be an appropriate time to ask a question about the commencement of the EEA. I raised a concern previously about some employers who have exploited young people, particularly those who have been on trial in retail establishments or restaurants and whose employment has been terminated after the trial. The EEA may come into effect. Is there a requirement for an employer to meet the current conditions of the EEA prior to the EEA coming into effect, or can the employer be required to meet separate conditions of employment prior to the EEA coming into effect? If so, what are the limitations?

Mr Kobelke: If the offer of employment and the EEA are the offered terms, the employer would start paying those terms from the starting date.

Mr BOARD: People do not. The point I raise is: when does employment start, on what basis can employers trial young people legitimately, and when does that become illegitimate?

Mr Kobelke: It does not change from what it is now. They start from the start date of the contract of employment. Trial work, as I understand it, is not a contract of employment. I understand there is no limit, and this proposal does not place a limit on the period of a work trial.

Mr BOARD: It becomes a verbal agreement between the employer and the person being trialled?

Mr Kobelke: Yes. That is how it is now. There are legal difficulties when people are doing the job, and the employer tells them they are just on trial. We have those problems now, and people seek enforcement. This does not radically change that arrangement. People start work from the date designated in their contract of employment. There can be an issue about their being worked when they are told they are not being worked. We have that problem now and it will have to be resolved.

Mr JOHNSON: The same issue has been referred to me, particularly by young people in my electorate. They have been put on trial for a day, they have given a day's work to an employer, and at the end of the day the employer has said, "Thanks very much, you are not really up to standard." They have not been paid a zack. I am sure that is totally unacceptable to the minister, as it is to me.

Mr Marlborough: What did you do about that employer in your electorate?

Mr JOHNSON: I brought it to the attention of the minister of the day to try to resolve the issue. I do not want people to be disadvantaged by not being trialled. There is a genuine call for employers to use a trial period if they want to take on someone for a day or so to see whether they are intelligent enough to do the work required of them. However, they should be paid something. Conversely, we may have difficulties if we are to safeguard young employees who are on work experience. I have young people on work experience in my office from some of the local schools. They often cause more problems than the benefits they provide. I provide the employment only to give them the benefit of work experience. They do not provide me or my electorate staff with any benefit. However, I would not like to see that finish. I support my local schools when they have students they wish to send on work experience.

Mr Kobelke: The member raises valid issues. We are not attempting in this legislation to deal with those issues. They are problems currently. When this legislation goes through, the problems will still exist. We are not tackling those issues in this legislation.

Mr JOHNSON: It is my understanding that this legislation contains clauses that deem employees to have started work even before they have signed a registered contract.

Mr Kobelke: That is the case now. This does not change that aspect of employment or pre-employment.

Mr Board: It could.

Mr Kobelke: That is not our intention, and this legislation does not contain any clauses which enter into that area.

Mr JOHNSON: Does the minister not think it is incumbent upon him to safeguard those young people who have been taken advantage of by some unscrupulous employers? The Government has a classic opportunity to do just that during the consideration of this legislation. If the Government brought an amendment, it would be passed, whereas if the Opposition brought it, it would not; but this is one amendment that members on this side would support. Such an amendment would safeguard those young people. It would not be desirable for young people who have been taken on trial for a day, or even two or three days, and who do not meet the requirements of the employer, to be in a position to be able to say they have permanent employment, and cannot be dismissed except by the Industrial Relations Commission. However, if such a person is there on trial, and is working, he or she should be paid a day's money for a day's work.

Mr BOARD: The minister may be aware that some employers have really exploited this situation, particularly with school children and, to a degree, young people at university, who may be seeking a job for the first time. Obtaining part-time work is very competitive. Sometimes 100 or 200 applications may be received for one or two positions. It is an exciting prospect for those young people to be trialled in a job. However, they are vulnerable at that stage, and some employers have utilised that by trialling a different person every day for three weeks, with no intention at the outset of employing any of them. This is exploiting the vulnerability of young people. I struggled with this when it came to my attention when I was Minister for Youth in the previous Government. With this legislation before the Parliament, the time is right to consider whether this problem can be dealt with in this or any other area of the legislation. The Government should be addressing this issue. It is not right, and it is affecting young people.

Mr Marlborough interjected.

Mrs EDWARDES: I pick up on the points made by my colleagues. For the information of the member for Peel, the minister has already said it is not covered in this Bill, and is not intended to be covered in this Bill. The member for Peel should come in later in the debate, when the House is considering the no-disadvantage test.

The converse side of the argument is, what would stop a person on trial saying, when put off after a week, that he or she was expecting an EEA to be signed or registered, and then making a claim under proposed section 97V?

Mr KOBELKE: I will first address the comments of the members for Hillarys and Murdoch. The situations raised by those members are real ones, but the reason they are not addressed in this legislation is that they were not part of the Government's key election promise, to be dealt with first up. It is not as simple as the members have said, involving simply moving an amendment to this legislation. If it is not done right, it might restrict work experience arrangements. It needs to be thought through and discussed with all the players, including small business, to work out the best way of doing it. There is already a way of dealing with such a situation, because the labour relations inspectorate in the Department of Consumer and Employment Protection can investigate complaints about a particular employer. That pattern of behaviour can change the interpretation of what is happening. If only one or two people felt that they had been ripped off, it can be argued that perhaps it was just giving them work experience. If, however, an employer is doing it on a regular basis, the complaints can be taken up, and if the pattern of complaints indicate that the employer has been using the young people as employees, the basis exists for a claim to be lodged against that employer. It is not the most effective way of dealing with it, but a means exists to address the problem. What was the question of the member for Kingsley?

Mrs Edwardes: What would stop a person, having been taken on as a trial or for work experience, and then being put off after the first week, from taking action under proposed section 97V - "Recovery of money" - claiming that he or she was expecting an EEA to be put in place? This proposed section states that an EEA made with a new employee may take effect before it is registered; from the day on which the employment commences. What would prevent a worker, taken on as a trial, from taking action under that proposed section?

Mr KOBELKE: The member for Kingsley knows more than I do about the legal cases. As I was saying earlier, it comes back to the existence of a contract of employment. That is the issue that must be determined. Both parties would put their evidence, which may be simply verbal, or may involve witnesses or what was assented to in writing. On the basis of that, it can be established if a contract of employment existed, and if there is a basis for a claim. If it cannot be established that there was a contract of employment, there would be no claim. Proposed section 97V assumes that an EEA has been signed, but not yet registered. That is key evidence - if an EEA has been signed it would be clear evidence that a contract of employment existed, which would be the basis for making the claim.

Mrs EDWARDES: I will deal more with proposed section 97V when consideration reaches that point, but I will say that the case presented by the minister - that the EEA had not taken effect - is not accurate. I am putting forward the argument about a person on trial work, which was essentially the contract of employment, involving that person being given a week's work to see how it went, before an EEA is done. At the end of the week the employer says that it did not work out, and then that employee takes an action under proposed section 97V. As the minister said, it would turn on the evidence - whether there was sufficient information to support a genuine contract of employment requiring an EEA to be put in place from the day the employee started work. However, nothing would protect small employers from such actions being taken, and from incurring the costs of the action.

Mr GRYLLS: Will the minister quickly explain how a trial employee would work under an industrial agreement?

Mr KOBELKE: A trial employee does not have a contract of employment. The existing law does not cover such a person, and this legislation does not. If a person is just on a trial, to see how he or she likes the job, and if that person stays on for a few days, or an expectation is created, a contract of employment can be moved into, and one of the parties may contest that. That is when difficulties occur. That difficulty is less likely to exist here, because the Government is talking about EEAs. A whole range of pieces of paper must be signed, according to all these proposed sections. If all the processes are not concluded, how can it be handled? It could not be said that that person is on trial, because a whole process has been entered into, of offering the person an EEA, which was an offer of employment. This proposed section refers to a contract of employment. The area of trial employment is not picked up here, and is not intended to be.

Mr BOARD: Is the minister in a position to inform us what happens to trial employees' workers compensation and public liability while they are on the employer's premises?

Mr KOBELKE: I want to be helpful, but those issues are outside the Act.

Mr Board: We are saying that they should not be.

Mr KOBELKE: The member could have referred to those matters during the second reading debate, but not now. That is an existing situation that we are not seeking to change. The member raised a range of matters,

which are right and proper to raise, but they take us into an area that is outside the employer-employee agreements. The sections before the Chamber do not affect those matters. The member has raised genuine concerns and I am happy to indicate how we have addressed them; however, they do not relate to contract of employment and are not covered by these sections.

Mr BOARD: I raised the issue because either an EEA commences at the date of the agreement or a provision can be made for it to start before it is registered, which raises the spectre of what happens to employers before EEAs are registered. It is a legitimate issue of discussion and is an issue about which we are concerned.

Mr KOBELKE: That is not considered a trial because, under those circumstances, a person is offered a job. We are talking about the technical details of how that would be put together and what would underpin it. It does not cover anyone who is enticed to work on a trial or work experience basis.

Mr BOARD: I will not labour the point because the minister has said that it is not covered in this division and he does not intend to discuss the matter now. However, what constitutes an agreement before an EEA comes into effect by verbal arrangement? When do employees know they are employed? When do they find out that they are not employed on a trial basis?

Mr KOBELKE: The member for Kingsley is a lawyer, I am not. The member for Murdoch is asking me about contract law and I cannot give him a legal opinion. Common law contract has been around for hundreds of years -

Mr Board: I am not trying to trick you.

Mr KOBELKE: I know that. The question asked by the member concerns a complex area of law that goes beyond what we are dealing with under this division. However, there are accepted standards. Members read in the employment pages of newspapers about cases that change the interpretation slightly. Common law contract is a very active area of law. We are putting statutory individual contracts in place. Although it is a complex matter due to the number of pages it involves, an advantage is that the EEAs are likely to create a higher degree of certainty than do common law contracts, which are guided by that area of law.

Mrs Edwardes: The issue is that those two sections together can allow for an abuse.

Mr KOBELKE: We will refer to that section later. Members opposite are yet to convince me there is a problem.

Mrs EDWARDES: Why has the minister gone down this path? An employer-employee agreement could take effect on the day a new employee commenced employment. For a range of reasons, an existing employee might suddenly change his employment relationship to an EEA. For an existing employee, the EEA would not take effect until the day after it is registered, which could take months as he goes through the registration processes. After an agreement is signed, there is a 14-day cooling off period before it can be registered. Before that time, there is no time limit upon the registrar to make a decision about whether there are problems with the EEA, to notify the employer that he should consider making corrections to it and to follow up on those changes. We will deal with those sections when we get to them. However, the issue greatly impacts on this division because it does not take effect until the day after the EEA is registered, which could potentially be months away. That is a major problem for an existing employee. A later date could also be provided for in the EEA. We totally disagree with this clause. The legislation provides for inflexibility in the EEA process. For an EEA to not take effect for some considerable time puts uncertainty into an employment relationship.

What if an existing employee were already on a workplace agreement that expired under the transitional provisions and the EEA process had not been completed before that time? That workplace agreement might have expired prior to the proclamation of this legislation. We are not sure how that employee would be employed. The employee's employment could be subject to the contract of employment and those could be the terms that would be implied in the contract of employment. We will refer to the interpretations of those provisions later. What would happen to an employee already on an EEA that had expired, and whose employment negotiations had been ongoing during that time, but the expiration of the EEA had occurred before the signing of the agreement and the subsequent registration? This legislation would affect that employment relationship. That employee may, under subsequent provisions, have to go onto an award, or an employee may be on a contract of employment. What is the connection between the award and the conditions under the EEA under which he is to work if it is to convert into a contract of employment? It would be difficult to interpret that worker's provisions, particularly for small business people who do not have the same backgrounds that we have as legislators. Small business people might not be used to reading such documents. I regard those provisions as onerous to small business employees who cannot afford the type of advice they would necessarily need.

We have a major problem with the effect on the employment relationship. An employee with an existing agreement in place is paid under a particular provision. An employer and an employee might both want to move to an EEA that could not take effect for some time. Therefore, there would be a hiatus in that employment relationship. I suggest that an EEA should take effect immediately upon the signing of the agreement. That might occur subsequent to the previous employment relationship expiring, but at least it would give a greater level of certainty to the employer and the employee.

Mr AINSWORTH: I support the comments made by the member for Kingsley. An employee might want to move from an existing employment arrangement to an employer-employee agreement not because another employment contract has expired but because the employee had renegotiated with his employer better terms of employment that would take effect under the EEA.

If that were the case and there was then a significant delay, as outlined a minute ago, the employee would not take advantage of the improved conditions or wages written into the agreement until the day after that document had been registered. That would be quite detrimental to the employee. Although it might occur in a very small number of cases, it may be an incentive for the employer, having completed the negotiations, to delay the implementation until the last day because the employer would not be liable for the extra conditions until that time even though the agreement had been willingly entered into. It would be far preferable for the employer-employee agreement to take effect on the day it was signed. The fact that the official registration might take place some time later becomes irrelevant, but at least if the EEA took effect on the day it was signed, all the benefits enshrined in the EEA would be available to the employee from that day and not from some day down the track. For that reason, I suggest that this provision is detrimental to employees.

Mr KOBELKE: If the employer is able to plan well ahead for starting dates, I do not see any problem with putting the provision in place.

Mr Ainsworth: We are talking about existing employees.

Mr KOBELKE: I do not see what the problem is with existing employees. It is a matter of continuing the current arrangement. If the new EEA changes existing arrangements, that could be worked through the starting date. It seems that the system is quite flexible.

Mr Ainsworth: The point is that in some cases the new EEA gives the employee greater benefits.

Mr KOBELKE: Presumably if it is a new EEA, it will contain additional benefits.

Mr Ainsworth: The additional benefits will be enshrined in the details of the new EEA. The employee would not be able to take advantage of them until the day after the EEA was formally registered. In the case of a new employee, the agreement takes effect on the day that it is signed. That would be beneficial for an existing employee, and should not be a problem for the employer.

Mr KOBELKE: We are talking about industrial dispute contracts. In most cases we can assume that there is a good relationship between the employer and the employee. There should not be any problems in this area. If the registration is delayed, there will be no inhibition on the employer paying above the contract amount. The employer can do that, and there is no difficulty with it. If an extra $20 or some other allowance is to come into effect with the new EEA, and there is a delay of two weeks or whatever in registration, the employer is not constrained in the intervening pay period from applying that extra benefit.

Mr Ainsworth: I totally agree that a good number of employers would take that view. However, there may be cases in which that is not done. I cannot see any reason for delaying the day on which the benefits kick in. If a new agreement has been signed and includes certain extra benefits, why not put it into effect from day one?

Mr KOBELKE: It simply gives checks and balances in the case of the very small number that might have problems with registration. I will give an example of a non-award case. The minimum conditions would be those under the Act covering minimum conditions of employment. It may be that the existing contract that was signed a couple of years before is not a good example. It would be better to benchmark it from the award.

Mrs Edwardes: You are confused. You can imagine what the employer and employee will be like.

Mr KOBELKE: I am being asked hard questions. The no-disadvantage test may be applied to an award signed two or three years previously, but the award conditions will have moved on. The employer may think that the extra benefits in the new EEA are substantially better, but he may not have checked the no-disadvantage test before he starts paying the new rate. When the employer submits the agreement for registration, he may find that award conditions have moved on more than he had anticipated and, therefore, a problem arises and the agreement is not registered. It may be that the employer will be told of the difficulty and then must reconsider. In all probability he will upgrade the agreement to meet the no-disadvantage test and obtain registration.

If there is an assumption that the agreement will start automatically, the employer may have a rude shock when there is a problem with registration because the agreement does not meet the conditions. It is better that the agreement come into being the day after it is all signed and sealed, because there will be less confusion. However, it is always open to the employer to start paying the higher level of remuneration if he thinks that the delay will be disadvantageous to his employee.

Mrs EDWARDES: That is of little relevance, because once the agreement is signed, whether it is registered or not, the employee has the ability under proposed section 97V, to which we referred earlier, to recover those moneys. Therefore, the safeguard is in place for the employee. There is no benefit in waiting for registration. There is a lot of benefit for both the employer and the employee in the agreement taking effect from the date of signing. The onus is still on the employer to comply with all the requirements; it would not detract from that. The employee is protected in the event of any loss of money or conditions if the agreement is not registered or the registration is refused. Even if the benefit contained in the EEA is only an increase in an employee's salary, it will affect his superannuation. That is a significant issue for people who are close to retirement age. Existing employees would be disadvantaged by the agreement not taking effect on the day of signing, but upon registration, which might be months away.

Mr GRYLLS: The member for Kingsley's amendment is very important. The minister has said that an employer would sign the EEA and then refer to the relevant award to make sure that the EEA complied with it. Would the minister not expect the employer to have researched the relevant award before he signed an EEA?

Mr KOBELKE: One would expect the employer to do so, but employers in small businesses are busy. They often have to rush such things. They do not want to get caught up in the detail. They want people to work in proper conditions. They may leave it to the Industrial Relations Commission to tick off. I think that the arguments are six-of-one and half-a-dozen of the other.

Leaving the implementation until one day after registration gives a clearer finality to what is happening. The way in which it signals the process is better than the member for Kingsley's proposal. Although that proposal would work, it is a matter of choice as to which proposition would work best. I come down only slightly more on the side of leaving the arrangements as they are, because they signal a clear certainty about when the agreement starts. Whichever way we go, if the agreement is brought on earlier and it runs into problems or is undone, there will be confusion. If it is left as it is and there is some delay, the employer may make the payment anyway. Either way, there is the potential in some cases for uncertainty, but I am not convinced that we shall improve matters by the amendments suggested by the member for Kingsley. I believe the current arrangements are better.

Mrs EDWARDES: This will not be affected by the later provisions whereby a new EEA must be entered into every time an existing employee is transferred, promoted or the like. Such a transfer or promotion is likely to be delayed for a couple of months, because the employee will not be put into that position, and may not want to be put into that position, without appropriate arrangements being put in place. In a large organisation with a major human resource department backing it up, all such issues will be dealt with. With a small business person, who the minister has recognised might be very busy and not able necessarily to totally concentrate on the matter, all existing employees will be affected instead of just those who might be affected at the end of the day.

Sitting suspended from 6.00 to 7.00 pm

Mrs EDWARDES: Before the dinner suspension members were discussing proposed section 97UR and the commencement date for existing employees. We sought to highlight the point that using the date on which the EEA is registered could severely disadvantage many employees. It would be particularly disadvantageous when an employee was looking for a promotion and the new EEA could provide benefits, not the least of which might be a higher salary. It could impact upon superannuation and so on. The minister recognised the potential for refusal of registration, and I acknowledged that the affected employees would not miss out because they could resort to proposed section 97V, under which they could attempt to recover money. The employer would still be under an obligation to comply with the legislation. Stipulating the commencement date as the date on which the agreement is signed would not lessen the employer's obligation to comply with the legislation. This will affect many more employees than the few who might not have their EEA registered.

The minister said that employers should be able to plan well ahead, but then acknowledged that some small businesses might not give this issue a high priority. Many small business people are very involved in the physical activity of their businesses; they are not focused on human resources issues, nor do they employ someone to deal with them. Accordingly, they would be disadvantaged if their business experienced problems, and small businesses are always experiencing problems. Earning the money to pay the wages on Friday often

takes priority over any human resources issue. Small business is the major employer group in this State and proprietors might not get around to having the EEA signed and registered in advance of the expiry of their current workplace arrangements, whatever they may be. That is the most probable scenario.

We are talking about an existing working relationship. This provision will severely disadvantage existing employees. Given the safeguards, I cannot see why the minister has specified the day after the day on which the agreement is registered or a later day as provided for in the EEA. He indicated that he was only slightly edging towards supporting his proposal. Hopefully, during the dinner break some of the seafood has provided mental simulation and he will see his way clear to support the amendment. I move -

Page 16, lines 20 to 22 - To delete the lines and substitute the following -

(a) the day on which the agreement is signed; or

(b) a later day provided for in the EEA.

It is not proposed that it be the day on which the employment commences. Clearly, that would be inappropriate. It also does not propose that it should follow on from the date of expiration of the current arrangement. If it were the date on which the agreement was signed, the employee would be protected by the minister's subsequent provisions.

Mr JOHNSON: I support the amendment. The member for Kingsley put some very good points to the minister. I have spent a lifetime as a small business man and I speak to many small business people in my community. Small business is the largest collective employer in Australia.

I endorse the member's comments. Human resources issues are the last thing a small business person has the time to think about. The member's amendment is reasonable and I hope the minister supports it. I cannot see any downside to accepting it. Small business people are the backbone of our commercial world. Some struggle week after week to make enough money to survive. Many pay their employees and have very little left for themselves and their families. We owe a debt of gratitude to these people. They each provide employment for between one and 15 people. Those employees have jobs thanks to their employers' initiative and decision to invest - very often their life savings. This Government should help them in any way it can.

We should not put stumbling blocks in the path of small business people that will make it extremely difficult for them to carry on their businesses. The last thing they want to do is fall foul of the law. The minister must accept that their top priority is to run their businesses at a profit so that they can pay their employees and, hopefully, have money left to pay themselves. The vast majority of the employers to whom I have spoken struggle, but they have an absolute commitment to treat their employees properly and to earn enough money to pay them so that they can take that money home and feed their families. That is a commendable commitment. I therefore ask the minister, in considering the amendment moved by the member for Kingsley, to take all of those matters into account. We do not want a hard and fast rule that will make life difficult for employers and benefit only employees. Unless the Government indicates some reasonableness, this legislation may close down those businesses and put employees and employers out of work. If that were to happen, these people would have to draw unemployment benefits from social security. That is the last thing that anybody wants. The minister does not want it and we on this side of the House do not want it. We want small businesses to thrive and prosper so that employment can increase, not decrease. The member for Kingsley's proposed amendment will assist small business people to achieve that goal. I believe that the minister would agree with that in his heart of hearts. I cannot think of any negative point he could make against the amendment. I hope he will give it good consideration and ultimately agree with it. It is a good amendment that will benefit not only small business people, as the member for Kingsley said, but also their employees. I am interested to hear the minister's comments.

Mr GRYLLS: I also support the amendment moved by the member for Kingsley. The National Party strongly believes that employer-employee agreements should take effect on the day they are signed. Members have outlined different scenarios and the problems that may occur if the proposed amendment is not accepted.

Mr KOBELKE: I want to achieve the same outcome. I want to ensure that the provision works for employers, particularly small business people. I am not convinced of members' arguments. In some respects the amendment moved by the member for Kingsley opens up greater uncertainty. Both provisions will work; however, on balance our amendment gives greater certainty to employers and on that basis is better for employers.

Amendment put and a division taken with the following result -

Ayes (19)

Mr Ainsworth	Mr Day	Mr McNee	Mr Sweetman
Mr Barnett	Mrs Edwardes	Mr Masters	Mr Trenorden
Mr Birney	Mr Grylls	Mr Omodei	Mr Waldron
Mr Board	Ms Hodson-Thomas	Mr Pendal	Mr Bradshaw *(Teller)*
Dr Constable	Mr Johnson	Mr Barron-Sullivan	

Noes (28)

Mr Andrews	Ms Guise	Mr McGinty	Mr O'Gorman
Mr Bowler	Mr Hill	Mr McGowan	Mr Quigley
Mr Carpenter	Mr Hyde	Ms McHale	Mrs Roberts
Mr Dean	Mr Kobelke	Mr McRae	Mr Templeman
Mr D'Orazio	Mr Kucera	Mr Marlborough	Mr Watson
Dr Edwards	Mr Logan	Mrs Martin	Mr Whitely
Dr Gallop	Ms MacTiernan	Mr Murray	Ms Quirk *(Teller)*

Pairs

Ms Sue Walker	Mr Brown
Mr Marshall	Mr Ripper

Amendment thus negatived.

Mrs EDWARDES: I bring the attention of the House and the minister to proposed section 97US(1), which deals with the expiration of an EEA -

> An EEA must provide for the day on which it expires which cannot be more than 3 years from and including the day on which it takes effect under section 97UQ or 97UR.

Those are the two proposed sections that the Chamber has just debated in terms of existing and new employees. That clearly highlights the problem we are talking about. The minister highlighted in his second reading speech that some workplace agreements never expire. Section 19(4)(b) of the Workplace Agreements Act provides for parties to enter into an interim arrangement after a workplace agreement has expired. That has been extremely useful in some of the cases I have been talking about, particularly for small businesses that may not have had the opportunity to negotiate a new agreement due to other business concerns. In putting a time frame in place I suggest to the minister that he should provide for the continuation of an EEA as an interim arrangement until a new EEA has been signed and registered. That will overcome some of the difficulties to which we have referred, particularly with proposed section 97UR and existing employees.

Proposed section 97US(2) in the Bill before the House is new when compared with the document put out for public consultation. It provides -

> The expiry of an EEA does not of itself terminate the contract of employment between the employer and the employee.

Therefore, the employer and the employee still have a contractual arrangement. There are continuing problems with that, which will be highlighted in later provisions. The fact is that the EEA will expire. What will happen then? The contract of employment is still in place. What will the employer and employee do, particularly when an award applies? The situation seems easier when no award applies. When no award applies, it will be automatic for the conditions to continue unless it is a workplace agreement. The same conditions will be provided under the contract of employment as were provided under the EEA. However, until when? The minister said in his second reading speech that an EEA will have an expiry date. The proposed section would be much clearer if interim arrangements were provided until such time as a new EEA was put in place. Proposed section 97US(2) essentially allows an employer to continue to pay the terms and conditions of an EEA under a contract of employment forever. There is no requirement for the employer to enter into a new arrangement, because the contract of employment underpins the employer-employee relationship.

Mr JOHNSON: I have the same concerns as the member for Kingsley. What will happen? Will any penalties be put in place? The maximum period of an EEA is three years. I know for a fact that many small business people will forget when the three-year period will expire. Employees will also forget. If it is a small firm employees and the employer will enter into an EEA, as they did with a workplace agreement, and the last thing

on their minds will be the expiry date. The date will be in the EEA. An agreement cannot be for less than three years. If the arrangements are to be different, I would be grateful if the minister would advise me otherwise. I understand that all agreements will be for a maximum of three years. What will happen if, after three years, the employer and the employee have forgotten all about it? We are talking about individual, not collective, agreements. Will there be any sanctions? Will there be a penalty to the employer? If there will be, it will be totally unfair. As I said before, it is the last thing on an employer's mind. This is bureaucratic stuff that employees have to get involved with. A small business person would describe this as a lot of bureaucratic rubbish that he has to sort out. It is just another form he has to fill in. In the old days we had verbal contracts between employers and employees. Those contracts worked. There were certain safeguards for the employee, such as unfair dismissal provisions. If an employee had worked for a certain number of months, or a year, he could always approach the industrial tribunal if he felt he had been dismissed unfairly and apply for compensation or reinstatement. This provision will take that away. It is being tied up in this proposed section. I ask the minister: what will happen if the three years comes and goes and the situation goes on for a further 12 months? What will happen if the EEA expires by statute after three years but the small business is very busy and the employer is happy to continue to pay the wages agreed to in an EEA and the employee is happy to receive them, along with his other terms and conditions, such as holidays and leave loading? Will there be penalties for an employer who does not negotiate a completely new EEA with his employee, even though neither party has sought to obtain a new agreement and both are happy with the existing agreement? I am talking about the situation in which both parties have forgotten about the expiry of the agreement for three, six or even 12 months. That is quite feasible. I have had workplace agreements with workers in the past, although not in this country. They were known as employment agreements. The agreement goes on ad infinitum until such time as either party wants to change it. The employee always has the option to speak to the employer and ask for a rise or an extra week's holiday. That is fair enough. That is what happened. That opportunity will exist now with a new EEA. Without thinking of that an employer may offer an employee an extra week's holiday because he has been with the firm for a certain number of years. They may agree to sort out the details at the expiration of the three years; however, they may forget about the expiry date. The employer may give an extra week's holiday out of the goodness of his heart because he appreciates the work of the employee. The employee may be happy to accept it. Will an employer be penalised if he does not enter into a new EEA after three years; and, if so, how and why? .

Mr GRYLLS: The minister said in his second reading speech that because workplace agreements can extend beyond a three-year period -

> This has weakened the bargaining power of employees, and has resulted in many of them being locked out of collective representation indefinitely.

Correct me if I am wrong, but I thought that an industry agreement overrode an EEA, in which case it would not be a problem. Is that correct? The minister said that they would be locked out of collective representation.

Mr Kobelke: I was talking about existing workplace agreements.

Mr GRYLLS: Would an industry agreement take precedence over an employer-employee agreement?

Mr KOBELKE: No, it would not. In answer to the member for Hillarys, although some existing workplace agreements contain a roll-over clause - and the member for Merredin referred to when the agreements roll over - many agreements do not. Therefore, upon the expiry of existing workplace agreements, exactly the same issues will be faced as we are now facing. There is nothing new with respect to this matter. It is the responsibility of employers to be aware of the employment conditions, and if they have gone to the trouble of putting in place an individual contract, I assume it is because they are trying to gain productivity or some other advantage out of it -

Mr Johnson: By way of an EEA.

Mr KOBELKE: Yes. Therefore, they will monitor the contract, and it should not be a big job to realise when it is coming up for renegotiation. From time to time employers will simply get on with the job and overlook it; that is life. However, that problem already exists with workplace agreements. Some workplace agreements roll on forever, which is what the member for Wagin was alluding to. That is a particularly unfair form of contract, because in order to negotiate a better position, the employee must resign, because he is locked into the contract and that is the only way to break it. Many of the existing workplace agreements have no annual salary increment. A person may be in the same job for about five years with no increase in his salary. For many of the people in this situation the only way out of it is to resign or pressure the boss into signing a new workplace agreement. That is the difficulty with not terminating the agreement after three years. The problems that then arise are already in existence with a range - not all - of workplace agreements. Proposed section 97US(2) points out that the expiry of an EEA does not of itself terminate the contract of employment. That may be the case if

that is specified in the EEA, but the termination of an EEA by the effluxion of time does not of itself terminate the contract of employment. The contract of employment continues, and proposed section 97UT covers what then happens. It is all laid out in the provisions, and although there is the potential for uncertainty and for people to let things slip only to find that they are open to a claim of underpayment of wages, that is also the case with workplace agreements. We will make sure that we help to educate employers and employees to understand their rights so that they will know when their EEA is due to expire and, in due time before that expiry, will put in place the arrangements that will flow on afterwards. If they do not make those arrangements, then in most cases the employees will default to the award conditions, which will then be the terms of contract for ongoing employment. The employers may not like certain aspects of the award and that may be why they have written up an EEA. Therefore, it will be in their interests to negotiate a new EEA in time because they do not want to revert to the award. The employees may work particular shifts and the award may be prohibitive or far too complex for the two parties to negotiate, yet they like the award rate. Therefore, it will be to their advantage to negotiate a new EEA prior to the termination of the existing EEA, otherwise they will simply default to the award conditions.

Mr Johnson: If an employer and the employee forget when the three-year period is up for an EEA and they just carry on, technically they have defaulted to an award situation.

Mrs Edwardes: Only if an award applies.

Mr Johnson: Yes. Is that the only penalty?

Mr KOBELKE: There is no penalty. There are a range of different scenarios. If the conditions of employment are well above what would be the default, which in many cases would be the award, there is no penalty. There is a potential cost if the continuing terms of employment, such as wages, are below the current award rate, because it is then open for the employees at some later stage to lodge a claim for underpayment of wages. However, that is something they may or may not do. Even in the light of knowing that they have been underpaid, they may let things ride because it is only a small amount. However, that is the potential risk, and it exists now with workplace agreements.

Mr GRYLLS: The minister's second reading speech also states -

> EEAs will be able to run for a maximum of three years. The EEA will cease to have effect at the end of its specified term. This contrasts starkly with workplace agreements, which can continue indefinitely beyond their nominal expiry date. This has weakened the bargaining power of employees, and has resulted in many of them being locked out of collective representation indefinitely. EEAs will not deny employees the benefits of collective representation once the EEA has ended.

The member for Kingsley said that the termination of the contract at the end of three years will cause some problems. The minister said that employees are being denied collective representation indefinitely.

Mr Kobelke: With workplace agreements.

Mr GRYLLS: Yes, but would the industrial agreement not take over if they wanted to have a collective agreement in this sense?

Mr KOBELKE: The part of the Bill to which the member is alluding covers a range of issues. I will try to cut to what I think is his main point. Under a workplace agreement that contains a clause that says this agreement will go on forever, a person may be locked in for five years. If the award wage rate has had an average increase of three per cent per annum over that period, that represents a 15 per cent rate increase. If the contract was basically award-equivalent when the employee went onto the workplace agreement, he would then be 15 per cent behind but he would be locked in for the next five, ten or fifteen years. There is no way of terminating the contract other than by resigning from the job or getting the employer to agree to renegotiate. Under the Workplace Agreements Act, neither party can cancel the agreement. It must be done by the agreement of both parties, or by the employee leaving that employment.

Mr Grylls: If the EEA was extended indefinitely -

Mr KOBELKE: The point to which the member is referring in the second reading speech is why do we not allow for that. The member for Kingsley said that perhaps we should allow for the EEA to roll on for a bit. However, that then raises the problem that workplace agreements are allowed to go on beyond the specified period, and how is that dealt with? We are making it clear that at the termination of the three-year period, the contract is finished. Therefore, at or prior to that termination, the employer and employee need to renegotiate a new EEA if that is the form of contract that they want.

Mr GRYLLS: As the member for Kingsley said, if the EEA was allowed to roll on and the workers felt that they were being disadvantaged because they could not enter into collective representation, could they then not form an industrial agreement?

Mr KOBELKE: The entry into collective representation is just one of the scenarios that they could consider at that stage.

Mr Grylls: Have they not always got that as a back up?

Mr KOBELKE: Not under an individual contract, because when the individual contract, whether it be a workplace agreement or an EEA, is signed or properly registered, it stands apart from the award system. Therefore, the awards do not apply to it.

Mr Waldron: What happens when the EEA expires?

Mr KOBELKE: One of the differences between a workplace agreement and an EEA is that in a workplace agreement a clause can be locked in to ensure that it never expires. Therefore, the award never applies. That cannot happen with an EEA. This is the clause we are dealing with. To be fair, an EEA should have a fixed period. It should come to an end and be renegotiated. The award might have been upgraded during the period the EEA was in place. At the expiry of the EEA, the employer and employee are in a position to decide the terms of a new EEA. They can revert to the award if the offer is not a good one. I gave an example of an EEA being in place for five years, during which time the award goes up three per cent a year, so at the end of the five years it is 15 per cent higher. The employer and employee would negotiate and decide whether the new EEA was going to match the current award level, which is 15 per cent higher than it was five years before.

Mr Waldron: Does the person go on the award in the interim period?

Mr KOBELKE: No, there is no interim period because the agreement should be renegotiated before it terminates. If something goes wrong and the expiry of the EEA is overlooked and it is not renegotiated, the employee continues on the same contract of employment. However, award conditions would apply, so if it were below award standard, it should come up. That raises the issue of enforcement. The employee would have to seek action to gain that extra payment. I am talking about the situation that would occur if an employer and/or employee let the expiry of an EEA slip by before it was renegotiated, presumably because they had forgotten to do so. That could run on for some time before someone saw the light and realised that the EEA had not been renegotiated. There is some jeopardy in doing that because a claim for unpaid wages might go back some time.

Mr Waldron: What happens then?

Mr KOBELKE: The employee would have the right, as employees do currently, to enforce his claim for underpayment of wages for that period.

Mrs EDWARDES: The minister did not get around to explaining the points I raised, which I will now recap. Proposed subsection (2) maintains a contract of employment between an employer and an employee. The effect of that proposed subsection is that the employment relationship would not automatically terminate at the end of the three-year period of the EEA; there would be an ongoing relationship. My suggestion was that greater certainty would be created for both the employer and the employee if provision was made for an interim arrangement, because once the EEA expires, proposed section 97UT(1)(a) provides that relevant award provisions will apply. Where no award applies, it is a contract of employment. I suggest that in the non-award situation, if the ongoing contract of employment is not amended and/or varied in any way, the existing provisions of the EEA would survive. There is no way around that. That is a direct result of proposed section 97US(2). I know why that proposed subsection was included, but I think it has a consequential effect. Essentially, it overrides what the minister wanted to do in the first instance, which was to provide that EEAs have an expiry date. In a non-award situation, the contract of employment continues indefinitely.

Mr KOBELKE: The suggestion the member for Kingsley made, that another period should be provided so that the employment contract can carry on, simply shifts the issue in one key area. It does not solve it because an EEA must come to an end at some point. The member for Kingsley is saying that if a person did not do his job properly or was not aware of what was happening - and that can happen to anyone - he will be given extra time to fix it up. That could result in the same problem occurring, because time would slip by and a person could again be up against the boundary. The member for Kingsley is seeking to fix a problem, but her solution would only transfer it; it would not fix it. It would create a bigger problem of uncertainty. This provision makes it simple and clear-cut. It provides a term. The EEA should be renegotiated before the term expires. It adequately covers the outcomes. If people overlook it or there is some delay, that is covered. I agree with the intent, if not always the detail, of the member for Kingsley's argument. The Government also wants simplicity for employers

and employees. The member for Kingsley's suggestion would not fix the problem, but would simply transfer it. However, in the process it would add complexity to the system. We certainly do not want to do that.

Mrs EDWARDES: What is the relationship between proposed section 97US(2) and proposed section 97UT?

Mr KOBELKE: Proposed section 97US(2) states that the contract of employment is not terminated just because an EEA expires. Proposed section 97UT outlines the situation when an EEA expires, if it has not been replaced with a new EEA.

Mrs Edwardes: What is the consequence of proposed section 97US(2) in a non-award situation?

Mr KOBELKE: Proposed section 97UT(1)(b) applies when an employee is not subject to any relevant award on the expiry of the EEA. The employee's contract of employment is taken to include the provisions of the expired EEA, except the provisions specifying the term of the EEA and dispute resolution.

Mrs Edwardes: For how long?

Mr KOBELKE: As long as the employment continues or until a new instrument is in place that varies or overrides it.

Mrs Edwardes: So your concern about a workplace agreement going on indefinitely, without any variation, is exactly the same as what you are providing in the non-award situation?

Mr KOBELKE: No, it is totally and utterly different. If it is based on the award, the award is part of the collective system - it has regular updates, it is subject to national and state wage cases -

Mrs Edwardes: I am talking about the difference in a non-award situation.

Mr KOBELKE: The only difference in the non-award situation is that the minimum conditions would upgrade it.

Mrs Edwardes: Would they? How?

Mr KOBELKE: Through the Minimum Conditions of Employment Act.

Mrs Edwardes: Okay.

Mr KOBELKE: Only a small sector of the work force is covered by the non-award system. What might be more relevant in terms of numbers is cases in which the EEA provisions are clearly above the award provisions, such as in the mining industry. Basically, it could continue like a common law contract. Proposed section 97UT(2)(b) provides that in a non-award situation, the conditions of the EEA would be maintained, so that the employee would not drop down to the minimum conditions of employment. The same conditions would be maintained. As I mentioned earlier, the only variation would be that the provisions relating to expiry of the EEA and dispute resolution would go.

Mrs Edwardes: The issue of minimum conditions of employment would arise in situations in which an agreement would catch up to the rate, if it went over an extended period. That is provided for under the EEA.

Mr KOBELKE: The key issue it is providing for is that it maintains the same conditions. They do not fall away to a lower minimum standard.

Mrs EDWARDES: Proposed section 97UT essentially flows on from discussions about a lapsed employee-employer agreement when a replacement EEA has not been signed. In the first instance, an employee's terms and conditions will revert to the award. The example the minister was talking about, but which he did not quite finish, was that of a person being paid well and truly above the award rate, such as someone employed in the mining industry. If no EEA were in place, would that person automatically go on to the award and lose all the additional benefits that were provided under the EEA?

Mr KOBELKE: Proposed section 97UT(1)(a) of the Labour Relations Reform Bill 2002 answers the member's question, unless that is only part of her question; that is, on the expiry of an EEA -

> any relevant award provisions extend to the employee unless a new EEA then takes effect;

Basically, the employee would be paid according to the award provision.

Mrs Edwardes: Employees would lose extra benefits that they currently receive under the EEA.

Mr KOBELKE: That is up to the employer. The potential exists for an employer to drop the wage.

Mrs EDWARDES: That is precisely why I suggested an interim arrangement, because it would provide greater certainty to both employers and employees. The minister is saying that the decision on whether an employee

immediately drops back to an award is made by the employer. The employer is required to follow the provisions in proposed section 97UT, but there is no protection and/or certainty. Until such time as a final secondary EEA was entered into, an interim arrangement would be a far better arrangement, and would provide a greater level of certainty than the situation being proposed. In an attempt to overcome what the minister sees as a flaw in the current workplace arrangements - that is not something with which the Opposition agrees - the minister will disadvantage people who might receive additional benefits, such as a productivity allowance, extra allowances for performing certain work, or other matters that have not been covered by the award. The award may not have been amended for a considerable period. We will deal with the relevancy or otherwise of the no-disadvantage test later, but it will make for great relations between an employer and employee if an employee who is on a very good EEA drops down to the award. The minister assumes that people have a great level of understanding about human relations. However, they have even less understanding of the minute details of this legislation. The mining industry - particularly the large mining industry - has no problem understanding this legislation because it is backed by a team. However, that is not the case for the majority. Therefore, many people will believe that when an EEA expires, an employee must move to the award and nothing can be done because that is the law. If there were an interim arrangement, people would then understand that it was a different situation.

Mr JOHNSON: I had not thought about this matter until it was raised by the member for Kingsley. These provisions could work to the disadvantage of the employee. I will put forward a scenario involving a small business that employs half a dozen people. An EEA exists between each of the six employees and the employer. The employer is not too keen on the sixth employee because he has not performed as well as the employer would have liked. The agreement in place is a very good one, and much better than the award. Once the three-year period expires, and the agreement is terminated, the employer could renegotiate with the other five employees - whom he believes are doing a good job - and keep them on the EEAs. However, the employer might prefer that the sixth employee be eased out of the business. The employer cannot sack the employee, but he can choose not to negotiate another EEA and to let the existing EEA lapse. The sixth employee would automatically move to the award and be disadvantaged.

From the Government's point of view the main aim of this legislation is to protect and help employees, rather than employers. That is fine; I accept that that is the position from which the Government has drafted this legislation. The legislation might do a disservice to the sixth employee who I described in the scenario. However, he or she would be better safeguarded if there were an interim period, as suggested by the member for Kingsley. She has put forward a sensible argument. She has the benefit of a law degree, which I do not have. She understands many of the intricacies because of the work she carried out when she was the minister responsible for this portfolio. The member for Kingsley knows better than anybody in this place - possibly even the minister - the possible outcome of the scenario I described under this legislation. Contrary to the beliefs of some of the minister's colleagues, I am concerned for not only the employer but also the employee, because for any business to be successful it must have a tremendously hardworking and committed work force. This can be achieved only when there is general agreement and understanding on both sides.

Mr KOBELKE: Proposed section 97UT was inserted for employers, and they do not like the fact that the Government has inserted protections, because they can become a bit cumbersome. This section was inserted because employers asked for it - employees did not ask for this section to be inserted.

The hypothetical cases put forward are extremely unlikely. If an EEA is used in a competitive area in which wage costs must be kept down, the EEA will be benchmarked slightly higher than the award and falling to the award will not be an issue, except for the employer who may lose flexibility and who will have to pay extra penalty rates and the like. That is a disadvantage. Therefore, the employer would have to negotiate a new EEA.

Mr KOBELKE: That does not apply to the scenario I just described. Where the EEA is close to the award level, and there is no room to discriminate between them, the level cannot go lower than the award. The other scenario is where an employer is paying substantially above the award rate, and is getting higher productivity through particular work arrangements or the specialised skills of the employees. In that situation, in the example given by the member for Hillarys of a firm with six employees, the potential exists for the employer to let one employee fall to the award level while keeping the other five above it. In that scenario, where the employees are earning above the award, there is a clear incentive for them to pressure the employer to renegotiate, because they do not wish to fall to the award level. Employers wanted the flexibility to allow one employee to fall to the award level, while negotiating with the others to keep them above it. If one employee is not as productive as the others, the employer can put him back to award conditions, working the day shift, while the other employees are allowed flexible time, because they are much better and more productive workers. I would want employers to have that ability to discriminate.

Mr Johnson: It could be a personality thing. The worker could be as good as any of the others, but for some reason he or she really upsets the employer.

Mr KOBELKE: Those issues will arise under any form of industrial relations law or different contracts of employment. The Government cannot seek to tie all those down and fix them here, and there is no intention that it should. I have given the member two possible scenarios relating to this issue. In the overwhelming majority of cases, the kind of hypothetical case the member is raising will be resolved by the participants pursuing their interests through a proper process to negotiate the best possible outcomes.

Mrs EDWARDES: Why, if the EEA has already passed the no-disadvantage test, does proposed section 97UT(1)(a) apply, rather than allowing the conditions of the EEA to continue?

Mr KOBELKE: I thought I had answered that earlier, although a lot of territory is being covered here. In the possible three years since the EEA was signed, while there may have been no annual increment clause in the EEA, the award may have moved on, and may now have better benefits than the EEA. At that point, the employment continues, but the person receives the award conditions, which may be higher than those available under the EEA.

Mrs EDWARDES: I thank the minister for that clarification. Presumably some of the other provisions applying under the no-disadvantage test of the order will be dealt with in due course. The minister is saying that, when an EEA is in place, any award changes do not affect the EEA. If the minimum conditions of employment change, do those changes apply to the EEA, even if tested against the award? In some situations the minimum conditions of employment may overtake the award.

Mr Kobelke: They will not overtake the award, but they may have an upgrading effect on an EEA, which the award will not have.

Mrs EDWARDES: We will deal with it when we get there, but it may provide for other benefits which are not incorporated in the award.

Proposed section 97UT(1)(b) deals with non-award situations where 97UT(1)(a) does not apply. The minister has said that there are only a few situations where it does not apply. Is there any further information about the circumstances under which proposed section 97UT(1)(a) would not apply?

Mr KOBELKE: The member is seeking statistical information that the Government obviously cannot provide now, but if she would like to clarify the question, it will be provided later.

Mrs Edwardes: I am just interested in a ballpark figure for the kind of situations the minister is talking about, where a contract of employment applies. It is not the contract of employment under proposed section 97UE; it is the contract of employment provided for under proposed section 97US.

Mr KOBELKE: Is the member seeking the numbers?

Mrs Edwardes: I am not talking about specifics, but I wish to know if the minister has any idea about how many employees in Western Australia would not be covered by an award, and in which areas.

Mr KOBELKE: The Government will provide that information for the member.

Mrs EDWARDES: I now move to proposed section 97UT(2), which deals with a contract of employment referred to in proposed section 97UT(1)(b) and allows it to be varied or terminated as if it were a contract entered into between the employer and the employee. How is this anticipated?

Mr KOBELKE: Proposed section 97UT(1) provides for what happens when an EEA expires, so that a contract exists according to those terms. In 97UT(2), there is provision for it to be varied so that it is not absolutely rigid. There is then the ability, by any instrument, or even verbally, for the employee and the employer to vary that contract.

Mrs EDWARDES: In proposed section 97UT(2)(b), the contract of employment appears to be in a different form from that referred to in proposed section 97UE, which provides for an EEA while it has effect, and not in this circumstance. Why is this contract referred to? It has been added since the version went out for public consultation. It did not displace any contract of employment that was already in existence. In fact, it provides for the provisions of the award as well as the conditions of the contract to apply at any one point. This appears to have been inserted so that it is quite different. In what respect is it different?

Mr KOBELKE: Proposed section 97UT(2)(b) is intended to clarify a potential confusion for an ongoing employee. If an employee were already employed, and entered into a new EEA, which then expired, the contract

of employment in existence prior to that EEA would take its place. The contract of employment established under proposed sections 97UT and 97US now applies, but it is not the prior one, but rather the one that was established through the EEA.

Mrs Edwardes: Does it no longer have any relevance?

Mr KOBELKE: No, unless the parties agree that it continues in part or in total.

Mrs EDWARDES: I refer to proposed section 97UU, under the title "No power to vary an EEA". According to proposed subsection (1) the parties to an EEA cannot vary the provisions of the EEA once it has been signed by the employer and the employee or, where applicable, his or her representative. Proposed subsection (2) states that proposed subsection (1) applies even though the EEA has not taken effect. What situation does the minister contemplate in those two provisions?

Mr KOBELKE: The effect of those proposed subsections is that once both parties have signed the agreement, they cannot keep negotiating and varying it. Although the agreement is fixed, a clause under the registration process allows for variation, which we will come to in the next division.

Mrs EDWARDES: What if the parties decided they wanted to include something that they had forgotten? Effectively, they cannot do that until the registration of the agreement.

Mr Kobelke: They would put aside the agreement and start a new one.

Mrs EDWARDES: Proposed section 97UU(3) states -

> However, subsection (1) does not affect the provisions of -
>
> (a) section 97UV relating to the cancellation of an EEA; or

That is what the minister just referred to - the new agreement would be replaced. To continue -

> (b) sections 97VE and 97VO relating to the revision of an EEA so that it is in order for registration.

Therefore, when the registrar identifies problems in the agreement, they can be corrected before the agreement goes back to be registered.

Mr Kobelke: That is in keeping with proposed sections 97VE and 97VO.

Mrs EDWARDES: I will raise an issue with the minister that the business community has raised with me so that it is on the record. As I have said, it is important that people who read these debates, particularly members of a court or a hearing, understand the interpretation of these provisions. Some members of the business community are concerned about the prohibition on the variation of an EEA by the parties once it has been signed. They believe it would have been more appropriate for parties to mutually agree to the variation of an EEA.

The minister is saying that it is possible to toss out the old agreement and start again. Why does the minister not allow for some variation of the agreement? It does not make sense to just tear up the old agreement and start a new one. Such variation should be registered in the same way as the original EEA. The agreement could provide for an annexure, which is similarly signed, with the same requirements. The business community believes that without an annexure, parties wishing to vary an EEA would have to cancel an existing EEA, as the minister has said, and make an application for a new one. This is an inflexible legislative requirement. Depending upon its interpretation and the stage the agreement is at, I can understand the minister saying that, if it is to be varied before registration, it should be torn up and a new one should be started. Why can a document not be identified as a variation, such as annexure 1 to the original EEA, rather than having to go back over the same process? I am sure that many contracts allow that. There would be no difficulty adding appendices to documents. I know what the minister is saying, but it does not make sense that the variation cannot be allowed and cannot be registered in the same way.

Mr BARNETT: I doubt that the employer-employee agreements will prove to be very popular and prevalent among employers or employees. However, if the minister is genuine in trying to allow some degree of individual choice in the workplace and some sort of individual contractual arrangements, I am bemused as to why there would not be a simple procedure for variation. Many industries in this State are variable and seasonal, including the fishing, agricultural, tourism and retail industries. Many people who work in those industries are casual or part-time workers who work flexible hours on weekends. If any industry were to use an EEA, it would be an industry of that type. In the majority of cases, the demand for the variation of an agreement will come from the employee rather than the employer. Although there are some weaknesses with EEAs overall, it is remiss not to have a simple procedure for variation, although we should make sure it is not exploitative or

punitive. In many cases, both parties will agree to the variation. In the majority of cases, the request for a variation of an EEA will be instigated by the employee, not the employer.

Mr KOBELKE: It is a fair ask, but it does not make much sense. Section 24 of the Workplace Agreements Act refers to cancellations and variations. However, this provision does not deal with variations, but rather cancellations and re-registrations.

Workplace agreements and EEAs give certainty to both parties, particularly the employer. If variation were allowed, that would create a risk and lack of certainty. Although some employers and employees might run into problems and want to vary their agreements, the process that would need be undertaken to check that the variations meet the proper standards would be very close to, if not full, reregistration anyway. Therefore, there would not be a big saving. Although a shorter process may result in a small saving, on the downside it would create complexity, because sections covering variations would have to be included in this legislation. However, when employers lock in an EEA, they want to know it is fixed. They may include some annual increments, but they want it to be fixed. If the process allowed for easy variation, we would give away one of the advantages of a statutory individual contract. I can understand why people would ask for it, because on the surface it appears to be appealing. However, when people carefully consider the matter, they will understand the big downside.

Mrs EDWARDES: Some agreements provide for performance reviews that might necessitate variation of the agreement. Certain performance measures may affect an employee's salary and conditions and are necessarily expressed at the beginning of an employee's employment because they are linked to productivity in some way. A simple variation to amend salary and conditions is one example of something that could be put in place. If the old agreement must be torn up and replaced with a new one, the process would have to be gone through again. That might discourage employers from incorporating such provisions in EEAs.

I refer to proposed section 97UV, which deals with the cancellation of an EEA, and states -

> The parties to an EEA may at any time make an agreement in writing cancelling the EEA with effect on and from a specified day.

If the old agreement is torn up and replaced with a new one, must employers go through a cancellation process? Must they put it in writing and cancel the EEA, in effect, from a specified day? Does it include only the parties involved? Proposed section 97UT relates to the cancellation of an EEA and refers to the employment conditions that take effect on the expiration of an EEA. We have just discussed the difficulties of not having an agreement in force at the time. If the old must be replaced by the new and a variation is desired at any time, the cancellation process must be gone through. That means everything must be lodged at the same time. Would it not be simpler if people could lodge a variation to the agreement? What process is anticipated for the cancellation?

Mr KOBELKE: The process is simply the lodgment of the cancellation, which is the same process as that under workplace agreements. If people wanted to use that mechanism for a variation, they could lodge with it, or immediately afterwards, a new employer-employee agreement for registration.

Mrs Edwardes: Feel free to include the workplace agreement process at any time.

Mr KOBELKE: The member has been telling us for many years how good it is. We thought that we might keep some elements of it.

Mrs Edwardes: The inflexibilities that the Government has put in place mean that the EEA process will not be as good. We can attempt to improve the EEA process. That is what I am attempting to do.

Mr KOBELKE: I accept that. I have tried to put to the member that the word "flexibility" is applied in quite a few different ways. We wish to open up flexibility for employers and employees. Putting too much flexibility into the provisions of the legislation could restrict employers and employees, because it will make the process too complex. Certainty is important to them. Providing other ways of opening up the process can be negative for those who wish to use the EEA. I am saying very genuinely that although on the surface the possibility of a variation is appealing, having considered it, not merely a moment ago but previously, I do not think it will help. It creates greater levels of uncertainty. People would still have to go through a process of registering a variation. If it were possible for a variation to change wages, people would have to go back to the no-disadvantage test. We would end up with a cumbersome set of extra clauses in what is already, I admit, a lengthy and complex Bill. I suspect that it will provide little or no gain, but a potential downside by removing some of the certainty with EEAs. Both parties would know their clear contract for the following three years. It is only in exceptional circumstances that they would get together and say that the EEA was not working to their benefit and that they should renegotiate. That would occur in very few cases. One party might be unhappy and seek to pressure the

other party, who would be very unhappy at the thought of a series of variation clauses that meant the parties would not have the certainty that they had signed up to. Certainty is one of the key elements. The potential for a variation could undermine that certainty.

Mr GRYLLS: What will happen if one party wants to cancel the EEA and the other does not?

Mr KOBELKE: It is not open for one party to renege on the contract, because both parties have agreed to an EEA, which underpins a contract of employment. We are currently dealing with proposed section 97UV on page 18. If both parties agree to a cancellation, there is a method by which that can be done. If only one party wants a cancellation, the parties are locked in until the agreement expires, which is a maximum of three years. However, an EEA could have been designed and registered for a shorter period.

Mr WALDRON: On behalf of the member for Avon, I move -

Page 18, line 23 - To insert after "employee" the following -

, excluding casual employees,

The National Party sees a need to exempt casuals so that an EEA will not expire when they are not required for a period. This applies to seasonal work and, more particularly, to industries, such as the abattoir industry, in which the supply of stock is variable. For example, in my electorate one such employer is employing casuals. The employer may have no stock for a period. My understanding of this clause is that the employer would then have to go through the whole rigmarole of another EEA. Surely for the benefit of both the employer and the employee, they should be exempt for the smooth running of the business. In that way, an employee would know the conditions to which he would return when he had been off the job for a period and, to all intents and purposes, was still working for the employer.

Mr KOBELKE: I understand the intent of the amendment. Although I have some sympathy for it, I cannot accept it at this stage, and maybe at no stage, but I am happy to consider it. The issue the member raises is very real. People working in the fruit-picking industry, for example, may have two or three days' work, after which the supply of apples runs out and they must wait for the next lot to arrive. It may be that they will come back two or three weeks later or process a different type of fruit in the meantime, but there is no continuous employment. I accept that in those circumstances an EEA would be of little use because the agreements must be signed and registered, and the employee will have moved on. If an EEA could help in those circumstances, it would be a good thing.

The difficulty with the amendment is that it will leave it open to some employers to abuse the system. It would be very rare but it could still happen. They could employ someone and sign him up on the basis of an offer which looks as though there would be reasonable employment. The employer could then lay him off and bring him back on again. A contract could be written that made it clear there would only be casual, seasonal work and that would be allowed for in the hours of employment. To take the example of fruit-pickers, why could somebody not be signed up on a contract of employment for the season that provides no minimum hours a week but a guaranteed number of hours over a two-month period? The hours might average 10 a week. It might mean that the employer would work 40 hours one week and none for the next three weeks, but the contract of employment would clearly state that.

Mr Waldron: Could that be done with an EEA?

Mr KOBELKE: Yes, it could be done. The point that must be taken into account is that there is a contract for that period. Let us say that the picking season is expected to be two or three months and an EEA is drawn up for that period. If there is incredible flexibility and the employer does not have to offer the employees any hours in a given week when no fruit is available, that could be written into the contract. The difficulty is that a contract of employment for a three-month period means that when employees are not working the employer does not have to pay them but there is still a contract of employment, which may be an inhibition for other costs. The employer may not have the employees on the job but he still has a contract of employment with them.

Mr Waldron: Are you saying that the EEA could be for a shorter period to cover that?

Mr KOBELKE: Yes, there could be a three-month EEA if they wished.

Mrs EDWARDES: In those circumstances, the agreement would have to have written into it exclusion clauses in case of frost, a cyclone or other circumstances when there would be no fruit. All such provisions could be written into an EEA for a casual, which would make a simple EEA run to 20 pages of provisions merely to make sure that all possible eventualities were covered. At the same time, they might want to recognise the ongoing employment relationship. A contract of employment terminates an EEA. However, casuals might be involved

in an ongoing employment relationship that they do not want to be severed purely because a piece of legislation provides that they must do it this way and not otherwise unless exclusion provisions are included to cover every scenario. I do not know the fruit-picking business as well as my colleagues do. It could be similar to the situation confronting the boat-building industry. An EEA might state that a person is to be employed to assist in the construction of a boat and, once it is completed or construction reaches a certain stage and those services are no longer required, that employment will cease. However, the employer might want to retain that person's services for the construction of another boat. Seasonal workers and others involved in that type of work can be accommodated under the Act, but this legislation might preclude it, particularly proposed section 97UW and the provision stating that a new EEA must be offered.

Mr WALDRON: An abattoir proprietor might want to keep employees on because they are good. However, at times there will be no work because stock is not available, which has happened this year. Country towns lose people in those circumstances and they cannot get them back. The exemption is required for those situations. I know that that can be included in the EEA, but is there a better way to cover that situation?

Mr KOBELKE: Meatworkers have awards that probably contain stand-down clauses covering unavailability of livestock. Industrial agreements can provide flexibility for those industries. This issue can be addressed in a number of ways, and the Government believes that EEAs are one option. People will balance the respective merits of each option.

Amendment put and negatived.

Division put and passed.

Division 5: Registration of EEAs -

Subdivision 1: Preliminary -

Mrs EDWARDES: In relation to proposed section 97UX, my experience as a minister makes me very conscious of the difficult legal consequences of not getting the delegation right. One case that comes to mind is the delegation of the WorkSafe commissioner's powers. This Parliament had to pass legislation to ensure prosecutions did not fall over.

Mr Kobelke: We dealt with two Bills in two days.

Mrs EDWARDES: It was a very serious matter. I thank the minister for his cooperation on that occasion.

Mr Kobelke: It is time you reciprocated.

Mrs EDWARDES: I am assisting. Obviously this delegation by the registrar makes sense, because one person will not necessarily be able to do all the work. What are the legal consequences of not getting this right?

Mr KOBELKE: This provision places the onus on the registrar to ensure the delegation is affected. That happens with a range of departments; it is not unusual. The problems we ran into with Mr Bartholomaeus related to the Public Sector Management Act and a different agency having to provide that power. Mr Bartholomaeus was not properly appointed and his delegations were the issue. I do not think Mr Bartholomaeus failed in his duty to sign bits of paper. This registrar will work in the same building and will have management of the situation. The chance of that happening again are almost nil. This delegation has been available through a range of agencies without problems.

Mrs Edwardes: Why do we need the delegation power if there is no consequence of not getting it right?

Mr KOBELKE: The member and I are at cross purposes. The registration of EEAs is to be done by the registrar. The registrar will not be able to handle the thousands of EEAs that might be lodged each month. Clearly, he will need to delegate his powers to appropriate officers. The member mentioned a problem that occurred a few years ago when a delegation was not made and actions were taken by officers who were not legally delegated to fulfil the role of the officer who had the powers. We are ensuring that when officers of the commission fulfil the role of the registrar for the purposes of registering EEAs, they have the appropriate powers. That is crucial.

The member asked how it can go wrong. I cannot think of anything other than maladministration, which I do not expect. We need a power of delegation.

Mrs Edwardes: Why? If there is no legal consequence -

Mr KOBELKE: There is.

Mrs Edwardes: What are the legal consequences of not having this power in place?

Mr KOBELKE: The registrar will have statutory responsibility for registering EEAs. I expect there will be more EEAs than one person can handle, and the registrar will need assistance to cope with the workload.

Mrs Edwardes: Will someone sign on his behalf or will the officers concerned simply carry out the assessments? Will other officers not only do the work, which will be signed off by the registrar, but also undertake the negotiations with the employers and employees and sign off the EEAs?

Mr KOBELKE: The officers concerned will fulfil all the roles that the legislation ascribes to the registrar, and which the registrar decides to delegate to another officer.

Mr JOHNSON: Does the minister envisage a number of officers within the registrar's domain being authorised under this provision to sign off EEAs on their own behalf, but acting on behalf of the registrar?

Mr Kobelke: Yes.

Mr JOHNSON: How many?

Mr Kobelke: I will consult the registrar about that.

Mr JOHNSON: Does the minister have any idea?

Mr Kobelke: It will involve a complex range of tasks. Certain powers might be delegated to only one or two officers. Other powers relating to the registrations as they come across the counter might be designated to a dozen officers. It will depend on the work flow and the hierarchy of the decision-making process.

Mr JOHNSON: Would the registrar, who is the head of that department, not then be personally liable for the actions of somebody he has authorised or to whom he has delegated that authority? Would that other person be responsible in his own right under the Public Sector Management Act?

Mr Kobelke: There would be responsibility on the part of the delegated officer, but the final responsibility rests with the registrar as in proposed subsection (4).

Mr JOHNSON: The minister is saying that the registrar would retain that responsibility and would have to take responsibility for any problems that arose.

Mr Kobelke: The buck would stop with the registrar.

Mr JOHNSON: It would not come back to the minister. It should come back to the minister; he is putting this in place.

Mrs Edwardes: I could move an appropriate amendment.

Mr JOHNSON: That would be an appropriate amendment to move.

Mr Kobelke: You are always requesting that I inspect building sites on a regular basis.

Mr JOHNSON: No. At the end of the day the minister is responsible for all the people in his departments. He accused some of our ministers of being responsible for their departments and agencies. The minister is saying that the registrar can delegate, but he is not sure how many officers the registrar could delegate that power to; it could be one officer or it could be 10 officers. I do not know how big this department is going to be.

Mrs Edwardes: It is going to get bigger.

Mr JOHNSON: I am sure it will get bigger. The member's interjection is appropriate.

Mr Kobelke: We appreciate your confidence in the legislation.

Mrs Edwardes: It will not be for the EEAs, but for all the other work that the commission is going to get.

Mr JOHNSON: Absolutely; I agree with the member. In the initial stages, quite a few people, particularly those in small business, will be happy to go on to an employer-employee agreement rather than on to the award because of their slightly more flexible arrangements, although there is not as much flexibility as we would like because of the constraints that the Government has put on the EEAs. As the minister said, the buck would stop with the registrar. There could be one or 10 or more people to whom he could delegate that power, but they would be responsible. I emphasise this because many members of the public, small business people and employees want to know where the blame should be levelled if there is a problem due to inefficiency, an oversight or incompetence on the part of an officer who has been delegated that responsibility by the registrar.

Finally, can the minister confirm that the officer who has received the delegation would have to answer under the Public Sector Management Act? The registrar would also have to answer because he would be the final stop. I do not think that only the registrar should get the blame. If the person to whom he has delegated some authority does not do an efficient job and has been incompetent or worse, he should not get away scot-free and see the

registrar take the can for the problem. I hope that that person will be held responsible and accountable under the Public Sector Management Act.

Mr Kobelke: We will share the praise with all the appropriate officers.

Subdivision put and passed.

Subdivision 2: Registration -

Mrs EDWARDES: This subdivision provides for the lodgment processes for the registration of the employer-employee agreement. A party to an EEA may, in accordance with the regulations, lodge it with the registrar for registration. The minister said earlier that it was similar to the well-known provisions for workplace agreements. Is this similar, or is it likely under the regulations to be similar, to registration with the Commissioner of Workplace Agreements, other than the no-disadvantage test etc?

Mr Kobelke: Yes.

Mrs EDWARDES: Proposed subsection (2) provides -

> An EEA must be lodged not later than the end of the period beginning with the day of execution -

What the day of execution means has been identified in proposed subsection (6) -

> and ending with the 21st day after that day.

No provision is being made to extend to 21 days after the day of execution an application to the registrar or to anyone else. The consequence of not registering it or not lodging it for registration within that period is dealt with in proposed section 97VA. The parties must then go back through that horrible process associated with the expiration of an EEA and the conditions of employment on which the employee has to survive, and we have discussed that. Why is there no provision for an extension? It seems a bit harsh. Even seven days would appear to be a little harsh. The period for unfair dismissals has been extended ad infinitum. A seven-day extension in which disputes can be dealt with has been provided. Many other provisions in the Act provide for an extension. I would have thought that even seven days would be ample, given the fact that if the EEA is not registered within that period, other consequences that impact on both the employer and the employee will flow, and we will get to that later.

Mr KOBELKE: The member is placing too much emphasis on what is involved. The time would be eaten up mainly in preparing, negotiating and getting agreement on the EEA. Once it is signed, it should be concluded with some expedition. If anything, 21 days is perhaps too long. Once both parties have signed it, all they need to do is put it in the mail or have someone lodge it with the commission. That should take no more than a week. If people live in the most remote part of the State, it may take another week to get here.

Mrs Edwardes: What if cyclone John comes through?

Mr KOBELKE: That would bring it here in double quick time. I can see no problem with the 21-day period. One hopes that most of the agreements will be lodged within seven days. Twenty-one days will give ample time if there is some hold-up, a mistake is made or someone loses it in a pile of papers and finds it a week later. These proposed sections are already too long and too cumbersome in many respects. We do not want to add more to them. It would just make it more difficult. It is better to set the period. It is an ample period.

Mrs Edwardes: We can start deleting some of them if you wish.

Mr KOBELKE: I did not mean to tempt the member to do that.

Mr Johnson: If for some reason an agreement is not lodged within 21 days and is lodged 22 or 23 days after -

Mrs Edwardes: You have to start again.

Mr Johnson: Yes, people have to start again, but to what degree do they have to start again?

Mr KOBELKE: The parties must simply photocopy the pages with the signatures, bind the papers together and change the date.

Mr Johnson: Can people use the same papers and simply have them re-signed and redated so that they comply with the 21 days from that date? Do they really have to go to the trouble of printing them all again?

Mr KOBELKE: I was not correct in what I said a moment ago. The parties must go through the process, and we are coming to that. There are a number of days for providing the prescribed information, and then the parties

must start the process again. Hopefully, if there had been lengthy negotiations, the parties will not have to go through them again.

Mr Johnson: If they have gone through that process -

Mrs Edwardes: And there is a cooling-off period.

Mr Johnson: If the only problem is that they have missed the deadline by a day or two, under the legislation the agreement cannot be used. If those papers went back to the employer and the employee, and if they were still happy with the agreement, surely re-signing and redating the papers and then lodging the agreement would be a much more sensible way to go. It would save an awful lot of time, heartache and aggravation. It would save the employee a lot of heartache and aggravation, and it would save the employer a lot of extra costs in going through all the rigmarole.

Mr KOBELKE: The member is suggesting a hard case that would make a bad law. We want certainty. The member was arguing before that he wanted to have the process condensed because he did not want to wait too long for registration and he wanted to bring the starting date forward. Now he wants us to push it back.

Mrs Edwardes: No. The commencement date of the registration processes could still follow.

Mr KOBELKE: No, because they are different. The issues of timeliness and expedition are still there and we want the matter to be determined as soon as possible; that is, in 21 days. There will always be a small percentage of people who simply forget to do what must be done. Even if we made the lodgment time 42 days, a small percentage of people would forget to lodge the employer-employee agreement. It is our judgment that 21 days will be more than ample and that 99.9 per cent of people will make their way through the process in that time.

Mr Johnson: But if both parties are happy with what is in the document -

Mr KOBELKE: If we give them any more time then it might be the case that -

Mr Johnson: I am not suggesting that they be given more time. You should simply let them have the papers back and say that lodgment was missed by two days and that the EEA is out of date. Surely they could then photocopy it, or delete their signatures and the dates and re-sign the EEA. The EEAs would not be re-signed unless both parties were happy. The agreement would carry the same conditions and terms so surely it could then be re-lodged, or is there a waiting period before it can be lodged for a second time?

Mrs EDWARDES: I have changed my mind. I support this proposed new section because it will cause so much aggravation among those who have missed out on the lodgment date by a few days and must go through the whole process again. This is a good one for us.

Mr KOBELKE: I have already put forward the case on this issue. I accept that it appears attractive to provide more time for the lodgment of an EEA. However, if we include a few extra clauses to allow people to resubmit a late lodgment, there will always be a small percentage of late lodgments. We want these matters to be determined. I am advised that 21 days is judged to be more than ample time for people to lodge the EEA. The parties will have gone through the lengthy process and finally signed the EEAs, and by that time the employee may already have been working for the employer for some time, so we want the EEA to be registered.

Mr Johnson: An employer can run out of time by a day or two for lodgment, and it happens to a small percentage of people, but we must look after everybody; the minority as well as the majority. It might happen to a small business person who is having some difficulties and has put something aside that needs to be done. Something else then happens and they miss the lodgment date by a day or two. If the minister wants to get some certainty and the process happening -

Mr KOBELKE: I am not inclined to put in a procrastinator's clause.

Mr Johnson: If the minister wants to get the EEA in place, at least let the employer have the option - if both parties are happy - to resubmit the EEA after seven or so days. To go through all that process again -

Mr KOBELKE: The provision drives people to get the EEA in within 21 days.

Mrs EDWARDES: I think the minister likes the big stick; it keeps coming up in section after section in this subdivision. Proposed section 97UY(3)(a) states that the EEA cannot be accepted for registration if it is presented after 21 days. However, proposed paragraph (b) of that section states -

> any provision of the regulations relating to lodgment has not been complied with.

What is anticipated in that instance?

Mr Kobelke: Is the member referring to proposed section 97UY? I do not see the point of her question.

Mrs EDWARDES: What other hurdles does the employer have to jump in order to get the EEA lodged?

Mr KOBELKE: Proposed paragraph (a) refers to the period we have just been talking about. Proposed paragraph (b) leaves an opening so that if something else should arise, it can be set by regulations. Those provisions provide flexibility if we suddenly find that there is a problem. Provisions could then be made with respect to some other factor that is a requirement for lodgment.

Mrs EDWARDES: Proposed section 97UY(4) and (5) indicate that the registrar must provide a receipt showing the day of lodgment. Obviously, that puts the process into perspective. However, that receipt must be issued within seven days after the day of lodgment. Why not on the day it is lodged?

Mr KOBELKE: We hoped to do that but if many lodgments came in together -

Mrs Edwardes: Surely the reason is not procrastination, minister.

Mr KOBELKE: No, it enables efficient management and gives us flexibility. The provision is for a maximum of seven days.

Mrs EDWARDES: I take the minister at his word when he says he wants to get the receipt out on the day. If I lodge an EEA, I want a receipt. I do not want to walk away with without a receipt. Can that be provided?

Mr Kobelke: I hope that as standard practice an employer would be issued with a receipt. However, if many EEAs are received by mail, they may need to go through the mail system, be opened, stamped and the receipts issued, and that may take a day or two.

Mrs EDWARDES: Proposed section 97UZ deals with the failure to lodge an EEA made with a new employee, and reads -

> If an EEA made with a new employee -
>
> (a) has taken effect; but
>
> (b) is not lodged for registration within the period allowed by section 97UY(2),
>
> it ceases to have effect for the purposes of this Part immediately after the expiry of that period.

I take it this links in with proposed section 97VA.

Mr KOBELKE: The member answered the question correctly. When the process comes to an end, we refer to proposed section 97VA.

Mrs EDWARDES: I referred to proposed section 97V, which deals with the recovery of money. This section applies when proposed section 97UZ applies. Therefore, it may not apply to an existing employee whose EEA has expired. I am surprised at that.

Mr Kobelke: Did the member think that proposed section 97V applied to existing employees, whereas it applies to only new employees?

Mrs EDWARDES: And only when there is a failure to lodge the EEA. In the previous debate I referred to the signing of the new agreement with an existing employee. We were concerned about the registration date being so far away and what would happen if the employee had an EEA. If the EEA was registered and later on there were concerns, I said that proposed section 97V would provide protection for that employee in terms of the recovery of money. In fact, it does not provide any protection for an employee in that situation.

Mr Kobelke: The confusion is that the EEA takes effect once it has been signed by the new employee. It takes effect not once it has been registered, but once it has been signed. That is what this proposed section covers.

Mrs EDWARDES: If the Government had agreed to the amendment relating to an EEA for existing employees taking effect on signing, this proposed section would also have needed to be changed to allow them to recover. It applies when there has been a failure to lodge an agreement. Employment commences when the new employee commences and not on signing, if I remember rightly. Therefore, the Bill provides for any entitlement the employee should have been given but had not been given because the EEA had not been lodged. Would the employee be provided with money as if the EEA had been in existence for the time he had worked, up until the lodgment date?

Mr KOBELKE: I agree with everything the member for Kingsley said, except the bit near the end of her argument when she said that their entitlements would be those to which they were entitled under the EEA. The entitlements would be those to which they were entitled according to the relevant award.

Mrs Edwardes: Why have this provision in place? What circumstances are you trying to cover? If an employee is not being paid according to the provisions of an EEA, it is because the EEA was not lodged correctly and not because it did not meet the no-disadvantage test. We have not got that far. You are saying that the safety net is the award in the event that the EEA did not meet the test. Again, an employee could be disadvantaged.

Mr KOBELKE: Yes, but generally we have benchmarked the award for all the provisions. That is consistent. The member for Kingsley could say that in some cases the employee would have been better off with the EEA provisions and not the award. We have generally benchmarked the award. I assume that is why the safety net was taken as the relevant award in the drafting of the Bill. That is consistent. Whichever way it goes, there will be some winners and some losers. It is my understanding that the Government has been consistent in using the award as the benchmark throughout the provisions of the Bill. The Workplace Agreements Act has the same provision. If there is a failure to lodge an agreement within 21 days, the entitlements are taken off the award.

Mrs EDWARDES: So the minister is saying that essentially the provision is to ensure that if employees are paid below the award, they have an action to recover the money, and if they are paid above the award, they do not have an action.

Mr Kobelke: Sorry, the employer may have an action.

Mrs EDWARDES: What happens if an EEA has a provision for annualisation and during the period in which the award provisions applied the employee worked a lot of unconventional hours? Under the award, penalty rates would apply to those hours. It seems unfair that the penalty rates would apply if the EEA had not been lodged. The employee had already agreed to the provision for annualisation and to work unconventional hours, for which he was to be paid an hourly rate, exclusive of penalties. It just happened that the employee worked a number of unconventional hours at that time because it was a seasonal period for that particular industry. What would happen in that instance? Who would owe whom money?

Mr KOBELKE: The case outlined by the member for Kingsley was that an employee worked a large number of hours, for which the rate of pay according to the award was high, but because the EEA had an annual salary or an averaging, he was paid less. In that instance the employee would have the basis for a claim for underpayment of wages. The alternative is that if an employee had for that period been working fewer hours than was specified, it might go the other way. There would be winners and losers in both cases. It has to be averaged out. The member for Kingsley should keep in mind that we are dealing with only a small number of cases. This type of thing occurs only in a few cases. We are seeking to cover all eventualities so that disputes do not occur and people know what is going to happen. It is not a big problem. There will be winners and losers whichever way it goes. The important thing is that proper procedures are laid down to handle unusual cases or cases that fail to meet certain criteria.

Mrs EDWARDES: All members have come across cases, probably in a personal sense, of mail that has not arrived on time. It is very rare; Australia Post is well regarded. What the minister has identified will potentially cost both employers and employees, just because they did not get the agreement in on time. It might not have been a deliberate delay. They might have thought that it would take seven days for the EEA to be delivered through the mail, but on this occasion it took longer. It could be around Christmas. The Bill does not provide an extension, even of only three to seven days, for people who are attempting to do the right thing. This provision could have real consequences, both financially and in the time taken to go back and start again.

Mr KOBELKE: The argument the member for Kingsley is making goes against the current Workplace Agreements Act.

Mrs Edwardes: I am looking at this legislation.

Mr KOBELKE: I know that. What I am saying is that the member for Kingsley is looking at the legislation and is suggesting or finding deficiencies. There are always hard cases. This is the mechanism in the Workplace Agreements Act. The Government has sought to enhance and improve on the workplace agreement legislation. The member for Kingsley knows the Labor Party was critical of that legislation. We have not sought to greatly vary a range of standard mechanisms to pick up small anomalies or injustices that might arise in particular cases. That would have meant taking on an extra task. The Government has clearly designated and addressed the key areas in which injustice or unfairness arose. The member for Kingsley can take issue with how the Government has addressed them by saying that the way in which it has been done is too bureaucratic or cumbersome, but the Government is not going to go through the legislation and be overly bureaucratic or cumbersome in every area in which there is the potential for a minor unfairness to occur. We have simply picked up what is in the workplace agreement legislation. I accept the member for Kingsley's argument. In a small number of cases someone might

seem to suffer unfairly. That occurs in a small number of cases. The Government is happy to accept the provisions that currently stand in the Workplace Agreements Act and to replicate them here for the use of EEAs.

Mrs EDWARDES: There is no provision to set off what an employee might have been entitled to receive or what an employer might not have been required to pay. A literal interpretation of the Bill is that it would be automatic; that whatever had been received by an employee over that period would obviously be set off because it would not be what he was entitled to receive. If an employee were entitled to any money, it would be over and above what he had already received. It would take into account what he had been paid. My understanding is that there would be no reason for a specific right of set-off, but, as I said, I would like confirmation to put it beyond doubt.

Mr KOBELKE: I do not think there is any doubt at all. However, I appreciate the opportunity given to me by the member for Kingsley to put it on the record in the event it arises in a court case. Proposed section 97V applies when a payment has been made to an employee. A person who sought redress under this proposed section would be awarded the additional amount required to give him his full entitlement. We are not suggesting that the person would receive the full quantum on top of any salary or wages already paid for the period. That is clearly not the intention of this proposed section, and I hope it will not interpreted as such by the courts.

Dr WOOLLARD: Does the minister have, and could he table, a sample of an employer-employee agreement? This part of the Bill comprises 70-odd pages. I would like a copy of an EEA to see how the provisions will apply. These agreements will be for general use. It would be interesting to know how an ordinary person would interpret an agreement.

Mr KOBELKE: The intention of a statutory individual contract, of which the EEA is an example, is to provide flexibility for employers and, to a lesser extent, employees to determine the conditions of their contract of employment. The Government will not specify those conditions. It lays down the rules. If the member wants examples of agreements, she should look at some horrendous ones which were lodged under the Workplace Agreements Act or the Australian workplace agreements lodged under the federal law, which has a similar legislative framework. They are both forms of statutory individual contract. The purpose of the provisions in the Bill is to enable employers to determine what is best for their businesses and their employees. Clearly, we do not set out to establish a template or standard EEA and herald that as the way to go. Employers and their employees should determine the particulars of their individual agreements.

I have told the member where she can find examples. The Bill contains areas - we have already discussed one - in which standard provisions can be developed as part of an EEA. The proposed section we have already covered deals with the dispute resolution procedures and allows the commission to develop a standard set of dispute resolution procedures to assist parties in establishing an EEA. Those parties are under no obligation to use those procedures, but they will provide a simple method of meeting the dispute resolution requirements of the Act. That is only one element of the various components that would constitute an EEA. It is up to employers to design the agreement; it is not the role of the Government. We are simply providing the flexibility they have sought. We will leave it to them to design the EEA.

Dr WOOLLARD: I believe that the minister suggested that I look at workplace agreements to learn how these EEAs will be written. That was my interpretation of what he said. I thought the Labor Party was against workplace agreements and that these EEAs were meant to be an improvement on them. If EEAs are meant to be an improvement, why is the minister referring me to workplace agreements? Why does he not have a sample EEA that one can look at?

Mr Kobelke: I thought I explained that. Workplace agreements are an inferior form of a statutory individual contract.

Mrs EDWARDES: Proposed section 97VA deals with the employment conditions of new employees if EEAs are not lodged for registration within the period provided. We have already talked about the circumstances that will apply when an EEA expires. This proposed section provides that if an EEA is not lodged, an employee will move to an award or, if no award applies, a contract of employment that is subject to the provisions of the EEA that was not lodged within the allowed period. That contract can also be varied, but it is not the same contract as that under proposed section 97UE(2). The proposed section is essentially replicating the provisions that will apply to expired EEAs.

Mr KOBELKE: In the case of new employees, it will be unlikely that the parties have contemplated any terms and conditions other than those specified in the EEA. Therefore, it is appropriate that those conditions should apply if the EEA ceases to have effect for a reason that is not the fault of the employee; that is, if the employer failed to lodge the EEA within 21 days. The Workplace Agreements Act does not provide any statutory

protection for a new employee or an employee whose workplace agreement expires in similar circumstances. Conceivably, employers could reduce those employees to the basic minimum conditions of employment. Although the Minimum Conditions of Employment Act will be enhanced, it will still provide for only basic conditions. Nothing will prevent the parties from agreeing to vary the contract of employment to incorporate the terms and conditions of the EEA. I refer to proposed section 97VA(2), which allows for the contract to be varied.

Mrs Edwardes: Does that mean that in those industries that are covered by an award, the award rather than the terms of the EEA will apply?

Mr KOBELKE: That is correct.

Mrs EDWARDES: Proposed section 97VB provides that the registrar must satisfy him or herself that an EEA is in order for registration, as outlined in proposed schedule 4. Proposed schedule 4 deals with the registration requirements for EEAs and outlines when an EEA is in order for registration. The proposed schedule lists a number of proposed sections, and states which apply to the registration of an agreement and with which ones an agreement must comply. The proposed schedule stipulates that an agreement must be signed in accordance with a particular proposed section; pass the no-disadvantage test; and not purport to provide for a condition of employment that is less favourable than a stated minimum condition of employment. Essentially, it repeats many of the proposed sections we have discussed and will discuss. Proposed schedule 4, subclause (2) provides -

> Subclause (1)(g) does not apply to an offer of employment made, or an intimation of employment given, that would otherwise come within that provision if -
>
> (a) there is no award or industrial agreement . . .

Proposed subclause (1)(g) states -

> in relation to the making of the EEA, the employer did not -
>
> (i) offer employment to the employee; or
>
> (ii) intimate to the employee that he or she would be employed,
>
> only if he or she agreed to the employment being under an EEA;

Can the minister clarify the interaction of those two provisions?

Mr KOBELKE: It is my understanding that the proposed schedule mirrors the proposed sections to provide simpler reference for the requirements. I am hopeful and confident that there are no contradictions between the proposed sections and the schedule. When the Act is applied - I have noted that it is more complex than I would have liked - a person will be able to go to schedule 4 and find a simple listing of the requirements for registration of an EEA, rather than go through various pages of the Act to determine what does and does not have to be considered. It is way of giving a simple summary of the provisions. That is the key reason for putting in the schedule.

Mrs Edwardes: I would like some comment from the minister about the interaction between clause 1(1)(g) and clause 1(2) of proposed schedule 4.

Mr KOBELKE: Clause 1(2) provides exemptions or variations to clause 1(1)(g), which reads -

> in relation to the making of the EEA, the employer did not -
>
> (i) offer employment to the employee; or
>
> (ii) intimate to the employee that he or she would be employed,
>
> only if he or she agreed to the employment being under an EEA;

That is the clause that provides that the employee must be offered choice.

Mrs Edwardes: So a person with disabilities will not be offered choice?

Mr KOBELKE: Clause 1(2) provides for variations to clause 1(1)(g) if there is no award or industrial agreement containing supported wage provisions that extends to the person with a disability. The contract of employment for people with disabilities is special, and a whole proposed section deals with that.

Mrs Edwardes: I think you have the wrong section. I thought that would have been the no-disadvantage test. Clause 1(1)(g) says that an employee cannot be offered employment only on the basis of it being under an EEA.

Mr KOBELKE: That is the choice clause.

Mrs Edwardes: The exclusion is if there is no award or industrial agreement containing supported wage provisions that extends to the employee, or the employment was arranged through an entity that provides employment services for persons with disabilities. I cannot pick up the connection.

Mr KOBELKE: This provision does not apply to all people with disabilities, because under clause 1(2)(a), if the supported wage provision exists, the employee still has the choice. However, for those who have no benchmark for a supported wage, their only chance of employment may be through an EEA, otherwise the wage structure will mean they will not be employed. For someone who can work at only 25 per cent efficiency, compared with a fully efficient employee, if the employer is required to offer the choice between an EEA, which assesses the employee at 25 per cent efficiency, and the award, he will simply not offer the job, because he cannot afford to pay the award. This does not apply to all people with disabilities. As I read it, it is a let out in cases in which no supported wage provision can be found to cover that employee. In most cases there will be a supported wage provision.

Mrs Edwardes: Increasingly the supported wage provision is used in cases in which there is federal government funding in any event. Why is clause 1(2)(b) there?

Mr KOBELKE: This is a special clause, because federal government money goes to special agencies that provide employment services for people with disabilities.

Mrs EDWARDES: I would like the minister to continue his remarks on this clause.

Mr KOBELKE: It is my understanding that only a small number of cases are being dealt with here. The situation now is that many people with disabilities are mainstreamed. That has been a huge movement over the past decade or so. Both state and federal programs exist to assist these people to lead full lives, go to work and be paid for that work. However, that pay needs to reflect the fact that their productivity may be very low. Flexibility is needed to allow for one person who may be working at 90 per cent of full productivity, and another person who may be working at 20 per cent. There is a big range between individuals. Clause 1(2)(b) refers to specialised agencies that receive federal funding to attempt to get people into employment. That may be within the traditional sheltered workshop environment, or it may be mainstreamed in a business that is willing to take on people with certain disabilities. The requirement is to have both; that is, someone cannot simply come along and offer to employ a person at a lower rate because he has found a niche in the law that will allow him to pay that person less. These people will have to come through one of the employment agencies that are set up to assist these people. In addition, in order to have this let out, it will have to be an area in which there is no award or industrial agreement containing supported wage provisions that extend to the employee.

I suspect this clause is providing for a very small number of people, but the Government has been very keen throughout this exercise not to undermine in any way the usefulness that has been found in workplace agreements in helping people with disabilities to get into paid employment. I have visited them. That employment is fantastic for their self-esteem, and they really feel they are contributing to the community, and they are, but it is because allowance has been made for the fact that they are being paid a much lower wage. That has to be measured so that it is fair, because serious accusations have been made about some people who are capable of doing a full day's productive work in some specific jobs being paid a pittance on the basis that they have some disability. The Government does not want to allow that kind of exploitation to take place. It wants to assist and encourage people who have a genuine disability and are involved in a program that will get them into the workplace. There are many sympathetic employers who are willing to cooperate, but they still have to run their businesses, so they need to structure a wage rate that has some equivalence to the level of productivity of the employee. That is what this clause is providing for.

Mr JOHNSON: I have a concern for people with disabilities, as well as for employers. I put to the minister a scenario of a person with severe disabilities who gets a job with an employer who is sympathetic to giving employment to such people - and that is normally the case in my experience. If after three months the employer finds that the person with the severe disabilities cannot do even the job that has been assessed for that person, what hurdles will the employer have to overcome in order to be able to terminate the agreement with that employee? The minister has said that he recognises that many people with disabilities do a very good job, though some are very limited in what they can do. That is generally accepted on both sides of the House, and certainly in the workplace. I am concerned as much for the employer as for the employee with the disability. What will happen if it is found after a period of time that the employee cannot fulfil even a job that is not as demanding as that of a person who is perfectly healthy? From the employer's point of view, what hurdles will there be if, for financial reasons, the employer decides that the work is not being done even at a lower level by

the person with disabilities? To what extent could the employer, although he may sympathise with the person, decide that he can no longer afford to carry that person?

Mr KOBELKE: The member for Hillarys has returned to the issue of trial employment, and that is one element of it. Commonwealth Government money goes into a range of support services for people with disabilities, so they can gain work experience from different jobs. Some may start on simple tasks and work their way up. The commonwealth funding provides a range of support programs for them, including trial employment in which employers can check them out first and the support agency covers them for workers compensation and the rest. It is not an issue of employment that is part of this Bill. It is work experience, and employers may decide to take them on. The risk that those employees will not be suitable exists currently. This Bill does not address those issues. The management programs that have been put in place by non-government agencies largely through commonwealth funding are already addressing these issues. The member for Hillarys has raised real issues. These schemes need to gain the confidence of the employer, because if employers have a bad experience, they will not repeat the experience. Having gone to a number of breakfasts and spoken to employers, I can say that we have fantastic employers who employ extremely good workers who are disabled. Recently I was talking to a father who had employed his son. His son was in a special school and he thought that they were not pushing him enough. He got his son to work with him on a trial basis and input his invoices. He said his son did a fantastic job. It is a simple job for him to input the invoices on the computer, and his son is happy that he is contributing to the family company. This father had not even thought about the possibility of employing his son until he talked to the people who provide the support services. There are tremendous employers who are giving disabled people a great opportunity to contribute. There will be occasions that it does not work out, but that is a management issue that is outside the amending Bill. The amending Bill does not seek in any way to reduce the advantage that these people have found in using workplace agreements. The Workplace Agreement Act also contains a section that allows for a lower disability wage. The Government is seeking to provide in the EEAs a continuation of that system, but to provide more protection so that we do not have the exploitation that is currently happening with some people who have minor disabilities. They are doing a full job, working long hours doing exactly what is required of them, but are being exploited. We have sought to include protections and to run with the mechanism that has worked very well for some disabled people using workplace agreements, but to allow flexibility.

Mr Johnson: What is the trial period to which the minister referred.

Mr KOBELKE: That is a management issue that is outside this Bill. I related to the member my experience of how that is being managed in a range of programs. It is working effectively, which is not to say there will not be the occasional situation in which it will not work. However, that is not caught by the provisions of the Bill; therefore, I am not in the position, because either I do not have the knowledge or it is not in the standing orders, to go further and explain those issues.

Mrs EDWARDES: Proposed section 97VC of the Industrial Relations Act deals with the powers and functions of the registrar. The registrar may meet with the parties and otherwise obtain information in any way he thinks appropriate. The registrar does not rubber stamp the EEAs. Members opposite alleged that the Commissioner of Workplace Agreements acted as a rubber stamp. The Commissioner of Workplace Agreements had the same power as that which is proposed for the registrar. The commissioner met with the parties and obtained any other information that he thought was appropriate in order to satisfy himself. The registrar may meet with the parties, either together or separately, and bargaining agents may represent the parties. We dealt earlier with bargaining agents. Proposed section 97VC(3) states -

> A party to an EEA that has been lodged for registration, or his or her bargaining agent, may make written submissions to the Registrar for the purposes of section 97VB.

Is it contemplated that at some point the parties, probably following contact by the registrar, may put in written submissions supporting the position being put forward in the EEA and whether it meets the no-disadvantage test and the like?

Mr Kobelke: Yes.

Mrs EDWARDES: Proposed section 97VC(4) refers to the purposes of performing the functions in proposed section 97VB. Under proposed section 98VB the registrar is to be satisfied that the EEA is in order for registration. It also states that a delegate of the registrar is an authorised person in proposed schedule 5. I am at a loss to understand what in proposed schedule 5 has a connection to proposed section 97VB. Could the minister explain?

Mr KOBELKE: The registrar is given powers to inform himself or herself, or a delegate of the registrar. Therefore, we need to know how the registrar may do that and what powers the registrar may have. Proposed

schedule 5 sets out those powers - that is, the power to obtain information relating to obstruction, false statements, failure to comply with notice, legal professional privilege and incriminating answers or documents. Proposed schedule 5 contains six clauses that basically set out the powers of the registrar, which are applied under proposed section 97VC for the purposes of ascertaining the clear facts of the EEA that has been lodged for registration. This proposed section replicates the powers given to the commissioner in the Workplace Agreements Act.

Mrs EDWARDES: The registrar becomes an authorised person with those powers. Proposed schedule 5 provides the powers. However, proposed schedule 5 must be linked to a substantive clause. Proposed schedule 5 does not provide a link to the registrar as being the authorised person who is referred to in proposed schedule 5. That is because it does not define who is an authorised person. Technically, I think this proposed subsection ought to refer to who is an authorised person for the purposes of proposed schedule 5, rather than linking this proposed subsection with proposed schedule 5.

Mr KOBELKE: My advice is that is not the case, because proposed section 97VC(4) says that the registrar is an authorised person within the meaning of that term in proposed schedule 5. When I move to proposed schedule 5, the authorised person clearly is referenced in proposed section 97VC.

Mrs Edwardes: It sets out the powers, but does not give us the definition of authorised person.

Mr KOBELKE: The member for Kingsley is the lawyer, but my advice is that it is adequate. Proposed schedule 5 also refers to proposed section 97VC(4). It seems there is a one-to-one linkage between the two parts to the Bill, so there could not be any ambiguity or doubt that the authorised person in proposed schedule 5 is the registrar as authorised under proposed section 97VC(4).

Mrs EDWARDES: Proposed section 97VD provides for the registration to notify parties of certain deficiencies in the EEA. Proposed section 97VD(1) applies when the registrar is not satisfied that an EEA is in order for registration for one or more reasons; that is, it does not comply with the form and content provision, the dispute resolution clause or the expiration clause. It does not pass the no-disadvantage test and provides for a condition of employment that is less favourable to the employee than a minimum condition of employment under the Minimum Conditions of Employment Act. How do (c) and (d) interact with each other?

Mr KOBELKE: As the member quite rightly pointed out, there is some duplication. However, parliamentary counsel considered that a number of clauses provided the opportunity to make it certain. I do not think it will create any confusion. The no-disadvantage test must apply. I think it will default to the Minimum Conditions of Employment Act should a relevant award not apply. Although 97VD (1)(c) might duplicate proposed paragraph (b), it will clarify that either the no-disadvantage test or the Minimum Conditions of Employment Act should apply.

Mrs EDWARDES: It will probably cause more confusion because people will want to know what is implied by this clause that is not obvious. I take on board the minister's response that it is duplication and was not imperative. I accept that if a condition fails the no-disadvantage test it will attract the Minimum Conditions of Employment Act. We will discuss the no-disadvantage test later.

Proposed subsection (2) provides -

> Where this section applies the Registrar must give notice in writing to the parties setting out -
>
> (a) the deficiencies in the EEA that, in his or her opinion, will make it necessary for the Registrar to refuse to register it; and
>
> (b) the terms of subsection (1) of section 97VE and the period within which the parties may comply with that subsection.

The parties must be advised in writing of the deficiencies that would make it necessary to refuse to register an EEA and within what time frame the parties must comply. What period is considered to be reasonable in this instance?

Mr KOBELKE: I cannot ascertain whether a statutory limitation will apply to the period. If we get that advice later I will advise the House. If necessary, the registrar or the Industrial Relations Commission can use guidelines or regulations for what should apply to various cases. I understand that the registrar would set a specific period.

Mrs EDWARDES: What does the minister consider to be a standard period to correct the deficiency and get it back to the registrar?

Mr KOBELKE: I do not know, but it must be workable. We will wait for the registrar. Complaints might be made about the period initially set, so it might be extended. That could be why a specific period has not been set. If, initially, a few people had trouble meeting the time frame, it might be extended for the time being and tightened later. We are allowing for flexibility. I will check whether a statutory limitation applies to the period. As the member for Kingsley pointed out, the period will be set under 97VD(2)(b).

Mrs EDWARDES: We referred this evening to timeliness and the need for some certainty. The minister indicated that the period for registering an EEA might be extended initially and decreased later. However, the proposed section does not require that the registrar should consider the EEA, inform himself or do whatever else he needs to obtain information to ensure 97VB is complied with and then to notify parties. This is a major deficiency, particularly, as we mentioned earlier, for existing employees because an EEA will not take effect until the day after registration. There is no requirement for the registrar to make a decision in a timely fashion after consideration of the EEA.

Mr KOBELKE: I accept the member's point. However, on balance we think this is a more workable system.

Mrs Edwardes: What would you regard as a reasonable period for that consideration to take place?

Mr KOBELKE: I cannot provide that information. However, the guiding principle is to assist the parties to have their EEA registered expeditiously. If more time is required because a genuine issue must be worked out, clearly the registrar should allow time for that. We do not want people's time being limited because of a bureaucratic restriction. That should be set by the registrar, who would see the flow of work, hear the issues raised by the parties to EEAs and seek to allow time so that the matter could proceed. I assume it will be a reasonable amount of time because the registrar will want to give the parties time to make alterations to the EEA.

Mrs EDWARDES: I was referring to the fact that proposed section 97VD does not contain a time frame within which the registrar should refer back to the parties to notify them of deficiencies if he failed to register their EEA.

Mr KOBELKE: I answered that in part by saying that one of the principles would be for the registrar to act expeditiously to release information that should be sent out again and to extend time to the parties to complete the necessary details.

The other issue is that the Bill will allow the commission to help guide this whole process. If there is a logjam or people see a problem, parties or individuals can ask the commission to intervene and lay down rules because they might be affected by time constraints on some of these matters.

Mrs EDWARDES: There is some confusion as to whether the registrar can allow the parties to amend any deficiencies or whether he can reject them out of hand and send the employer-employee agreement back to the parties stating that he has refused the registration. That would then involve the parties going back to the registrar to register the document. In proposed section 97VG, which we will deal with shortly, the registrar must refuse registration if the document does not meet the outlined requirements. In what circumstances under proposed section 97VG would the registrar notify the parties of deficiencies in the EEA and when would the refusal be given?

Mr KOBELKE: It is not discretionary for the registrar to give notice under proposed section 97VD(2); he must give notice. A range of administrative matters would flow from that notice. Therefore, given that the notice could not be taken as perfunctory, the timeliness and the way in which the notice was given would have to be effective, otherwise the registrar would not fulfil the statutory requirement that it must be in writing. Although the questions asked by the member are valid, it is inappropriate at this stage to tie down that detail. We intend to leave it to the registrar to administer the process. However, the power in proposed section 97VD(2) makes it clear that it must be carried out; therefore, the timeliness of a notice and the communication of requirements are implicit from that requirement on the registrar. We have confidence that the registrar and his delegates will implement a workable system although we cannot at this stage dictate the details about which the member wants to know.

Mrs EDWARDES: There is a need to clarify where and when the document should be amended and where and when it should be refused. Proposed section 97VD states that if the document does not comply with the three sections that I outlined earlier and does not pass the no-disadvantage test in paragraph (b) - which is again a major part of the EEA and the paragraph that contains the minimum conditions of employment - the registrar must give notice in writing to the parties setting out the reasons for non-compliance. If there is another deficiency in the EEA, does proposed section 97VG apply and in what circumstances could there be a deficiency? These are the major provisions that must be prescribed in the EEA. Any other deficiency would be additional to those major requirements. Is the minister saying that proposed section 97VD applies to correct

deficiencies and then proposed section 97VE applies? If the agreement is re-lodged for registration and the registrar is still not satisfied that the EEA is in order, the registrar will determine that the registration is refused. It is unclear when the link between proposed sections 97VD and 97VG applies.

Mr KOBELKE: That is a valid point. Proposed section 97VD has a range of checks for compliance that the registrar must carry out. They are proposed section 97UL, which relates to the formalities that the EEA must be in writing and so on; proposed section 97UN, which relates to dispute resolution procedures; proposed section 97US, which relates to expiry; and a no-disadvantage test in proposed section 97VD(1)(b) and (c). The registrar can give notice to rectify those matters to make sure that the EEA complies. The other matters required for registration are whether there has been choice, proper notice and those sorts of things. If those requirements are not met, the EEA would not be registered because of the way the provision is structured. The other requirements, on my reading of their application, would have to be met and there would be no opportunity to revisit them. It is not as if the parties can hand in any bit of paper and the registrar has the job of a year 1 schoolteacher of correcting it. If those other requirements are not met, proposed section 97VG would be applied and registration refused. However, under proposed section 97VD the registrar must give notice of the deficiencies in the agreement and the parties could rectify those deficiencies because they could be key issues that would require a few alterations to comply with the necessary standards.

Mrs EDWARDES: With due respect to the drafting, there is not a sufficiently clear link between proposed sections 97VD and 97VG. The minister's explanation of when he believes those sections should apply is clear; that is, the requirements outlined in proposed subsections (1)(a), (b) and (c) give the parties an opportunity to amend the agreement. In all other respects there is no opportunity to redress any deficiency in the agreement and it must therefore be cancelled.

We will discuss next when the parties may correct deficiencies; however, does the proposed section give the parties an opportunity to review the EEA at that time? What is the registrar's position if the document comes back to him and he identifies other changes relating to proposed subsection (2)?

Mr KOBELKE: If the document complied it would be registered; if it did not comply there would be no second chance.

Mrs Edwardes: Can the EEA be reviewed at the time the registrar corrects the deficiencies?

Mr KOBELKE: Only within the parameters of the notice provided by the registrar; that is, in the designated deficiencies to which the registrar is seeking a remedy so that registration can be completed. Other areas that were not the subject of the notice from the registrar could not be varied.

Mrs EDWARDES: I reiterate for the record that in instances in which paragraphs (a), (b) and (c) apply, the registrar would give the parties an opportunity to review and correct those deficiencies. I labour the point because a no-disadvantage test is a costly exercise. It is not a simple exercise, as one might think, for some businesses. Therefore, if an EEA does not meet the no-disadvantage test, is there an opportunity for the agreement to go back to the employer and the employee to correct that deficiency?

Mr Kobelke: That is correct.

Mrs EDWARDES: Proposed section 97VE deals with situations in which the parties may correct deficiencies. If a notice is given to the parties under proposed section 97VD, to which we have been referring, the parties may, in accordance with the regulations, lodge a revised employer-employee agreement with the registrar within the time specified in the notice. We have learned from the minister that that should be a reasonable period, but one that can be exercised expeditiously. A revised EEA so lodged is to be treated as if it were an EEA duly lodged under proposed section 97UY. Therefore, it goes through that process. However, proposed section 97VD does not apply to a revised EEA lodged under proposed section 97VE(1). Therefore, the parties do not get a second bite of the cherry. They have one opportunity to correct the deficiencies, but they do not get a second bite of the cherry.

I go back to the complexities of dealing with a no-disadvantage test. It is a costly, timely exercise to attempt to get it right, particularly when evaluating the differences between non-monetary benefits under awards and monetary benefits that might be included in the EEA. Parties will get only one bite of the cherry. However, in an endeavour to try to meet the needs of both parties, the registrar might like the parties to put the agreement back in draft form so that he can cast his eyes over it to ascertain whether there will be a problem with it, without doing that in a formal sense. I believe that is what the minister said; that is, that the request would be to facilitate the ability of the parties to enter into the EEA and get it registered. I want clarification of whether it is really only one bite of the cherry; and, if that is the case, will there be an opportunity for the registrar to look at the agreement in a discretionary way prior to the formal re-lodgment of it?

Mr MARLBOROUGH: I will go back a step from this clause and look at what the Government is trying to do throughout this Bill. One of the key matters is to bring in best practice between the employer and the employee. As part of that best practice process, one hopes that both parties will use their best endeavours to come up with a document that effectively reflects what they have agreed. There is no point negotiating in a complex area for days or weeks on end and coming up with a document that does not reflect the discussions that have taken place. The clear emphasis in the Bill is to make sure that those parties responsible at that level of negotiations get the document right. The registrar will make clear to the parties within seven days those areas in which the document is incorrect. However, it is not intended that in the first instance this will be a smorgasbord of issues that the parties will try to somehow craftily get past the registrar and agreed to. If that smorgasbord of ideas does not meet the criteria necessary to satisfy the disadvantage tests that apply in the award - that is, the no-disadvantage test against the award and the state minimum standards - the registrar can move accordingly.

Under proposed section 97VM, "Appeal against refusal of registration", there is the ability, without going back to the drawing board, starting all over again and trying to bring in new issues, to appeal the registrar's decision on any matters on which a party thinks the registrar may have been incorrect in using his or her judgment. There is an appeal process, but the intention from the word go is to get the document correct. We do not want to waste the time of the commission. It has far more important things to do than to second-guess what the employer and employee groups determined would be their outcome. They are the parties who best know that, and if in the level of negotiations that take place across the table they cannot get the documentation of that process correct, it does not bode well for the rest of the time that they will try to negotiate together.

It is not a shopping exercise in front of the registrar. It is not a matter of whether the parties think they can get this one or that one through. It is what the parties have agreed, how the document best reflects that agreement, and how that agreement meets the appropriate standards that the Bill puts in place. If the registrar rejects the agreement, he must inform the parties of that rejection within a certain time. The parties then have a right to appeal if they feel they need to do so. Clearly, the parties should get it right in the first instance and move on. That is the process.

Mr GRYLLS: I thank the member for Peel for his explanation. However, I support the member for Kingsley's comments. The National Party strongly believes that parties should be given the opportunity to revise deficiencies prior to a refusal. This process would be far better than an appeal, which would be more cumbersome.

Mr MARLBOROUGH: We have answered that question. Fundamentally, there is a chance for the parties to work through those processes if they think they have it wrong. We want to put in place a realistic process that assists the parties to get the document registered. It is of no benefit to anybody to put in place a process that deliberately sets benchmarks that cannot be met. There is a clear understanding in part of government that these benchmarks can be met. We believe that two parties sitting around a table with the best interests of each other in mind can reach that position. Nobody will chop off anybody's head if there is an inadvertent error in the processes. If the best way to handle that is to fix it quickly, that is fine. However, there should not be an attempt by either side to put in place something that is far outside the guidelines. I am sure, without my telling him, that the Leader of the Opposition would know from the years he worked as an advocate with the Chamber of Commerce and Industry of Western Australia -

Mr Barnett: Two cases.

Mr MARLBOROUGH: There we are. When he speaks in this Parliament, one would think he did a lot more than that. I am glad to know it is only two cases. As an experienced person in that field, the Leader of the Opposition would know more than most people that the registrar of an industrial commission is an extremely experienced person. He will not run at issues simply because he thinks there is a particular job to be done. He will look at how his efforts must be directed in accordance with the Bill, and he will rule so that the best outcomes are achieved. That is the intent behind the whole process. When there is seen to be a significant error by the registrar, the parties have the ability to appeal.

Mr BARNETT: I agree with the comments by the members for Kingsley and Merredin. This is an extraordinary bureaucratic process. Previous parts of the Bill that we were discussing an hour or so ago make it almost impossible, if not impossible, to alter an EEA; and this is the process to revise it. Elsewhere in this legislation is a so-called no-disadvantage test. The scope to vary an EEA is restricted in any case, as is the scope to have an EEA; yet there is this extraordinary, cumbersome, expensive, bureaucratic and slow process to revise it. It seems to me that the regulatory approach taken by this Government is one designed to ensure that there are no EEAs. This is a sham. The legislation is complicated and unattractive and will be of little value to employers and employees. People will proceed to make their own informal workplace arrangements, and every now and again

some poor hapless employer or employee will face some sort of prosecution. If the Government wants token workplace agreements - EEAs or whatever - it should at least make them flexible and usable. It has already restricted the process by prescribing the no-disadvantage test, the inability to alter agreements and the requirements for notification of revision. If the Government is genuine about the process, why is it imposing those requirements? This is a cumbersome and unnecessarily bureaucratic part of a poor piece of legislation.

Mr MARLBOROUGH: I am repeating myself, but I will go through it slowly so that the penny drops for the Opposition. The intent of this proposed section of the Bill is to take on board the maturity of two parties who, outside the commission and in the confines of an industry, set about to determine how that industry can best move forward while appropriately rewarding its work force. That is what I think would be the mentality that would prevail around such a table of negotiations. It is with that process in mind that I feel confident that a positive outcome will be delivered. I see a positive outcome as a decision to go to the registrar with documentation that best reflects the parties' needs as an employer and wants as an employee. If the parties do not do that, the commission will judge them appropriately. The registrar will tell the parties that the agreement does not meet certain standards. The parties will be aware through the legislation that if they do not meet standards such as the Minimum Conditions of Employment Act, the registrar will advise them of those matters and give them a chance to rectify the situation. They are matters of absolute significance, because the legislation states that an agreement cannot be registered unless those guidelines are met. It is likely that if a party is out of step with what is provided in the legislation, the registrar will bring it to the parties' attention. The parties will be told to go away and consider how they must comply with the standards of the legislation, such as the no-disadvantage test, and then take the agreement back to the registrar. One hopes that the document could then be registered. It will be a quick process. The intent is to not let the agreement process linger for an extended time. Why would we want an atmosphere in which an independent arbitrator - which is what the registrar is - says that a document is not lawful? Why would someone want to create a situation that could lead to disputation? The intent of the Bill is to remove potential disputation as quickly as possible. If a registered agreement existed, what could the parties dispute over? The parties would have a legal document registered by the independent commission as appropriate and lawful.

The Leader of the Opposition keeps referring to EEAs as some sort of Clayton's workplace agreement. They are far from workplace agreements.

Mr Barnett: It is correct.

Mr MARLBOROUGH: It is not correct at all. In many industries, the workplace agreements introduced by the Leader of the Opposition's Government allows workers to be screwed to the ground and paid third world wages and conditions. The previous Government was so convinced of its model, which we were told was the best in the world, that it made it a law that an employer or employee could not talk about a registered document for five years. This process goes nowhere near that. This process is open and public and hides nothing. The document will be registered by a private arbitrator, not a minister of the crown. Not satisfied with making it illegal to talk about a workplace agreement for five years after it is registered, the previous Government gave its minister the power to determine the State's basic wage. When we came into office six years later, we discovered that the basic wage in this State was $42 less than that in any other State of Australia. Western Australian women and young people were the lowest paid in the nation. This is not a Clayton's workplace agreement; that is why the Opposition does not like it. Once the EEA document is registered, it will be public and secure. This process will provide workplace fairness that did not exist under the Liberal Party's regime. That is why we are on the government benches and the Liberal Party sits on the opposition benches. The Leader of the Opposition should remember that. If he does not, I will remind him every five minutes.

Mr JOHNSON: I wanted to pick up on some of the comments of the parliamentary secretary, but he is no longer sitting at the Table. I found his remarks interesting. Some of them were amusing and others were ridiculous. He referred to various things regarding the previous Government and what will happen at the next election. I wanted to take him to task on some of those.

He also said something that was somewhat relevant to this proposed section. He said that through this legislation the Government is trying to make the process of negotiating and registering an employer-employee agreement simple. He was not in the Chamber when the Opposition was earlier trying to make the legislation simpler. If someone is one or two days late in registering the EEA, through no purposeful fault of his own - accidents can happen - the process must start again. The agreement cannot simply be sent back to the two parties to verify that they are still happy with it, sign it and redate it. That could save time. The minister was not prepared to accept an amendment along those lines. Yet, such an amendment would reflect the sentiment expressed by the parliamentary secretary.

He also said that there would not be any problems with discrepancies and disputes between the parties because the registrar is a clever person. The parliamentary secretary implied that the registrar is very professional and would ensure that such things did not happen. Of course, the registrar will not determine every case. I assume that under the delegated powers, one of his officers might deal with disputation and irregularities. I once again return to the question of how knowledgeable the people to be deputised with this power and authority will be in deference to the registrar. I hope that the registrar will be topnotch and know exactly what he is talking about, and will be able to sort out a disputation and make things easier for the employee and the employer. I would be concerned if the delegation were given to too many people, especially if they were not qualified to do that job. It is a job for which a range of qualifications would be necessary, such as a vast knowledge of industrial relations law, particularly in relation to the Bill before this House. Even the minister has had some trouble explaining some of the detail in this Bill, and he has been eating, sleeping and drinking it for the past year, with the help of the unions and the parliamentary secretary. I am sure the parliamentary secretary played a very important role.

Mr Kobelke: I acknowledge that he did.

Mr JOHNSON: I am sure he did. I know the parliamentary secretary. He is very keen on a Bill of this nature.

Mrs Edwardes: I think you liked him sitting at the Table.

Mr JOHNSON: I did. I miss him not sitting there.

Mr Barnett interjected.

Mr JOHNSON: He is okay. Can the minister assure me, the House and the people of Western Australia - the workers and the employers - that the delegated officers will be competent to deal with this proposed section, which provides that an EEA with discrepancies should be sent back to the parties? One hopes that the registrar will be an expert in that field. The parliamentary secretary assured us that the registrar would be an expert in that field and would be topnotch. He said that we would have complete and utter faith in him or her. I hope the registrar will justify that faith. Once again, I am concerned about the people who will be given delegated authority and who will probably deal on a day-to-day basis with problems with the EEAs - any discrepancies or irregularities that may arise from EEAs not conforming in some major or minor way.

Mr Kobelke: I can assure you that they will handle it fairly, effectively and efficiently.

Mrs EDWARDES: Proposed section 97VE(4) states -

> the Registrar must determine under section 97VG that registration of the EEA is refused.

That occurs in the event that the registrar has given a notice, such as one to correct deficiencies, but a revised EEA has not been lodged in accordance with subsection (1). I take it that that is the time frame specified in the notice. Are we expecting the chopper to come down on the chopping block as soon as the period specified in the notice to correct the deficiencies has not been met with a revised EEA? Will the registrar move immediately to determine that the registration of an EEA is refused?

Mr KOBELKE: The wording is clear. The registrar has no choice but to do so.

Mrs EDWARDES: The minister is a hard man with some of these provisions. In some instances there is no flexibility.

Mr Kobelke: I thought that clarity was a virtue.

Mrs EDWARDES: People get it only once and at the end of the day the chopper comes down. Proposed section 97VF(1), titled "Registration", states -

> If the Registrar is satisfied that an EEA is in order for registration, the Registrar must -
>
> (a) register the EEA; and
>
> (b) give to each party notice in writing of the registration and of the day on which it occurred, not later than 7 days after that day.

It is like the receipt given on lodgment of the EEA. It continues in proposed subsection (2) -

> The Registrar is not to register an EEA before the 14th day after the day on which it was lodged under section 97UY.

This proposed subsection should be deleted. It is a lengthy process to get an EEA to the registrar. That must be done within 21 days after the last date of signing of the agreement. If the employee had any concerns about the

EEA and did not want to proceed with it, he would already have had 21 days in which to say something before it was lodged. I take the point that it might be lodged in a shorter period. The registrar must satisfy himself that it meets all substantive, form and content tests before he can register it. A further 14 days would surely elapse in any event. In his second reading speech the minister referred to a cooling-off period for the employee. It is superfluous to provide a specific requirement. An extra 14-day cooling-off period after lodgment is not needed because sufficient time frames have been built into the legislation in an endeavour to allow the employee time to change his mind because he perhaps did not understand the EEA and does not wish to go through with it. Even on lodgment, if an EEA is not clear to the registrar, he can meet with the parties and obtain information in whichever way he thinks appropriate. He could telephone the employee and ask whether he is happy and comfortable with the EEA and whether he wants to meet with him to go through it. There is sufficient time in which the employee can notify the registrar to say he is sorry that he got it wrong, and he does not wish to proceed with the EEA but wants to go back on the award provisions. Proposed section 97VF(2) is superfluous. The Government is waving a flag to the employee to show that it is providing a cooling-off period of 14 days. I suggest that employees get more than the 14 days, because if the registrar seeks information, which he has the power to do, it could take longer than 14 days. The employee could at any time in that 14-day period say that he does not wish to continue with the EEA. If it takes the registrar 28 days to be satisfied that the lodgment of the EEA is valid, the employee will have 28 days. If it takes the registrar 60 days in which to do that, the employee will have 60 days. There is no need for this proposed subsection, other than as a flag-raising exercise. Does it limit the employee to 14 days? I do not think it does.

Mr KOBELKE: I do not totally disagree with the member for Kingsley's comments about this being a flag-raising exercise. It is part of a cooling-off period, and that is a flag-raising exercise. If the office is running efficiently and there is no problem with the registration - the education program runs well, people know how to do it and there are no kinks in the system - the EEAs could flow through in less than 14 days. Many will take 14 days. There is no double accounting. If there are any hold-ups, the normal processing takes 14 days and it will be registered. There will be no delay. However, if the system is moving efficiently, the period of 14 days in which a person can consider whether he is totally happy with the EEA will still be provided because of the emphasis this Government has placed on choice. People could be locking themselves into a contract of employment that has no annual increment in salary, so for three years they could be caught on that salary. It is appropriate that they have at least 14 days in which to consider the agreement. I agree with the member for Kingsley to the extent that some other processes that will take place might provide an extension in that time. It will be passed through the due process. The aim is to ensure that there is at least a 14-day cooling-off period, given that a contract of employment could be for three years and may not provide for an increase in salary. Therefore, the person should have the ability to think it over and to make sure that it is an agreement with which he is satisfied and wishes to proceed.

Mr JOHNSON: Is the minister saying that the employee has up to 14 days in which to register with the registrar that he has had a change of mind or is not sure about something?

Mr Kobelke: That is correct.

Mr JOHNSON: Is the minister saying they employees have up to 14 days?

Mr Kobelke: No, there is a minimum of 14 days.

Mr JOHNSON: That is what I am trying to clarify. An agency might work slowly and might be inundated with EEAs. That is how the bureaucracy sometimes works, through no fault of its own. It might simply be that the department is understaffed and that it could take a month or, as my colleague said, 60 days to register an EEA. Is the minister saying that an employee who has had a change of heart or has fallen out with his boss would, on not having heard from the registrar, be justified in phoning the registrar or an authorised officer delegated by the registrar to say, two months after signing the EEA, that he did not want to go through with it? Is the minister saying that as long as the agreement has not been registered by the registrar or the authorised person, the whole agreement can be thrown into chaos?

Mr Kobelke: That is true. That currently exists under the Workplace Agreements Act.

Mr JOHNSON: The minister and his colleague the member for Peel said the Government was trying to simplify things, and had great confidence in the registrar. I would like to think that is the case. However, this is an open-ended clause and it could take six months to be registered. It took six months for the Minister for Planning and Infrastructure to reply to a letter that I sent her. What would happen if it took that sort of time?

Mr McRae: It is because the issue is so complex.

Mr JOHNSON: I can understand that it will be complex for a person like the member for Riverton. The member looks bewildered a lot of the time. I will not take interjections, because they sidetrack me and I do not want to go off the rails.

It could be a complex issue. This will result in an injustice to not only the employee but also the employer. Is the minister saying that employers can phone the registrar in two months time and say they have had a change of heart?

Mr Kobelke: Yes, they can.

Mr JOHNSON: Then it is a waste of time specifying a time limit. Is the minister saying that if the bureaucracy takes a long time to deal with the EEA, either the employer or the employee could opt out? The member for Peel assures me it will not take long to register these agreements, because the bureaucracy is so efficient. However, let us accept the scenario that it could take six months to register the EEA, even though it complies with all the relevant sections in the Act. That would surely be an injustice to both parties. Is the minister saying that if either of the parties has a change of heart two months down the track, and the registrar has not dealt with that EEA, they can withdraw the agreement? Supposing an employer is sick and tired of an employee, or an employee wants something different - although he was happy with the agreement at the time. That is totally inflexible and is a disservice to both parties and should be simplified.

Dr WOOLLARD: Have any projections been done of how many EEAs are likely to be registered under the new system.

Mr Kobelke: No.

Dr WOOLLARD: Has the minister or his department drawn up a sample EEA that can be compared with a workplace agreement?

Mr Kobelke: No.

Dr WOOLLARD: Is my understanding correct that an EEA is a workplace agreement that the Government has tried to tighten up to protect employees and give employees more rights? Is an EEA a dressed-up workplace agreement?

Mr Kobelke: An EEA will allow the flexibility that some employers want through a statutory contract, but provide real protection for employees who wish to enter into it.

Dr WOOLLARD: If there were 10 employees in the workplace and eight of those employees wanted an EEA and two wanted an enterprise bargaining agreement, would I be right in assuming that the eight employees would miss out because two employees wanted an EBA?

Mr KOBELKE: It is a hypothetical case that is getting away from the division. The employer has to agree to an EBA. The employer and the two employees would have to negotiate the EBA. It is a highly unlikely scenario. If the employer wanted an EBA, he has the choice of not offering the EEAs. The first level of choice rests with the employer. Employers initiate the employment. Employers decide whether they want to employ people and whether they want to use an EEA. If the employer decided he did not want an EEA it is not an issue, because it is not on offer. On the other hand, if the employer wanted the EEA and only two of the eight wanted an EBA and the employer made that clear, the eight cannot be forced into an EBA. It is an enterprise bargaining agreement. It is called an industrial agreement in the state legislation. It is an agreement that the parties enter into. They may dispute some of the conditions, but one side cannot force the other side to be a party to an industrial agreement.

Dr WOOLLARD: Would the minister be prepared to ask the person he anticipates being the registrar to draw up a sample EEA, so that we can compare that with workplace agreements?

Mr Kobelke: The last Government did not draw up a sample agreement when it introduced workplace agreements. There is no need for a sample. The employers who want an EEA will design something for their purposes.

Dr WOOLLARD: This proposed section on EEAs comprises 70 pages. Will these 70 pages prevent people from asking for an EEA and encourage people to go to EBAs? Will this section help unions get a foot in the door and will it work against those people who would like to have an individual contract?

Mr Kobelke: Not at all. The schedules at the end of this section give a clearer guideline to the main provisions.

Mrs EDWARDES: The member for Alfred Cove did not state that it is clear that no EEA is on offer when an industrial agreement is in place. Essentially, the proposition the member for Alfred Cove put forward was that if one employee wanted an EBA. then the whole lot would have an EBA. We will get to those provisions a little later on. Essentially, an employee cannot have an EEA when an industrial agreement is in place.

To some extent the minister tried to associate some clauses of EEAs with sections of the Workplace Agreements Act, although they have been varied in some aspect. I do not want the impression given, particularly to the member for Alfred Cove, that this is mutton dressed up as lamb. The minister might like to present to the employers that the Government has an even better, super-duper individual agreement called an EEA that is better than the old workplace agreements. I put it to the minister that it is lamb that has gone to the slaughter, and the bits and pieces that might have been utilised at the end of the slaughter process may have come out of workplace agreements legislation, but there is no likeness either between a WPA and an EEA or in the way they are applied. I wanted to clarify that, and to have it put on the record. The section 97VF registration is superfluous if it takes the registrar longer than 14 days, because at any time the employee can withdraw from the process. It is not made certain by the signing, or even by the lodgment of the document. Taking into account the time that has already passed to bring the agreement to this stage, this is an unnecessary time restriction on the registration process. If the registrar were able to process the document quickly, because he had seen this agreement before, up to 50 times, and he knew the agreement inside out, he could give such an agreement a very immediate tick-off. After a quick call to the employee to establish whether the employee was comfortable with the agreement, and had gone through all the proper processes, it could be done in less than seven days. It is a very simple process. If 100 agreements are lodged at once, and they are all the same, there is no reason that the process cannot be quicker than 14 days. It would be an unnecessary time restriction to hold up registration in those instances for 14 days. Industry, particularly the mining industry, regards that as an unnecessary restriction. It would have liked more certainty, particularly given the process that has already been undertaken to get the agreement to this stage. That is why the mining industry regards the federal system as being a far more effective process than that provided for under EEAs.

Mr JOHNSON: I can understand the reason for a waiting period of 14 days. The registrar cannot register the agreement in less than 14 days. However, if the Government is dinkum about the whole issue, it must concede that there should be a cut-off period, after which the agreement should be deemed registered, even if it has not been physically registered, unless it contains something untoward. The period cannot be open-ended just because the registrar, or somebody authorised by the registrar, had taken too long. I can understand the reason for the 14-day cooling-off period before the EEA is registered, but it would be more fair and equitable to provide that, after 21 days, if there has been no representation from the employer or the employee, the agreement is deemed to be registered, unless the registrar or the officer authorised by the registrar finds a discrepancy in the EEA that warrants sending it back to both parties. I am sure the minister can do two things at once - talk to his colleague and listen to what I am saying - so if he understood what I said I would like a response. This is a fair issue.

Mr Kobelke: I have already answered all the points the member for Hillarys has made.

Mr JOHNSON: No, the minister has not done so. He has said what the situation is, but he has not explained where the fairness is in that situation.

Mr Kobelke: The Government has made quite clear that there is to be at least a 14-day cooling-off period. The other matters the member for Hillarys is addressing are no different from those presently in the Workplace Agreements Act. The only difference is that both the employer and the employee are guaranteed that they will have a minimum of 14 days to reconsider. The Government wishes to make sure that there is genuine choice, which is very different from what happens with workplace agreements.

Mr JOHNSON: That is what the minister said, but I do not agree with his opinion. There is far more choice in workplace agreements, because they suit the employer and employee, and they have been very successful, in the main, apart from a few cases that have not worked well. They have been fair and equitable, and they have suited both the employer and the employee. The minister has not addressed the fairness aspect that I am concerned with. I accept the fairness in the 14-day cooling-off period, but the Government is not allowing for any fairness after that period, because it is not prepared to limit the amount of time for the registrar or the authorised officer to deem that agreement is concluded. In the worst case scenario, the agreement might not be registered until six months down the track, even though there was nothing wrong with the agreement - it contained no discrepancies and it complied with all the criteria set out in the regulations and the Act. Surely it could be deemed as being accurate and correct, and should be deemed registered, so that the employer and the employee have more certainty. I ask the minister to look at the issue more closely and explain to me how it can be fair and equitable to have this open-ended provision in this legislation.

Mr TRENORDEN: The minister is deliberately trying to miss the point here. He may have an argument in the early days of the application of the legislation, but what happens two to fours years down the track, when EEAs are a common procedure, and everyone in the industrial relations system knows precisely what is coming? Why would the Government put this bureaucratic pressure on industry, when it is absolutely unnecessary? The minister is saying that from the time the agreement is signed, both parties must go into neutral for 14 days.

Mr Kobelke: The member for Avon has misunderstood. It does not do that at all.

Mr TRENORDEN: It gives people an opportunity, for 14 days, to repeal the process, and change their mind. There might be an argument in the early days of this legislation, but what happens after a couple years of operation, when people are very comfortable with EEAs, and know what they are? Why would there not be a situation in which people can sign the deal, and then get on with life?

Mr Kobelke: I accept that when the process settles down, it will be easier to do. However, these are individual contracts, and they can all be different. The issue is that the parties, to what might be a unique individual contract, will have at least 14 days to confirm that they are happy with the agreement.

Mr TRENORDEN: How many variations are there to the song? After a few years, all the variations will have been played.

Mr Kobelke: You are suggesting that employers and employees are not very creative, if that is what will happen.

Mr TRENORDEN: That is the truth. That is the way it will be. If we were in the other place the minister would not be arguing with me. That is the nature of industrial relations. People will not think up really creative situations just for the sake of it. The minister has already said that this arrangement will go for some time - at least three years.

Mr Johnson: They also want some simplicity to it.

Mr TRENORDEN: Yes, they do. They will want to know. In the future, the only person who will be at a disadvantage will be the employer, not the employee, but who knows whether in any given period someone might object for whatever purpose. There might be an argument early in the piece, but, when people understand EEAs, there will be no argument. This adds the red tape that the minister said a few days ago he was trying to reduce.

Mr KOBELKE: I have put the Government's position. The other provisions are in the Workplace Agreements Act. The only major difference is that we are allowing for a 14-day cooling-off period. It is not a huge change. We have differing opinions, and I cannot explain it further.

Mr Trenorden: The minister is correct; he cannot explain it.

Mrs EDWARDES: It is a time-wasting exercise when the registrar could register those agreements earlier. In certain circumstances - probably in the majority of circumstances - the employer will have longer. This does not provide the required level of certainty.

I refer members to proposed section 97VG, which deals with the refusal of registration. It provides -

> If the Registrar is not satisfied that an EEA is in order for registration, the Registrar must -
>
> (a) determine that registration is refused; and
>
> (b) within 7 days after making that determination, give to each party a notice in writing of the refusal and of the reasons for it.

We discussed this clause and when it might apply in connection with proposed section 97VD. It applies in those instances in which the EEA does not comply with all other requirements in the legislation, other than those situations outlined in proposed section 97VD(1)(a), (b) or (c) and in the event that an amended EEA is not received within the prescribed period. Effectively, the registrar must determine that the registration is invalid and notify the respective parties within seven days.

Proposed section 97VH refers to the point at which a refusal has effect. It provides -

> (1) A refusal of registration comes into force -
>
> (a) on the expiry of the period of 14 days allowed by section 97VM(2) for the bringing of an appeal against the refusal . . .

If after 14 days no appeal has been duly brought, or the appeal has been duly brought and has failed, the refusal of registration comes into force. From when does the 14 days for appeal apply?

Mr KOBELKE: According to proposed section 97VG, refusal must be given. Proposed section 97VM(2) provides -

> An appeal must be brought within 14 days after the day on which the party received notice of the refusal under section 97VG.

Mrs EDWARDES: Proposed section 97VH(2) highlights when an appeal fails. It provides -

> For the purpose of subsection (1)(b) an appeal fails if -
>
> (a) the refusal of registration is confirmed under section 97VP(2); or
>
> (b) the appeal is withdrawn or is dismissed by the relevant industrial authority for want of prosecution.

Proposed section 97VP does not address that issue; that is the first time it is mentioned.

Mr KOBELKE: I do not know whether the word "prosecution" has thrown the member; it threw me. The party or parties who have sought to register the EEA can seek to overturn the refusal to register; that is, they can seek to prosecute their case to have the EEA registered when it has been refused. The appeal is withdrawn or dismissed for the want of prosecution. If it is withdrawn, a party must go through the process of withdrawing. If a party simply fails to make any further contact, the appeal will be dismissed because the party has not continued with it.

Mr TRENORDEN: Can a party's decision not to continue with an appeal be appealed? If an EEA is put forward and one side or the other decides not to continue, can the other party appeal that decision?

Mr KOBELKE: We need to be clear on the member's question, because he has jumped back to the proposed section that we have already covered. That is appropriate, but it is confusing because we are dealing with the appeal process and the member is relating the appeals to the cooling-off period and one party withdrawing. If one party withdrew at that stage because that party no longer consented to the agreement, clearly that would be the basis for the refusal to register. When the notice of refusal to register goes out, the other party who still wishes to continue can appeal that rejection. That party has the right to do that, but unless there was some clerical error or mistake in the other party's position that he wishes to withdraw, there would not be consent, so there simply would not be registration. It is not likely that the appeal would succeed, but there is the potential for such an appeal and therefore for the parties to continue to pursue registration even though there is notice that one party wishes to withdraw.

Mr TRENORDEN: In that case, how long would it be before resolution under this process? Is the appeal on the previous decision that we just discussed finalised after 14 days, before 14 days or after a period of deliberation by the registrar?

Mr Kobelke: The last option is correct. That is what we were discussing in proposed section 97VH, which includes those provisions. The member will note that there is no specific time other than that the refusal of registration will come into force on the expiry of 14 days from the start.

Mr TRENORDEN: We are speaking about an extraordinary bureaucratic process.

Dr WOOLLARD: In relation to the appeal and the refusal of registration, basically this Bill provides flexibility for employers and protection for employees. If there is one employer and two employees, and the employer and one of the employees want an employer-employee agreement and prepare a case for an EEA, will the other employee be able to take it to the registrar and appeal against the EEA on the ground that he wants an enterprise bargaining agreement because he wants parity with other workers within the profession?

Mr KOBELKE: The question is predicated on a misunderstanding of enterprise bargaining agreements. That does not enter into the proposed section that we are dealing with. I tried to explain earlier that the employer has the first decision on whether he will offer an EEA or an EBA.

Mrs Edwardes: Or an award.

Mr KOBELKE: Yes. Once the employer has made that decision, it is not then open to the employee to go the other way. The employee could try to run a campaign to coerce or convince the employer otherwise, but it is the employer's decision.

Dr Woollard: The employer does not go to the commission. There is nothing that could be argued.

Mr KOBELKE: No. The employer can go to the commission and argue the case, but the commission cannot force an EBA, or an industrial agreement as it is correctly called, on to the employer.

Mr TRENORDEN: I have a very simple request. Can the minister explain it to me once again, because I did not grasp it. If an employer wanted to be obstructive in this process and an employee signed an EEA and then decided within the 14 days that he did not want to take it up, what is the process if the employer appeals? For how long could the employer drag out that process?

Mr KOBELKE: The employer does not have any ability to drag it out. The registrar takes it and then a single commissioner hears the appeal. It is totally in their hands and will depend on the workload they have, the information on the file and whatever information they may need to gather to consider the case. No mechanisms in the Bill allow the employer to drag it out. If information is required and in the unlikely event that the employer seeks through his appeal to be uncooperative - that would be a very strange circumstance when the employer is the appellant - proposed section 97VH(2) would come into play. The appeal could then be judged to have failed as it was dismissed by the relevant industrial authority for want of prosecution. If the employer appealed and then refused to provide documents, and a reasonable amount of time elapsed, that proposed section could be used to say that the employer was not serious about the appeal and it could be closed off.

Mr TRENORDEN: In that process, would the registrar seek from the person who had decided that he no longer wanted to continue with the EEA the reasons for not continuing with the EEA? Would the registrar approach the individual who signed the deal and who decided within 14 days that he would not proceed with it and say that the individual needed to supply to him or the duly appointed person -

Mr Kobelke: No, but the person may inquire for the purpose of ascertaining that it is a firmly held opinion, but the person does not need to know the reasons. If it is a correct and firmly held position, the reasons for it are not relevant to the decision.

Mr TRENORDEN: Why should I not think, as I do, that an employer might want to go on that fishing expedition? Why would an employer, having reached the stage at which there is conflict between the employer and employee, not attempt to use the registrar to extract some information that might be pertinent?

Mr Kobelke: The statute simply does not allow for it.

Mr TRENORDEN: However, the minister has just said that it does.

Mr Kobelke: No, I did not.

Mr TRENORDEN: The minister indicated that the registrar can seek certain information.

Mr Kobelke: Only as is necessary to determine the opinion or the position of the parties to the agreement.

Mr TRENORDEN: The employer is asking the registrar why this process is not fair.

Mr Kobelke: That is not the question to be answered in the member's scenario. The question to be answered is: is it the view of the employee that he does not wish to be a party to this agreement? If he firmly says no, there is no reason for the registrar to inquire as to the reasons.

Mr TRENORDEN: So they go through the whole process again.

Mr Kobelke: No. This is about consent agreements between parties.

Mr TRENORDEN: I know. However, if they do not consent -

Mr Kobelke: There is no agreement.

Mr TRENORDEN: If they go through the whole process in whatever period, and they sign the agreement and one party or the other backs out, they must go through the whole process all over again.

Mrs EDWARDES: It is even worse than that, because the employer may not necessarily get to learn the reasons that the employee does not wish to proceed. All the way along the line the employee has been a willing party to the agreement. He has got his own independent advice, but when it comes to the point of registration, all of a sudden he opts out for some unknown reason. It might be nothing more than a comment that is misunderstood by the person while sitting at the pub and chatting to the bloke on the bar stool next to him or while sitting in the coffee shop chatting to somebody; the person might simply have the wrong end of the stick. The employer, to protect and save the costs and the time which both of them have expended, may not even know why the employee has backed out. He cannot go to the employee - obviously this is one of the reasons - and ask him why he does not want to continue with the EEA.

Mr Kobelke: Why can't he?

Mrs EDWARDES: He can.

Mr Kobelke: Why can't the employer and the employee resolve the matter which is supposed to be central to an employer-employee agreement? There is no need for the registrar to get involved in that.

Mrs EDWARDES: The registrar does not have to ask the reason why. He has only to ask whether the parties are still happy with the agreement. If the employee says no, he has to advise the employer that the registration will not occur. Is he told why?

Mr Kobelke: The member is assuming appalling employer-employee relations. They might actually get on with each other and talk to each other!

Mrs EDWARDES: If the minister assumed that, he would not have half this bureaucratic nonsense in the Bill. If he assumed that they could sit around a table and have a good relationship, there would be no need for half this Bill. The Opposition is saying that this is bureaucracy on top of bureaucracy. The vision put forward by the minister varies on what it is he is talking about. There is no consistency in the argument. On one hand he says that they can sit down and talk to each other and that there will be no need for the registrar to get involved. However, at some point it may be no more than chatting to some bloke down at the local pub and the employee may decide not to proceed with the workplace agreement. As such, he will have the wrong end of the stick. It has nothing to do with the individual agreement he may enter into. The minister is saying, "Hang on, they can still sit down and chat about it." They have just had the whole process refused. To sit down and chat about it means that the whole process has to start again. I would give up as well. I would ask what am I an employer for? I may as well become an employee so I do not have to worry about paying wages on Fridays or all this bureaucratic nonsense. Why would I want to become an employer under these circumstances? There is no certainty whatsoever. What about existing employees? There is an awfully long delay in getting an EEA registered. This highlights concerns, not only raised by the Opposition in this place, but the concerns of employers. Employees also have concerns. Employees want to sit down with employers and talk about terms and conditions. They will get equally as frustrated with the amount of bureaucracy that this legislation puts in place to presumably protect the very small number of people who were overridden by the power of their employers.

Mr TRENORDEN: What stops this process from repeating itself? If an employee, in the circumstances I gave before, does not wish to give reasons for withdrawing, why would an employer go through it all again just for the employee to repeat the process? Why will that not happen? Is there a mechanism to stop it from happening?

Mr KOBELKE: The member is barking up the wrong tree. Only six to nine per cent of employees and employers are on workplace agreements. The Government is providing an alternative with EEAs. We are talking about a very small percentage of employers and employees.

Mrs Edwardes: Approximately how many is that? It is still a large number.

Mr KOBELKE: There are one million employees.

Mrs Edwardes: It is a large number.

Mr KOBELKE: About 60 000. The indications are that there will be fewer than that. That is the assessment of the Opposition and it is also my assessment. The Opposition calls it miniscule but I see it as substantial. It will work in the circumstances in which the employer wants to have particular arrangements that meet the productivity of an enterprise and in which the employees agree to it. It is a matter of the employer and employee reaching agreement. The scenarios that the member is opening up are borderline or will clearly not get up because, in a very small number of cases, the employer is trying something on that is not in the interests of employees. It has to serve both interests. If the employer tries it on and the employee decides that he is better off on the award, they will not go through with it because the employer has not designed a win-win situation. He should aim to get productivity and efficiencies by using an EEA. It will be a win for the employee through a pay increase of $20 a week or whatever. The employee will be better off. If they both come to the agreement, it will go through.

All these provisions deal with a situation in which someone sells a pup to the employee, who then decides that the agreement is not in his interests and pulls out. There is then no agreement, so we do not need to worry about those issues. There may be the odd case - which I think the member for Kingsley is alluding to - in which the employee pulled out of an agreement even though it was a good deal for him or her because someone had given him or her false information. That would occur in a minuscule number of cases. It would come back to the

arrangements between the employer and employee. Using the member for Kingsley's example, the employer should say that Joe down the bar the other night had sold the employee a load, and suggest that they again sit down to talk about it.

Mrs Edwardes: They would have to go through the whole process.

Mr KOBELKE: No, they would not. They could enter an appeal. When the appeal is heard, the employee could say that the notice he gave was based on false information and that he now understands the full effects of the agreement. That appeal may be successful. It would be in only those circumstances that the commission would refer to the detail and the reasons for the appeal. The Bill does not require that the reasons are needed for the decision. The only basis on which the commission may look at the reasons is to ascertain that the statement is genuine. The only time the commissioner would refer to reasons would be when he wished to establish the genuineness of a position stated; that is, that the parties were in agreement.

Mr TRENORDEN: That does not answer my question at all. The minister went to his natural side of the argument, which is anti-employer. I will go to the other side. What about a vexatious claim by a person who is angry at the boss, stirred up at the process or does not like his or her mother-in-law? The person might be angry at the world and simply say no to the agreement. What would stop that process?

Mrs Edwardes: Why pick on the mother-in-law?

Mr TRENORDEN: They are nasty people sometimes.

Mr Templeman: That is a big harsh.

Mr TRENORDEN: It is a bit harsh, although I said "sometimes".

What would be in it for the employer if he did not know why the employee had rejected the agreement? What confidence would the employer have in going back to the negotiation table to begin a process in the hope it would reach a resolution? How do we break that cycle?

Mr Kobelke: You are imposing your point of view on a system that does not work in that way. That is why the argument is not going anywhere.

Mr TRENORDEN: We all know that people will look at this legislation, like people look at every other piece of legislation, and work out how they can use it to their advantage. It happens every day of the week.

Mr Kobelke: The process is predicated on an agreement that both parties want. If both parties want the agreement, there is no problem.

Mr TRENORDEN: What happens if both parties do not want it?

Mr Kobelke: There is no agreement. That is fundamental.

Mr TRENORDEN: The minister should answer my question: how do we break that circuit?

Mr Kobelke: We cannot. The employee would revert back to the award or an industrial agreement.

Mr TRENORDEN: The Government wonders why we think this is a load of nonsense. That is outrageously bureaucratic.

Mrs EDWARDES: I refer to proposed section 97VH(2)(b). We talked earlier about the want of prosecution. Proposed section 97VP does not provide the industrial authority with the power to make such a determination. Is that somewhere else?

Mr KOBELKE: The commission, which makes the decision about the appeal, has these powers. That partly covers the area the member is talking about. Proposed section 97VH(2) prescribes that an appeal fails if the refusal of a registration is confirmed. In that case, the merits of the appeal would be considered and registration again refused. Proposed paragraph (b) relates to an appeal that is withdrawn or dismissed on the basis that it is not being pursued. That does not relate to the merits of the case.

Mr Trenorden: How many days are allowed?

Mr KOBELKE: There is no restriction on days in this case.

Mrs Edwardes: Is that covered by the powers of the commission?

Mr KOBELKE: Section 27 of the Act, which deals with the powers of the commission, states in subsection (1)(a)(iv) that except as otherwise provided in this Act, the commission may, in relation to any matter before it, at any stage of the proceedings dismiss the matter or any part thereof or refrain from further hearing or determining the matter or part if it is satisfied that for any other reason the matter or part shall be dismissed or the hearing therefore discontinued, as the case may be. The commission has powers available to it.

Mrs EDWARDES: I keep thinking we have dealt with this part, because it is starting to become repetitive, not in debate but in its proposed sections. Proposed section 97VI refers to the cessation of EEAs for new employees where registration is refused and states that if an EEA is made with a new employee and has taken effect but is refused registration under proposed section 97VG, the EEA ceases to have effect for the purposes of this part as from the day on which the refusal comes into force under section 97VH. We have dealt with that proposed section. What will happen to the employee once the refusal has been received and the appeal period and/or the determination has expired? What does this proposed section mean?

Mr KOBELKE: It will determine when cessation takes place. We have already debated the proposed section that deals with where that will leave the employee.

Mrs Edwardes: What is this proposed section meant to do? It is similar to the proposed section that deals with failure to lodge the EEA. Why not reduce the number of pages by having one section that is subject to section such and such?

Mr KOBELKE: I do not class myself as a parliamentary draftsperson. I accept that this is the way they have decided it is best done.

Mrs EDWARDES: Proposed section 97VJ deals with the recovery of money. We dealt with this earlier when we dealt with a failure to lodge the EEA. This proposed section applies when proposed section 97VI applies, that is, there has been a refusal of registration. This proposed section is exactly the same as the previous one, and I am sure the minister's comments about offsetting money that has already been received apply equally to this proposed section.

Mr Kobelke: It is not intended that there be double dipping.

Mrs EDWARDES: Proposed section 97VK deals with the employment conditions of new employees if registration is refused and provides that in an award situation they will go back to the award; and if an award does not apply they will go back to a contract of employment that has the same provisions as the EEA that was refused registration. Under this proposed section, a contract can be varied, as it can be under the previous proposed sections, if it is not lodged in time. Why is that not comparable with proposed section 97UT, which deals with employment conditions on expiry of EEA? I think it is.

Mr Kobelke: They are very similar .

Mrs EDWARDES: Is there any difference?

Mr KOBELKE: In one case it expires and in the other it ceases to have effect, because one clause deals with continuing employment and the other deals with a new employee and ceases to have effect. It takes into account that we have set up an existing and a new employee differently for a range of reasons. There is a slight variation; otherwise, the sections are substantially the same.

Mrs EDWARDES: Proposed section 97VL states that the registrar must give a copy of the registered employer-employee agreement to the employer and the employee and, where applicable, to the employee's representative. The registrar must comply with that provision no later than seven days after the day on which the EEA is registered. We have already dealt with a provision whereby if the EEA has not been registered, the registrar must be notified in the same period. An EEA is registered under proposed section 97VF, which provides the registration process, or by order of a relevant industrial authority under proposed section 97VP(2)(b), which provides the determination of appeal provisions. Essentially, it is a mechanical process to ensure that the parties are given a registered copy.

I put on the record that the Opposition will divide on this subdivision because of the huge bureaucratic and administrative process involved and because of the time and the cost that will be incurred because of these provisions. This debate has highlighted our concerns, which have highlighted the concerns of many people in the community.

Mr TRENORDEN: If the Liberal Party does not call for a division, the National Party will, for the same reasons. The minister has made no real attempt to work through the maze of bureaucracy and uncertainty in this process.

I am far from convinced there is a degree of certainty about the legislation or that there are not mechanisms that one side can use against the other in the new world of antagonism that this Bill will create.

I am greatly concerned for employees, the bureaucracy and, in particular, small businesses in the areas I represent in the wheatbelt. They will not be able to manage these processes, which will be well out of their comprehension and reach. The Government is creating a situation of fear and doubt, which will be represented in the work force. During the second reading debate, few members on the other side attempted to say that there were problems with the present legislation. In my part of the world, problems have been limited to a very few areas. Although there have been a few appeals against unlawful dismissal, in my part of the world people work things out on a one-on-one basis because they live in each other's backyards. To be forced to go through this sort of process and to have other people breathing over their shoulders during some sections of the process is totally unacceptable and we will not support this subdivision.

Subdivision put and a division taken with the following result -

Ayes (26)

Mr Andrews	Mr Kobelke	Mr McRae	Mrs Roberts
Mr Bowler	Mr Kucera	Mr Marlborough	Mr Templeman
Mr Carpenter	Mr Logan	Mrs Martin	Mr Watson
Mr Dean	Ms MacTiernan	Mr Murray	Mr Whitely
Mr D'Orazio	Mr McGinty	Mr O'Gorman	Ms Quirk *(Teller)*
Mr Hill	Mr McGowan	Mr Quigley	
Mr Hyde	Ms McHale	Ms Radisich	

Noes (18)

Mr Ainsworth	Mr Day	Mr Johnson	Mr Waldron
Mr Barnett	Mrs Edwardes	Mr Masters	Dr Woollard
Mr Birney	Mr Edwards	Mr Pendal	Mr Sweetman *(Teller)*
Mr Board	Mr Grylls	Mr Barron-Sullivan	
Dr Constable	Ms Hodson-Thomas	Mr Trenorden	

Pairs

Mr Ripper	Ms Sue Walker
Dr Gallop	Mr Bradshaw
Mr Brown	Mr Marshall

Subdivision thus passed.

Subdivision 3: Appeal against refusal of registration -

Mrs EDWARDES: Proposed section 97VM was briefly referred to earlier in the debate. Proposed subsection (2) states -

> An appeal must be brought within 14 days after the day on which the party received notice of the refusal under section 97VG.

Either the employer or employee can take this appeal to the relevant industrial authority. In Western Australia, the relevant authority is the Industrial Relations Commission. The appeal is made against a refusal by the registrar to register an EEA. I mentioned the issue of time frames earlier in the debate. In passing I said that I would like to see a flow chart that detailed the time frames in the Bill, because they seem to have been plucked from the air time and time again. An appeal of this sort must be made within 14 days. A period of 21 days was given for registration, with no extension. No mechanism has been provided to allow an extension of time for an appeal against refusal of registration. Proposed subsection (3) specifies that the time limit in proposed subsection (2) - 14 days - cannot be extended under section 27(1)(n). I would have thought that this is inconsistent with the Government's views on time limitations in other areas, particularly its philosophy of giving the courts greater discretion. The Bill specifies 14 days to lodge an appeal and 21 days in which to lodge a document. That is an issue for people in regional Western Australia and small business people. Let us say they have received notification that they have 14 days in which to lodge an appeal and they put the notification in their top drawer. In the meantime, a truck has rolled over and a few other issues have arisen in their small

business, which should be taken into account in a request for an extension of time. People will be disadvantaged. The minister says that fixing a time will provide certainty. I am not sure from where the minister draws that conclusion. If we give the discretion to the authority and/or the registrar in certain circumstances, it is not a huge bureaucratic process to add that extra layer. It can even save time by not having to start the whole process again. This is inconsistent with the principle of giving courts greater discretion to extend time, particularly when only 14 days are allowed in which to lodge an appeal against a refusal to register an agreement. As the minister said earlier, it might be a simple matter of an employee getting something wrong, but he wants to proceed, and it can be dealt with quickly. I once again ask the minister to look at that to ascertain whether there is a level of unfairness in the inability to extend the time - if not on the previous section, at least on this section. In the unfair dismissal section the time is unlimited. Why is it okay in certain circumstances to give the authority the discretion to extend the time but not in others? I do not buy the minister's argument that it relates to certainty, given the other layers of bureaucracy that are involved.

Mr KOBELKE: The member for Kingsley is seeing problems where she never saw them before. While someone can get into a bind and feel that a limitation of 14 days is unfair when compared with the 21-day period in the Workplace Agreements Act, under that Act someone must appeal to the Supreme Court, so it is a much greater hurdle. Lodging an appeal with the Industrial Relations Commission within 14 days will be a much easier process.

Mr TRENORDEN: Will the minister explain proposed section 97VN? I have no idea what it means.

Mr KOBELKE: I refer the Leader of the National Party to proposed section 97VD, which we discussed in detail and which specifies the time in which the registrar must notify parties of deficiencies. This section mirrors the appeal procedures in that section. It takes up the period of notice that must be given from that section.

I refer the member to a very important point. In the Workplace Agreements Act there is an absolute requirement that the registrar notify failure to appeal. The relevant industrial authority may give notice, as set out in proposed subsection (2). Therefore, it is discretionary, which it was not on refusal, but otherwise it has similar provisions.

Mrs EDWARDES: Essentially there is a second bite at the cherry by being able to correct those deficiencies. When I said there was only one bite of the cherry, that was not exactly true.

Mr Kobelke: People can appeal through the appeal process.

Mrs EDWARDES: There is also the ability to correct the deficiencies. A further opportunity exists to be able to have another go at those deficiencies if people wish to proceed with an EEA. That must be done on appeal and only at the discretion of the industrial authority enabling it to be referred back.

Mr Kobelke: Yes.

Mr TRENORDEN: Why would new matters be allowed to be brought forward through the appeal process?

Mr KOBELKE: My understanding is that the grounds that can be considered by the industrial authority are broader than the grounds on which the agreement was rejected. That is presumably on the basis that the industrial authority is a higher authority than the registrar.

Mr Trenorden: What are you attempting to achieve?

Mr KOBELKE: We are attempting to ensure that if the parties to the EEA feel that they have not been treated fairly and properly in the registration process and that the refusal to register was not correctly founded, they have an avenue of appeal. The appeal goes to an industrial authority, which in many cases may be the Industrial Relations Commission. Its commissioner is a higher authority than the registrar and can consider the case.

Mr TRENORDEN: The minister has said that people can pull out of the agreement process whenever they want to. If a dispute occurs and the higher authority decides to bring in new material, why not say, as the minister has said earlier, that the parties should repeat the process?

Mr KOBELKE: As we have said many times, although on the surface that may seem an advantage and improvement, the fact is that more and more is being added but is not necessarily providing workable legislation. I am not saying that applies to this area. We are told by members on the other side that workplace agreements work well. We have mirrored many of their provisions here. Suddenly we are told that they are no longer good enough. People can always drag up a case in which somebody was hard done by. However, the effect of the statute overall is to provide a framework in which employers and employees can agree that they want particular arrangements. Therefore, all these provisions relate primarily to where there is an error by the registrar which

people seek to put right or where people are not in agreement and the role of the registrar or the industrial authority is to sort it out.

Mr Trenorden: Why not tell them to go back and draw up another agreement?

Mr KOBELKE: It is because they can seek to rectify it by an appeal.

Mrs EDWARDES: The provision is probably not as wide as has been expressed in this Chamber. Proposed section 97VO is exactly the same: the commission identifies the deficiencies, there is time of notification and a period when parties can correct the deficiencies. Otherwise they could deal with it under proposed section 97VP(2)(a) and/or (b), whichever would be appropriate. Proposed subsection (1) provides that in determining an appeal, the relevant industrial authority will not be limited to the material that is before the registrar. He can inform himself and invite new material but it will not change the agreement. Nothing can be changed in the agreement except the deficiencies that are identified in the proposed subsection. The relevant industrial authority can give new information only to support the EEA that has already been refused by the registrar. That information might not have been before the registrar and it might be about the interpretation of the no-disadvantage test or whatever. Essentially, no other change can be made to the agreement. That new information is purely to support the EEA at that period.

Mr Trenorden interjected.

Mrs EDWARDES: It will allow another opportunity for the party to ask that the agreement be registered on the basis that its registration has taken too long and has cost a lot of money.

Mr Trenorden interjected.

Mrs EDWARDES: Yes; the parties would seek to do whatever is necessary to register their agreement because they would not want an appeal determined in any other way. The Bill provides that parties can present material, which might not have been before the registrar, in an endeavour to convince the industrial authority to register the agreement.

Mr BARNETT: I am fascinated by the member for Kingsley's comments. She is exposing this legislation for the socialist, ideological, bureaucratic load of rubbish that it is.

Mrs EDWARDES: Proposed section 97VP was referred to a few minutes ago concerning the determination of the appeal. The industrial authority has other powers under the Industrial Relations Act that it can call on to assist in its determination of an appeal. Will the minister highlight the other powers he can use?

Mr KOBELKE: The powers of the commission are in section 27 of the Industrial Relations Act of which, as a former Minister for Labour Relations, the member for Kingsley is probably even more aware than I am. They are crucial to the commission's function. Constituent authorities can also fulfil the role of the relevant industrial authority, in which case they could avail themselves of those powers under the Industrial Relations Act.

Mrs EDWARDES: I hope the minister does not seek to use all those powers, or EEAs will not be registered because registration will take far too long. Once a determination has occurred, it must be provided to the parties in writing within seven days of its determination. This proposed section is consistent with the seven-day notification, registration etc. A level of continuity can now be seen in how those days will be worked through.

Mr Kobelke: I am surprised you did not recognise that much earlier.

Mrs EDWARDES: We are getting there. Proposed section 97VQ provides for proceedings under this subdivision, which deals with the appeal against refusal of registration. Proposed section 97VQ(1) reads -

> The Commission may make regulations under section 113 providing for the practice and procedure to be followed for the purposes of appeals under this Subdivision.

I asked the question about what will be provided for in those regulations. Proposed section 97VQ(2) reads -

> Subject to subsection (1), the relevant industrial authority may exercise such of the powers set out in sections 27, 28 and 33 as the authority considers it necessary or expedient to exercise for the purposes of an appeal under this Subdivision.

If only I had waited one more clause, I would have had the question answered, but they threw in a few extra sections there - 28 and 33. Section 28 deals with the exercise of powers prior to hearing and determination, which links back to section 27. Section 33 deals with the evidence in the proceedings before the commission, and as such it highlights how the process will be conducted. Will the minister provide advice about the first section?

Mr KOBELKE: I will rise to give the member the opportunity to speak again, but I do not see how I can add to what she has said. It seems to be self-explanatory, and the member has gone through it, unless she wishes to be more specific.

Mrs Edwardes: We are talking about practices, procedures and regulations that are not already covered under sections 28 and 33.

Mr KOBELKE: We are simply providing flexibility, so that if it looks like there is a need for regulation to give certainty and to smooth the process of such appeals, then the powers are there for the commission to establish those regulations. It could be anything applying to this subdivision, including any forms required, which is seen as necessary or conducive to the good functioning of appeals, on which the commission can make regulations.

Subdivision put and passed.

Division put and passed.

Division 6: No-disadvantage test -

Subdivision 1: Definition -

Mrs EDWARDES: Division 6 deals with the no-disadvantage test, and subdivision 1, one would tend to think, deals with definitions, but is quite extensive in those definitions. I suggest that it is misleading in its title, because of what else is contained in this subdivision. Proposed section 97VR deals with the definitions of "award", "comparable award" and "relevant order". I would like to look at the philosophy of what is being proposed and intended about agreements. One of the issues the Opposition has been consistently raising, that we have been told about, is that business costs will rise through the transaction costs as identified here, and also through the inflexibility that awards provide. With the no-disadvantage test, the EEA will be compared to the award or, in the event there is no award, with the minimum conditions of employment. How can the no-disadvantage test be criticised? I sum it up in one way - it is cumbersome. The minister has said the proposal put forward is very similar to the federal provisions. What is the similarity with the federal provisions, and is it likely to be looked at in the same light? Several procedures and guidelines for the respective tribunals have been established over time; for instance, when the Commissioner for Workplace Agreements became a tribunal for the purposes of section 40G of the Workplace Agreements Act. A set procedure outlined how the no-disadvantage test had to be satisfied. It included taking into account the views of the parties, the test being global, a focus on the overall package, the tribunal's taking account of monetary and non-monetary aspects of the agreement and the needs of workers in disadvantaged positions, the balance of work and family responsibilities - a very important issue for some of the women to whom I have spoken - and the promotion of better work and management practices through workplace agreements. The procedure contained further clauses dealing with monetary and non-monetary aspects. It also covered direct assessment of agreement clauses compared with the award entitlements applying immediately before the agreement was made, future increases or decreases specified in the award being taken into account and the award entitlement being disregarded if it did not apply to an employee. In the case of an EEA, the minimum conditions of employment legislation would apply. Non-monetary aspects included things such as regularity and certainty of hours, training and career path arrangements, the value employees place on non-monetary entitlements and whether the arrangements would be available if entitlements in the award were to be used. A high level of comparative testing was undertaken between the agreement and the award. That included checking whether the agreement picked up all award matters or stated that the award applied where the agreement was silent. When an agreement was silent on an award condition, consideration was given to whether the condition applied to the employees' circumstances, and, if so, whether it was likely to be of value. An assessment was made to establish whether the agreement referred to other documents such as the contract of employment or the company policy and whether it would have a bearing on the no-disadvantage test. The accuracy of the employers' comparison of the agreement and the award, if provided, was ascertained. The information supplied with the application and the description or statement supplied by the employee was also verified.

Mr TRENORDEN: This explanatory memorandum is not worth two bob; it is useless. I do not know how the departmental officers had the gall to present it. It is totally inadequate. I should be able to read this clause, examine the document and have some idea of what is intended. I have no option but to read it. No direction has been provided by the minister. That is a serious matter. The minister has introduced a significant Bill and the explanatory memorandum is useless.

Proposed section 97VS(3) means anything. If an employer decided to give his employees the day off to attend a local race meeting, he would have to shut his premises, but he could not do that without consultation. The minister must explain why this is not a massive erosion of employers' rights.

Mrs EDWARDES: I support the Leader of the National Party's comments about the explanatory memorandum. It is the worst document of its type to be presented to this House. Although some explanatory memorandums that have been presented to the House could have been better - such as an explanation, not a replication, of the clause - this memorandum goes far beyond those bounds. The minister does the House a major disservice by bringing into the Parliament such a document. It is unlike him and I believe that he has been let down by people. If the memorandum was drawn up at his direction, it was clearly a misjudgment because members on this side of the House -

Mr Board: Not just this side of the House; everybody.

Mrs EDWARDES: The member is right. The explanatory memorandum that went out to the community has no explanation of the Bill clause by clause and gives no guidance for members to interpret each clause, yet the minister has an explanatory memorandum that details each clause of the Bill.

Mr Kobelke: My officers have notes, but I have the same explanatory memorandum that you have and no other one.

Mrs EDWARDES: The notes give some guidance to the minister at the consideration in detail stage, which are the sorts of notes that we have come to expect in the House. As such, I agree totally with the Leader of the National Party.

Ms MacTiernan: You'll be back in coalition at this rate.

Mrs EDWARDES: The minister was on the opposite side of the House from me when I was minister. She would be aware that I gave explanatory memorandums then and I am sure the Minister for Consumer and Employment Protection would agree that I made them available to him when he was in opposition.

I referred to the no-disadvantage test and the way in which comparisons can be made between an agreement and an award. An assessment template under which comparisons can be made between the provisions of the agreement and the award states -

a) Start with wages and salary: pay rates, allowances, overtime, penalties.

b) Compare hours of work, span of hours, rosters, all leave, notice periods.

c) Compare other conditions and non-monetary benefits: contract of employment, regularity and certainty of hours, training, career paths.

d) Note any other features that are potential advantages or disadvantages for the employee.

5.3.5 Where there are particular circumstances or scenarios that are relevant, such as particular roster arrangements that could advantage or disadvantage the employee, document these and attach to the Assessment template. Employer or employee could supply this information.

The assessment template then suggests the method of determining advantage or disadvantage as follows -

5.4.1 Where an agreement appears to reduce or eliminate an entitlement, assess whether the entitlement applies to the employee's working situation having regard to the hours actually worked by the employee. It may be necessary to check time records of the employee's working hours prior to making the agreement.

5.4.2 Where an agreement provides less remuneration than under the award for the same working arrangements, this would initially appear to disadvantage the employee. However, there may be other factors to offset the apparent monetary loss eg increase in base rate would result in increased superannuation entitlements or employee discounts on products.

5.4.3 Where an entitlement such as a discount does not have a ready monetary value it may be necessary to obtain information from employees on the value they place on that entitlement.

5.4.4 If there is a concern that the agreement may not pass the no-disadvantage test, the parties have the opportunity to remove a provision that may disadvantage employees, or increase an entitlement in the agreement.

The overall assessment of disadvantage to employees on an EEA compared with award entitlements is a comprehensive procedure known by those who worked in the Office of Commissioner of Workplace Agreements. The minister might recall that I said that when the Office of Commissioner of Workplace Agreements became a tribunal for the purpose of section 40G of the Workplace Agreements Act a well-known process with well-known guidelines was already in place.

Mr KOBELKE: I seek the call simply to allow the member to continue her remarks.

Mrs EDWARDES: There were guidelines therefore for the Commissioner of Workplace Agreements when his office became a tribunal under the Act and they are well known. I went to such extreme lengths to identify that a well-known and recognised process and a set of guidelines were already in place in Western Australia. Essentially, the provisions that are being provided for under this division deviate and add other factors to the decision on the no-disadvantage test. One of the issues that has come up in the debate is that the minister regards as unlawful any agreements that pay less than the hourly rate under the award. He has not taken into account that an hourly rate is provided for under the Minimum Conditions of Employment Act. The rate of pay being paid was never unlawful. Doing a comparison to determine whether it equated to the award is a different issue. The moneys that were being paid under workplace agreements were not unlawful when they were linked to the Minimum Conditions of Employment Act. I point that out to the minister, because often he flows into that language when it is not quite true.

I will identify some comments by a very large employer who has concerns about the repeal of workplace agreements and what it will mean in terms of both monetary and non-monetary conditions. According to my notes, that employer said -

> The requirements of base salary rates and penalty rates are not on. If someone is employed in a position that works from 1800 to 2000 hours (i.e. cleaners) they accept that they will be working those hours. This may be their primary employment or additional employment. To impose penalty rates because they do not work the "normal" hours, should not come into play. Forcing penalty payments again takes away free enterprise and forces an unacceptable cost onto society. The alternative in respect to cleaning of buildings, would be to do it during the day like the majority of workers. I am sure the Premier would be the first to complain about having a vacuum cleaner working whilst he was on the phone in the middle of the day.

The issue is that what were known as conventional hours have been extended. We need only take note of the freeway. It does not matter what time we leave at night, the freeway always has cars on it. I do not remember that 15 years ago. When we left here at these ungodly hours, the roads and the freeways were much quieter. A lot of shift work occurs. Many people now work longer hours, but they do not necessarily work during the day. They may do their eight, 10 or 12-hour shifts from the afternoon to the evening or they may work evening shifts. Far more people are working non-conventional hours. They are their ordinary hours of work. The employers are saying that they are their ordinary hours of work. The awards do not recognise that. The awards have not been updated in many instances. I take objection to the minister's comment that the previous Government did not update those awards. It was up to the union movement and it was remiss of it not to update and upgrade those awards. The awards do not meet today's current working environment. When people enter into a no-disadvantage test, going through all those other issues and taking into account monetary and non-monetary conditions is a costly exercise for employers. They will not undertake it lightly when they first choose it because of the cost involved. However, if they do, they will want to see the process completed. That is why we feel so strongly about the bureaucratic process that was being put in their way in an attempt to stop the registration of the agreement. In terms of the comparative test of employer-employee agreements and the no-disadvantage test, how does the minister see that operating?

Mr KOBELKE: Before turning to the last question, I agree with the member on the need to upgrade the awards. Some are obsolete, some have a range of provisions that are simply out of date, and some have very low wage rates that are no longer applicable to community standards. Others contain such complex provisions that they are very difficult for employers to use. A whole range of areas need to be updated.

I do not know where the member got the suggestion that I blamed the last Government for that. I may have exhorted the last Government to do something about it and it did not do anything, but I was in no way suggesting that the responsibility for that was solely the last Government's. A range of people were responsible for that, and clearly the unions are some of the bodies that must look to their responsibilities in that area as well. I certainly acknowledge that the last Government did not do anything about it, and there was a role for it. However, the last Government was not the only body that had a role to play.

Mrs Edwardes: I am sure you would have liked us to go down the path of simplification.

Mr KOBELKE: The issue is how to do that, and we clearly do not want to do that in the way the federal minister, Peter Reith, set about doing it. However, I believe that our whole model will help to do that. What was the member's last question?

Mrs Edwardes: What is proposed regarding the comparative test?

Mr KOBELKE: The member referred to the manual or the guidelines that were used by the Commissioner of Workplace Agreements. The commission will develop those guidelines, and I assume that it will look at what was being used in the Office of the Commissioner of Workplace Agreements. Therefore, the file to which the member alluded would be made available. How those guidelines are developed will be up to the commission. It seems to me that that material would obviously be referenced.

We also hope that a number of the staff who have worked in the Office of the Commissioner of Workplace Agreements for some time will go over to the registrar's office and assist in setting up the procedures. In the budget for the coming financial year, the money will go from the Office of the Commissioner of Workplace Agreements to the registrar's office, and, along with that, as I have indicated, it is hoped that some of the experienced staff will also be available. It is up to the commission to develop the guidelines; that is why they are not included in the Bill. However, I assume that those guidelines will follow the lines that the member has already indicated, and will take account of the way in which the Employment Advocate applies the test for Australian workplace agreements. Although the guidelines will be different in various ways, they will provide a framework that has worked, and I expect that lessons will be learnt about the way in which the no-disadvantage test will work for employer-employee agreements.

Mr BARNETT: Some of those comments prove the point. The fact that industrial awards are out of date is surely a sign that they are not being used by employers, employees or unions. I remember a previous life in the early 1980s at the time of wage indexation. It was a farcical period. A wage indexation increase would come in, and at the then Confederation of Industry about 60 people would go down to the basement, the printers would run and the awards would be updated and mailed out. It was the most bureaucratic, ridiculous process. We were reproducing awards that no-one was using; yet there was a requirement that they be sent out and posted in workplaces. This is a hark back to those days. It was an absolute waste of time. These awards are outdated simply because they are not being used. That should tell the Government that the world has moved on for both employers and employees.

If people who are inclined to enter into an EEA go through the bureaucratic nonsense that we have heard about for most of today and tonight in debate on the earlier divisions, and they finally get to this division that deals with the no-disadvantage test, if anything is needed to kill off the EEA once and for all, this is it. It is the coup de grâce; it is the end of it. What is the point of an individual enterprise agreement if people cannot trade off conditions compared with an archaic, outdated award?

Mr Kobelke: That is what it does.

Mr BARNETT: It does not. The no-disadvantage test effectively precludes that. It is being tied to the award, and people cannot be disadvantaged when their conditions are compared with the award conditions. Is that correct?

Mr Kobelke: That is correct, but you need not have all the provisions of the award in the EEA.

Mr BARNETT: No, but there cannot be a provision in the EEA that is deemed to disadvantage the employee when compared with the award condition. Therefore, the ability to trade off one condition, such as to not have double time, treble time or whatever on a Sunday - all those things that give flexibility to the employer and the employee - has gone.

Mr Kobelke: No, you can trade those off.

Mr BARNETT: Sorry, I must have misunderstood. What happens to the no-disadvantage test?

Mr Kobelke: It is an overall package.

Mr BARNETT: If the award specifies double or treble time on a Sunday, can there be single time?

Mr Kobelke: Yes; if the single time rate is higher.

Mr BARNETT: That higher rate must be equivalent to double or treble time, or whatever is in the award.

Mr Kobelke: The employer could work out the hours and remuneration of an average employee. These guidelines will lay down the way in which that should be determined. If an average employee worked for four hours on Sunday at double time, those hours and the rate would be included when calculating the weekly wage to determine an hourly or annual rate.

Mr BARNETT: Let us take a simple example of an award that specifies a double time rate for weekends of $30 an hour. Could the employer pay an employee less than $30 an hour on a Sunday?

Mr Kobelke: Yes.

Mr BARNETT: That is not the way this proposed section is worded.

Mr Kobelke: The employee would be paid a higher rate than that prescribed for ordinary time. Let us say that the ordinary rate is $15 an hour and the person works 20 hours a week, which may be the average for that employee or industry. Five of those 20 hours may be worked at double time, which works out to $150. The remaining wage - 15 hours at $15 - should be calculated and added to the $150 to determine the total wage. Allowances that may apply, such as for clothing, should also be included. That figure would then be divided by 20 to provide the hourly rate the employee should receive. That employee would receive the same hourly rate whether he worked zero or eight hours on a Sunday.

Mr BARNETT: That is just averaging. That is very different.

Mr Kobelke: That is how the Australian workplace agreements work.

Mr BARNETT: That is why that system is not attractive to many employers. Companies that move out of the state jurisdiction - which they will do in droves as a result of this Bill - generally move to a collective agreement rather than an Australian workplace agreement.

Mr Kobelke: That must also meet a similar disadvantage-type test.

Mr BARNETT: That is why it is not so attractive.

Ms MacTiernan: It is because you cannot completely rip off the worker.

Mr BARNETT: I did not hear that, but I do not think the minister's contribution is required.

Mrs EDWARDES: I would like to explore this further. These are the important issues. The minister's example incorporated 15 hours of ordinary time. However, if the employee worked those 20 hours on Thursday and Friday nights and Saturdays, which are outside the standard hours of work of 9.00 am to 5.00 pm, Monday to Friday, the penalty rates would mean that the cost to the business would increase enormously. The Leader of the Opposition was attempting to say that other benefits might be substituted. Those benefits could be a quarterly or annual productivity bonus. Some fast food businesses do that because their workers generally work non-ordinary hours, and the companies anticipate high weekly wage costs. Therefore, they do something else for the benefit of the employer and the employee. That might be able to be taken into account; however, the wording of the proposed section regarding the comparison between monetary and non-monetary benefits is of concern.

Awards have often been created for a number of employees in different types of workplaces within an industry or across comparable industries. Some parts of an award may not apply to a particular employee. The concern is whether the clauses that would not ordinarily apply to the employee will be taken into account when the conditions of an employer-employee agreement are compared with those in the award. There are some concerns about how the test will be applied. Will the minister alert the House to the fact that the guidelines to the no-disadvantage test will be in place at the time of the commencement of this legislation? It would be a travesty if people attempted to go through the process without the guidelines and had it knocked back at the registration stage.

Mr TRENORDEN: Will the guidelines be gazetted? Will that be the process? It would give us the opportunity to move to disallow them in the House.

National Party members are not particularly concerned with the intent of this proposed section because, in principle, we do not want to disadvantage anyone. Much of the argument that came from the other side on the previous Bill was about individuals who were disadvantaged under earlier contracts. It would have been far simpler to fix up those situations than go through this extended process with its great bureaucratic nonsense.

Dr WOOLLARD: Both the Government and the Opposition have said that the current awards are outdated. What is the Government planning to do to update awards to ensure that they reflect a 38-hour week?

Mr Kobelke: That is relevant but the no-disadvantage test tends to take benchmarks from that. It is not covered in this proposed section. It is best left until we deal with the relevant proposed section.

Dr WOOLLARD: Will it come up later?

Mr Kobelke: Yes.

Dr WOOLLARD: Will the minimum wage issue come up later as well?

Mr Kobelke: Yes.

Dr WOOLLARD: The definition of "relevant order" reads -

means any order under this Act that is prescribed by the regulations for the purposes of section 97VS.

Will the minister give a more explicit definition of a relevant order?

Mr KOBELKE: Some relevant orders contain conditions that sit with awards. They apply to specific industries and may involve redundancy provisions. That should be picked up and taken into account for the no-disadvantage test. That is covering the field in respect of some technicalities.

Dr Woollard: Does that mean it is carte blanche award by award, and that this is irrelevant?

Mr KOBELKE: No, it must be in the area in which a person works. If a person is a metalworker he cannot use the cleaning award. A cleaner cannot use the catering award. A job must be designated as being in a particular area. The registrar must be convinced that the particular award or relevant order applies to people working in that type of job. There may be ambiguity in some cases as it may appear that there are two relevant awards and a decision may need to be made as to which applies. In most cases it is fairly obvious which order applies. Some areas may not be covered by a state award, in which case people must look to a relevant federal award.

Dr Woollard: Will it be based on a precedent?

Mr KOBELKE: It will be based on which award is best applied to the work. People cannot go fishing for an unrelated award to try to drag it in. If there is an award in that area, it will apply.

The Leader of the National Party asked a question about the regulations. The difference is that the commission will establish those rules. I have already indicated that there are guidelines and other areas in which these provisions have been applied. Although they will not have full coverage, because we are doing things differently, they will act as a guideline. It is up to the commission to develop those regulations.

I will refer to the issue raised by the Leader of the Opposition. To look for the explanation we must consider proposed section 97VS(2), which states -

> An EEA disadvantages an employee as mentioned in subsection (1) only if its provisions result, on balance -

I emphasise that it says "on balance" -

> in a reduction in the overall entitlements of the employee under -
>
> (a) an award;

An employer would use the award as an example and work out what would be paid to a group of employees. Although it is an individual contract, people working in a cafe and restaurant may want to change the structure of the days they work. Currently, someone might want to work on Sundays because it fits in with his lifestyle and gives him more pay. However, later he may decide that he does not want to work on Sundays any more. In that case, the employer may take an averaging approach. Of course, in the final event, it would depend on the way the commission laid down the rules and regulations as to what extent it would allow averaging and what types of averaging would apply, because it can be done in several ways.

An employer might end up with slightly different categories under the same award. For example, an employer might look for part-time workers who work 20 hours or less. It will be up to employers or unions to make a case to the commission for how they do the bundling up. However, for the purpose of this exercise, an employer looks for people to work in the restaurant and catering industry and who come under an award, most of whom will work for 20 hours. Often those types of workers are part-time students. The employer or the union will ask how they can bundle up the award for these people. They might refer to the relevant enterprise agreement or other agreements and present those types of wages records to the commission. They would argue that the EEAs they wish to register for their operations and enterprises must ensure that their workers are no worse off, as a whole, than if they were on the award. The employer might end up with an averaging system that works on an annual or monthly basis working back to an hourly rate. Whatever linen allowances and other entitlements that are available under the award might be bundled into an hourly rate.

Some figures that the Government has trialled, which I do not have here but I will make available tomorrow, indicate that a flat minimum hourly rate of just under $12 under the award came to about $13.50 under the averaging system. That would be put into the EEA as having met the no-disadvantage test and the workers would be paid $13.50 whether they worked on Friday or Sunday lunchtime. An employer interested in that EEA would be provided with a flexible and simple agreement. When negotiating the agreement, the employees might give up the double time rate in return for an extra 40c or 50c an hour. That is what a genuine individual contract comes down to. It would give the employer the flexibility to pay a flat rate across that time.

It may be that in developing the no-disadvantage test the employer considers a two-tier system that has a flat rate for certain times of the week and considers one and a half times the hourly rate for other hours that currently pay double time. It is up to the employer with the employees to craft the agreements that meet the needs of their enterprise. A survey of the hospitality industry, which I alluded to in the place a week or so ago, found that 11 per cent of establishments used only workplace agreements. Another five per cent use both and 16 per cent used some form of individual contracts.

Mr JOHNSON: I do not want to stop the minister in full flow. I am interested to hear what the minister has to say. I want to hear the remainder of his remarks.

Mr KOBELKE: I thank the member for Hillarys for that opportunity.

Restaurants and cafes are concerned about the cost of paying double time on Sundays. The thorough survey of work that was carried out last year by the Department of Consumer and Employment Protection showed that 16 per cent of employers were using totally registered individual contracts, which meant that 84 per cent were using the award. Although there is concern about EEAs, the vast majority of employers currently use the award, despite the problem of double rates on Sundays and all the rest. Some people have trouble with double time. I understand that. Therefore, a provision in the EEA provides for bundling up, so that employers do not have to pay such a high rate on Sundays. However, they have to make sure that over that period the general employees are not worse off. That might lead to some winners and some losers. If an employee was interested only in working on Sundays, he might not want to work any more, because his rate might drop a fraction. Others who perhaps were working ordinary hours would get a slightly higher rate. There will be a slight rearrangement, but not a major disruption, because 84 per cent of employers are currently not using individual contracts. Only a few establishments will find, through that averaging, that they have the odd winner and the odd loser and will need to rearrange rosters a bit to satisfy the requests of staff to work at particular times.

Mr JOHNSON: I listened closely to what the minister had to say. He mentioned the bundling up of the award across-the-board for employers, such as those who run cafes. Many small businesses these days, particularly in the small supermarket area, such as Supa Valu and others that can open on a Sunday and after five, 5.30 or six o'clock at night, have a lot of young people who work over the weekends. Regular staff work Monday to Friday and other young people come in at five o'clock at night and work for three hours. Those young people - they could be 17, 18, 19 or 20-year-olds - want to earn some money. My investigations have found that they are more than happy to work those hours because they are the only hours that they can work. They cannot work during the day because they go to school or university. They are happy to do weekend work. That is their choice. Under the no-disadvantage test, they would have to be paid the award rate for working on the weekend. Is that what the minister is saying?

Mr Kobelke: Many larger supermarkets use industrial agreements. My son, who is employed to do night fill, is on an industrial agreement. After a trial period he was put on as a permanent part-time employee. He works fixed hours at night.

Mr JOHNSON: Does he work at a big supermarket?

Mr Kobelke: Yes.

Mr JOHNSON: I am not talking about big supermarkets. I am talking about small business people, whom I am more concerned about.

Mr Kobelke: Smaller supermarkets have used workplace agreements and have therefore been able to pay a lower rate. If that rate of pay is lower than general community standards, they will have to increase wages.

Mr JOHNSON: For Saturday and Sunday work?

Mr Kobelke: No, generally. I will get to Saturday and Sunday work to amplify that point. When it comes to Sundays, which is a day on which double time applies under an award, those employers will have to look at how the no-disadvantage test applies. I cannot give any guarantee. There may be a cost component. It will depend on how it works out. Employers will have the option to go to an industrial agreement, which may give them greater flexibility. It does not have to mean a no-disadvantage test. Both models are available. I have spoken to small retailers. Some are happy. I suspect that a substantial number are not happy, because they fear that this legislation will increase their costs. They are looking at both models and are keen to see how the no-disadvantage test will be applied. Once they have seen that, they will be able to decide whether it is in their interests to use an industrial agreement, which they have not used in the past. Some employers see that as a potential way to keep their business functioning effectively. Alternatively, they will look at how the no-

disadvantage test will bundle up the hourly rate of pay and the impact it will have on Sunday work for part-time students.

Mr JOHNSON: I do not necessarily agree with the minister. Historically, penalty rates for work beyond five o'clock in the evening and on Saturday and Sunday were brought in for normal weekday workers who wanted to work overtime. In order to get workers to agree to work after normal hours they were paid, quite justifiably, time and a half or double time. However, the people to whom the minister is referring are not working excess hours that require they be rewarded with time and a half or double time. At the end of the day the biggest test of what the Government is putting forward will be how many of these people will be out of a job. A lot of small business people will not be able to pay young people who are desperate for this work the penalty rates the minister wants. I would like to hear more on this because it is the crux of this area.

Mrs EDWARDES: I will add to that line of thought. The Master Cleaners Guild of WA put out a media release. I met with the guild when I was Minister for Labour Relations, and the Minister for Consumer and Employment Protection has referred to the guild. Some of the guild's members supported the no-disadvantage test, because they wanted a level playing field among all competitors so there was no obvious price cutting on the basis of lower wages. However, they are concerned when they compare their existing wages and conditions with award wages. Most people in this industry work unconventional hours and their award is so outdated that it does not recognise that fact. Until that award reflects the marketplace in a real sense they want the Minimum Conditions of Employment Act to apply. I do not know what the current difference is between award wages paid to the cleaners and the current minimum weekly wage. I suspect that, as with most awards, it probably does not vary greatly, although it would with some awards. The guild's position is that in a no-disadvantage test the award is unrealistic when people work non-conventional hours.

That applies to not only the cleaning industry but also the retail industry. For example, some supermarkets have extended trading hours from eight o'clock in the morning to nine o'clock at night, and on Saturday and Sunday. The community appreciates those extended trading hours, particularly in the local strip shopping centre, where Sunday afternoon shopping becomes an occasion for the whole community. The cost and the impact of this legislation will be great when it involves an award that no longer relates to marketplace realities and does not provide the flexibility that those industries need today. Fast food companies are another example. While the big boys have arrangements already tucked away in the system, a lot of little players are involved - small pizza shops, fish and chip shops and kebab shops, which have become popular. We have seen increased growth in the security industry. The security industry has different issues such as the type of security arrangements in which they engage, the quality of the security agents they employ and the level of training that is needed.

The level of training needed for a security agent to stand in front of a chemist shop, where he is likely to be faced with an armed robber, is quite different from the level of training needed for somebody to stand in a store and look out for petty theft, shoplifting and the like. Some industries have different classes of requirements. People are saying that employees in the security industry who are in charge of crowd control and so on must be paid more to attract them to do the training and the job. That would not apply across the board to include security agents standing outside the local Dewsons Supermarkets store looking for potential shoplifters. That variation of skills in the security industry would need to be reflected, but I do not know that the award for that industry reflects the different types of arrangements that have evolved. The opportunity for a large number of jobs has blossomed in that industry. There may be concern over some of the hourly rates of some security agents, but I do not think the award reflects what is occurring in the marketplace.

Mr KOBELKE: It is difficult, if not impossible, to tie down details. Proposed section 97VX deals with the commission establishing principles and guidelines, and the proposed provisions over the page deal with seeking public comment. It means that the Government, employer groups and unions can make representations on how the no-disadvantage test should be applied. The commission will listen to those cases. If particular industries or enterprises say that they have a set of problems, it is open to the commission to hear their case on how the no-disadvantage test works. The test is really established as a key component under proposed section 97VX. The proposed section provides that the commission must prepare an instrument setting out the principles and guidelines that are to be followed by the registrar. That is basically how the no-disadvantage test will work.

The commission will establish an instrument in a court session in which people can argue the case of the principles for the instrument and it is left to the registrar to apply it. That can be reviewed at any time if it is not working. This will provide flexibility to make sure that the needs of both the employers and employees are looked at. Obviously many people are afraid, but I believe quite genuinely that fear is unjustified. The fact is that less than 10 per cent of the work force is on workplace agreements. The mining industry pays well above the award rate, and although there are problems, the no-disadvantage test is not a specific problem. To take a

wild guess, I would say that perhaps some of the five per cent of the work force, or less than 50 000 people, may be in a situation in which the no-disadvantage test will alter their hourly rate, which may mean that a shop will employ fewer of them on a Sunday because it will cost more.

Mr Johnson: My concern is that they are young people who desperately need work and will be out of work.

Mr KOBELKE: They will not be out of work, but there may be strains and stresses that will cause problems for some of them. That will be much less than the stress and trauma that the Opposition caused when it brought in workplace agreements. When they were first introduced people's pay was suddenly reduced by $150 a fortnight. People could no longer meet their mortgage repayments and had to sell their house. The introduction of workplace agreements caused huge problems. I argue strongly that in a very limited number of cases, some realignment will take place, which will always be a trauma for people. However, that realignment will have far less impact than it did when workplace agreements were introduced.

Mr Johnson: If they were existing employees they did not have to sign a workplace agreement. They could have stuck with the award.

Mr KOBELKE: They did have to sign an agreement. Even though under the Act existing employees were not supposed to be forced to sign agreements, they were forced to sign them. Often, companies that employed people lost their contracts and told the workers that if they did not accept a reduction in their pay of $50 to $150 a fortnight, they would not have a job. That driving down of costs from which other people benefited left a number of people in considerable hardship.

Mr Johnson: It was not widespread.

Mr KOBELKE: A negative impact as a result of the changes in this Bill will not be widespread. Up to 50 000 people could undergo a no-disadvantage test, and for whom things might be tight. A small proportion of those people will require some reorientation. A small number may find they are affected by a realignment due to cost structures. I am being up-front that a small number of instances will occur. The Government is seeking to ensure that they are minimised. However, at the end of the day if some companies gained a commercial advantage by paying well below their competitors, they would have a problem. I think that only a small number are in that category. Some supermarkets may have adopted that approach with Sunday trading. I know their approach because I spoke to a group of them a few weeks ago. Some were very positive and some have difficulties about how they will resolve the problem.

Mrs EDWARDES: Proposed subsection 97VR defines "comparable award" as follows -

> . . . an award or awards regulating the terms and conditions of employment of employees engaged in the same kind of work as the employee;

When the new Government was elected, the then Department of Productivity and Labour Relations added a page to its web site on what to expect with changes to the industrial relations system. The section in the Act on the no-disadvantage test provides that it must be measured against any award that applies in the absence of a workplace agreement. I tend to suspect, based on some of the minister's comments, that when no award applies, an award may be designated for the purpose of the no-disadvantage test.

Mr KOBELKE: That is what we mean by a comparable award. There may be a federal award that matches very closely various types of employment.

Mrs EDWARDES: It could be a Victorian award, a South Australian award, a Queensland award or any other award. The level of uncertainty and the difficulty that is likely to ensue for the employer and employee in trying to develop an EEA would result from something like that. Who will know what other awards operate around the country?

Mr KOBELKE: That is covered in proposed section 97VT, under which the employer may apply in writing to the registrar for a determination of what comparable award or relevant order will apply.

Mrs Edwardes: Excellent! That would create another delay in the process!

Mr KOBELKE: No. If an employer knew that a competitor or someone else was doing that in his area he would have a benchmark and could proceed. This is to give certainty as early in the process as possible. An employer would not commence the process and find he had got it wrong, thereby causing his numbers to change and creating financial disadvantage. If there were any uncertainty a ruling could be obtained from the registrar; and based on that employers could do their sums and develop their model with some certainty.

Mrs EDWARDES: Essentially, the definition of a comparable award means any award currently operating anywhere in Australia that deals with the terms and conditions of employment of employees engaged in the same kind of work as the employer.

Mr KOBELKE: I cannot give a definite answer to that question in terms of how they might judge it. In most cases there will be a relevant state award. I cannot give a definite answer, and that may be due to my ignorance of it, but I am working on the basis that the commission and the registrar have the ability to decide whether an award can be dragged from Victoria. It may be judged appropriate, but that is a matter the commission would have to consider. It is open that it may be possible, but I will not go so far as to say that it will allow an award to come from somewhere else. It would have to be judged in the context of fairness and its applicability to that job.

Mrs EDWARDES: That can be picked up again when the next section is considered. Is there a provision for the employer to question whether it is a comparable award?

Mr KOBELKE: The advice I have is that it is the decision of the registrar. There is no section where that is qualified, other than proposed section 97VX, which provides that the commission can prepare an instrument setting out the principles and guidelines to be followed. The powers there are wide, and if a matter turned out to be contentious, I would hope that the commission would have the powers to settle it. In establishing an instrument under proposed section 97VX, it is required that the commission consult. Therefore, if it turned out that there was a problem with the way in which the registrar used a particular award or awards, I hope that the powers in that proposed section are broad enough for people to take their case to the commission, which might decide that in particular areas the registrar needed some guidelines on the use of particular awards. Up front, however, it is the registrar's decision about what are the comparable awards.

Dr WOOLLARD: I want to clarify, in regard to the no-disadvantage test, that it is there to ensure that full-time equivalents are not disadvantaged. I will give the minister some figures that are easy to work out. If someone who is currently working full-time, and is working 14 hours a week -

Mr Kobelke: A full-time worker is working 14 hours a week?

Dr WOOLLARD: If a worker is working 14 hours a week, by working 10 hours during the week and four hours in the weekend, and is being paid $18 an hour - which works out to $252 a week - can the employer, under this agreement say that the worker's base rate in future will be $14 an hour rather than $18 an hour, and double time will be $28 an hour? This would equate with the 10 hours during the week and four hours on the weekend, and the person would still be taking home the same salary, and the no-disadvantage test would apply. New staff, or those working only at the weekend, would be paid $28 an hour.

Mr KOBELKE: That general approach would be followed, although I am not sure that the numbers and details are correct. The commission must still determine the general instrument for applying the no-disadvantage test. It will depend on how specific the instrument is to each type of employment or whether a broader instrument will be used.

I will use the award covering restaurants to illustrate my point. If it is decided to treat all employees as average employees, the average will be applied to everyone. Some might argue that that is unfair because so many different people work in that industry. The package for a full-time employee might be different from that for casuals. There might be a different rate for out-of-normal-hours work, although it might not be double time. It will be up to the commission to establish that.

The guiding principle is clear; that is, overall, employees cannot be worse off. The point is to allow the employer to arrive at a standard hourly rate or annual salary and to have flexibility in the hours worked. How then do we work out the average hours worked per week - not total hours, but the time people normally work in that industry? If the normal expectation is that someone will work four hours a week at double time and six hours at time and a half, that rate will be used to determine an hourly rate that will be paid no matter how many hours are worked on a Sunday. The commission must work that back to an average using the instrument as outlined.

Dr Woollard: Does that mean the commission can work that out for someone working 15 or 20 hours, but that someone working six hours over the weekend at double time will receive double the minimum wage for that time?

Mr KOBELKE: That will depend on the guidelines laid down by the commission. It might decide to have a standard test for everyone in an industry and that that test will be applied in a certain way to students, who might work only 12 to 15 hours a week. Those who work between 15 and 30 hours might be subject to a different test. I do not know. Different groups in an industry - for example, casuals - might work differently. In that case, they will present the format of their normal working week as opposed to that of permanent employees. The

commission might decide to apply one rule or that subsets of that rule will apply within that award area. The commission will decide that by consulting the key stakeholders. The employers or the unions will present their case to the commission, which will then consider the case knowing that the clear intent of the legislation is that EEAs should be an available and workable option for industry, that there should be a fairness and that standards should be maintained. The commission, as the independent umpire, will make a judgment about how best to make that model work.

A new provision states that the commission must establish what is fair and it must ensure that standards are maintained for employees. However, it must also consider what is viable for an enterprise. If maintaining fairness will put an enterprise out of business, the commission will take that into account. It will impose arrangements to avoid loss of employment and to ensure that the enterprise continues to function effectively and to prosper. That argument can be put to the commission.

Mr JOHNSON: Let us say that an employee and an employer decided to go down the route of an employer-employee agreement under this legislation. They set out the terms and conditions in the EEA and were happy with it when they signed and dated it. At that stage the employee is working, which is permitted under the legislation. The employer is paying the employee and they send off the EEA to be registered. There is no limit to how long it takes to be registered. We know that there is a minimum 14-day cooling off period but registration could take three months. Three months go by and the registrar decides under the no-disadvantage test that there is a disadvantage. He sends the agreement back to both the employer and the employee with, I presume, his reasons for sending it back. The employer notices that the terms of agreement do not match the award conditions for overtime, double time and time-and-a-half rates or in the number of holidays, sick leave or leave loading and all those sorts of things. The employer has not provided enough in the agreement in those areas but he has done his figures and cannot afford to pay any more. What happens to the employee? Does the employer say that there is no agreement because it has not been registered and the employee must go? Is that the end of employment for that employee or does the employee have redress through the Industrial Relations Commission? Could he demand to keep his job because he has worked with the employer for two or three months? The employer cannot afford to meet the wages and conditions that the registrar says the employer must meet. There is then a dilemma for the employer, particularly if he cannot tell the employee that he cannot afford the wages and conditions set down by the registrar because the registrar has said that the EEA does not meet the no-disadvantage test. What will happen in that scenario? Would the employer be lumbered with that agreement?

Mr Kobelke: It would depend on whether there was a contract of employment. If there was a contract of employment, there would be potential problems in getting rid of an employee through redundancy or if he was made redundant there could be an unfair dismissal case.

Mr JOHNSON: Must there be a contract of employment before a new employee signs an EEA and does that employee have to go through all the bureaucratic rigmarole set out in the Bill?

Mr Kobelke: It depends on a range of factors. There will be employees who are signed to an EEA and who have an acknowledged contract of employment. If there is a contract of employment, employees will have the option of going on either an EEA or the award. If the EEA proves unsatisfactory and cannot be registered, the employment would be based on the conditions of the award.

Mr JOHNSON: The employee has absolute certainty from day one of employment and the employer is disadvantaged completely. Does the minister accept that?

Mr KOBELKE: The member must keep in mind that in most of these areas, the majority of people are employed on the award or an industrial agreement.

Mr Johnson: I am talking about new employees.

Mr KOBELKE: I am talking about an industry. The majority of industries are paying people on the award or on an industrial agreement. However, in some areas it is a problem.

Mr Johnson: I am talking about small business.

Mr KOBELKE: That is for their competitors. If a business wants to use employer-employee agreements, many, if not a majority, of its competitors are already employing people on awards or industrial agreements. Businesses know what the benchmark is for labour market costs. If they think that the employee they take on will be more productive for a whole range of reasons, and they want to use an EEA to deliver that package for the employee and the EEA fails, they know that they will be stuck with the award. That will be the situation in the vast majority of cases. There may be some cases in which a business can employ a person only if it can get

cut-rate labour. Cut-rate labour means that employers need EEAs with a no-disadvantage test that comes in quite low. They will put themselves in jeopardy. The difficulty is that time worked on Sundays pays double time, whereas businesses are trying to get the rate down to, say, ordinary time or 1.2 times ordinary time on a Sunday. They can run it at that rate if they get the no-disadvantage test; if they have to pay double time under the award, they will not have a case and they will have a difficulty. However, they would protect themselves by a range of other measures; for instance, by offering employment without designating the day. If they could not get it through, they could employ the person during the week.

Mr Johnson: That does not solve the problem. The person would probably be a young person in year 11 or 12 or at university who could work only on Sundays. There are thousands of young people in that position. The no-disadvantage clause will jeopardise a lot of those jobs. The employer may not be allowed to pay the rates under an EEA that does not pay double time. Employees used to be paid double time at the weekends because it amounted to extra time beyond the normal working week. They should not be paid double time if they work only at the weekends.

Mr KOBELKE: The member made that point. I will conclude. I am saying -

Mr Johnson: It comes back to the employer. In that situation, they could be doing an EEA for 100 young people -

Mr KOBELKE: I will finish and then the member can make his comment. The point I am making is that there will be little or no change for most employers. There may be difficulties in some industries because there are changed circumstances. That was a problem when workplace agreements came in. Similarly, when we remove them and put in EEAs, some people will have to adjust to that. People adjust; they are adaptable. There are various mechanisms they can use to protect themselves, which I do not propose to hint at now.

Mr Johnson: When you say "people", do you mean employers?

Mr KOBELKE: Employers and employees, but particularly employers will adjust.

Mr Johnson interjected.

Mr KOBELKE: They can adjust and meet those problems by various means.

Mr Johnson: Give us an example. What other means?

Mr KOBELKE: One means is that they would have to negotiate an industrial agreement. Another one is that they change their rostering so that they employ fewer people on Sundays and cover the work on the other days.

Mr Johnson: I am talking about people who cannot work on the other days. I am talking about the thousands of young people who work on Saturdays or Sundays or both and they are the only days they work.

The ACTING SPEAKER (Mr Edwards): I ask the member for Hillarys to enlarge on his comments and then the minister can finish his remarks.

Mr JOHNSON: Those people who can work only after the normal hours during the week because they are at school or university during the day may be able to work only on Saturdays or Sundays or both. I have a great concern for those people and the way this legislation could affect them and their employer. At the moment, I understand that most of those people would be on workplace agreements, particularly in the smaller supermarkets. I am not talking about Woolworths or Action Supermarkets, but the smaller supermarkets such as Supa Valu and Dewsons, which are privately owned. They now have the benefit of being deregulated so that they can trade on a Sunday, and for longer hours, provided they have only a certain number of staff during those times. The young people will lose out, as will the employer if he has to pay the award rate, which is double time, even though the person is not doing overtime. Those people are happy to do the job and get the money they are paid at the moment, and it suits the employer and the employee down to the ground. They will both be disadvantaged under this legislation. The employers know their costs. There is not a lot of money in supermarkets. A lot of lines are loss leaders.

The situation is the same in the hospitality industry. There is not a lot of profit margin in that area. Very often the companies involved are small businesses, small restaurants or small cafes. They need to make a profit to be able to pay for the stock and pay the staff, the rent, the rates, the insurance and everything else that small business people are lumbered with these days, and they must try to make a bit of money to take home to feed their family. It does not matter whether they are male or female employers, they both have the same job - there is no discrimination in that respect.

This no-disadvantage test will work in reverse. The mere implication of this no-disadvantage test will be a disadvantage to both employers and employees, particularly young people. I would have thought that the Minister for Consumer and Employment Protection would want young people to get jobs, rather than an increase in unemployment rates among young people, which would take us back to those pretty dark days of record youth unemployment in 1992 when Labor was last in government. I do not want the Labor Party to make the same mistake it made last time. I hope it can learn from its mistakes and go forward.

Under this no-disadvantage test, unemployment rates, particularly among young people, will increase, because they are the bulk of the people who are employed over the weekend in the hours between 5.00 pm and 8.00 pm, or later if it is a fast-food area. The market in fast food is massive. The fast-food industry employs many young people who would not have had jobs in the past. Until McDonald's, Hungry Jack's, Chicken Treat and all the rest of them came along, 90 per cent of those young people did not have jobs. Without those fast-food outlets they would not have jobs today. Therefore, this State should be thankful that those companies have created this employment. They should not be penalised to the hilt. I ask the minister to look more carefully at this no-disadvantage test. I believe that it would be more aptly named a disadvantage test.

Mrs EDWARDES: I bring the minister's attention to proposed section 97VS(2), which states -

> An EEA disadvantages an employee . . . only if its provisions result, on balance, in a reduction in the overall entitlements of the employee under -
>
> (a) an award . . .

Proposed section 97VU requires all entitlements to be considered and states -

> In comparing the entitlements of an employee under an EEA to the entitlements that would be provided to the employee under -
>
> (a) an award or a comparable award; or
>
> (b) a relevant order,
>
> the Registrar must take into account all relevant benefits whether in the form of money or otherwise.

Together, those two proposed sections result in the definition of the no-disadvantage test being wide open to interpretation. There is much potential for the interpretation of a "comparable award" to be left wide open. Two proposed sections refer to the definition of the no-disadvantage test. Proposed section 97VS(2) states -

> . . . on balance, in a reduction in the overall entitlements of the employee . . .

Proposed section 97VU states that all relevant benefits are to be considered. I also mentioned to the minister that, in some of the awards, not all of those entitlements under an award might relate to a particular workplace, let alone to a particular employee. Under some of the provisions that concern record keeping, employers must have kept the times of breaks and the rest of it. A work break identified in an award will potentially be taken into account as a loss of a benefit.

Would the minister please provide further clarification about the interaction between those two sections? How does the no-disadvantage test operate, and what will be taken into consideration? We have talked about awards. I am not referring to the broad comparable award situation but the sorts of things contained in awards and orders. As I have indicated, not all sections of awards necessarily apply to all workplaces or even to all employees at a workplace.

Mr KOBELKE: Proposed sections 97VS(1) and (2), which are crucial to the establishment of the no-disadvantage test, are lifted from the Workplace Relations Act relating to Australian workplace agreements. An established track record is already in place from which to seek advice as to how it has worked and how we might consider the application of the no-disadvantage test under this legislation. The member said that monetary and non-monetary aspects of the award had been taken into account. The commission will have to decide how that matter is bundled into an agreement. The commission has been given the job of establishing the instruments for the no-disadvantage test. All the involved parties will make submissions on how entitlements can be incorporated. I cannot give the member a chapter and verse answer; however, a process will be put in place under which the commission will determine that and people can make submissions on how it should be determined.

Mrs EDWARDES: That answer relates to the point I made earlier that guidelines for the no-disadvantage test must be in place by the time the Act commences, otherwise workers will be severely disadvantaged.

Mr Kobelke: The sections that relate to the repeal of workplace agreements and the availability of EEAs will have to be in place. That is why the proclamation section has considerable flexibility; it will allow the various stages to be done so that they mesh one after the other.

Mrs EDWARDES: When these two proposed sections are read together, they appear to be very broad and wide ranging. Although I could not quickly put my hand on the relevant sections in the Workplace Relations Act, the minister did not indicate that proposed section 97VU was similar to those sections.

Mr Kobelke: No, I understand that there isn't a similar section to proposed section 97VU.

Mrs EDWARDES: Proposed section 97VS opens up the situation broadly and to wide interpretation - far wider than was anticipated or should be available. It highlights the concerns that people have with anything new. The minister could say that that is the reason for most of their concern. As we have identified, employers are doing the sums and they do not like what they are coming up with. At the end of the day, they still must pay wages and bills. They might have to make some hard decisions. If they do not readily understand what will apply, that fear will only increase. What do proposed subsections (3) and (4) achieve, particularly as they were put in after the document went out for consultation?

Mr KOBELKE: They were included to ensure that it does not provide simply for a shell agreement. A shell agreement means whatever the employer wishes it to mean. Therefore, the no-disadvantage test would be inoperative because it would not achieve its objective. The member for Kingsley can read the clause, but it is fairly clear that the terms and conditions of employment cannot be varied without the consent of employees. If it were done without consent, it would mean that the employees lost out and the agreement would no longer meet the no-disadvantage test. Issues have arisen in workplace agreements in which major changes have been made to conditions of employment because of changes in the human resource policy of the company. A clause in the workplace agreement said that the agreement could be varied in accordance with the company's human resource policy, as it changed from time to time. It could wipe away whatever standards had been established; they meant nothing.

Mrs Edwardes: But policies are already incorporated in the guidelines that I read out.

Mr KOBELKE: No, the point is that a clause could be provided in a workplace agreement which said that some of the primary provisions or conditions within the agreement could be varied on the basis of changes in other policy documents. Hours of work could be extended without an increase in salary, so a person could be working 20 per cent more hours for the same pay. Those changes were possible on the basis of a change in company policy. They were not detailed. This provision is saying that in order to meet the no-disadvantage test, the key principles of the employment contract cannot be varied without the employee's consent.

Mrs EDWARDES: Proposed subsection (4) refers to the application of proposed subsection (2) to an award or order determined by the registrar under proposed section 97VT. Proposed section 97VT is titled "Determination of award, comparable award or relevant order by Registrar." The phrase "or otherwise" was also inserted in proposed section 97VS(4). What is anticipated by that phrase?

Mr KOBELKE: I am advised that it relates to when an EEA is lodged without it having been thought through or direction given about the no-disadvantage test or the award. In cases in which an EEA is fairly open-ended, the registrar will determine what is relevant under proposed section 97VT or otherwise. In other words, the registrar has the power to seek further advice or make reference to other aspects in order to determine the registration process. It would relate to situations in which there had not been prior consultation or a prior model that might have established the relevant criteria or instrument for the no-disadvantage test.

Mrs EDWARDES: Under proposed section 97VT, if an employer proposes to enter into an EEA and is not sure which award applies, the employer can apply in writing to the registrar to make a determination of the relevant or comparable award. The determination under proposed subsection (3) is binding when the document is lodged for registration, unless the registrar indicates that circumstances have changed in a material way. The concern is that this has a real potential for delay. Extending the entitlements in any award that is able to be compared with an EEA introduces a level of uncertainty into the equation. That certainty can be restored by writing to the registrar. However, people who might have some understanding of what applies in state workplaces would be unlikely to know what is happening around Australia. They might have some understanding of the federal award, because in some industries the federal and/or state awards apply. However, they are not likely to be aware of awards that operate around Australia unless it is a new industry. For instance, a process is currently under way to determine an award for people employed in call centres. Again the registrar has no time frame in

which to make this determination and get back to the employer with a response. I want to raise the time frame, and I can predict the minister's response. He will say that it should be timely but workable.

Mr Kobelke: Clearly it will be done as quickly as possible. In the first few weeks it may take longer than the Government would like, but as soon as the system settles it will be done reasonably quickly.

Mrs EDWARDES: How did the Government determine that a comparable award could be an award from any other State, when employment in WA is underpinned by the Minimum Conditions of Employment Act? I do not know which States have minimum conditions of employment legislation that acts as a safety net.

Mr Kobelke: The comparable awards can only be state or commonwealth awards. In earlier discussions on state awards, I stated that it is only Western Australian awards or commonwealth awards.

Mrs EDWARDES: Proposed section 97VS(5) refers to "any award, including an award under the Commonwealth Act". It has been suggested that because it does not mention any other States, any award is a state award.

Mr KOBELKE: Proposed section 97VS(5)(a) refers to any award. "Award" is defined on page 3 of the Bill as a state award.

Mrs EDWARDES: I am glad the minister has clarified that, otherwise all sorts of people would be wondering tomorrow what on earth they would have to do to meet the no-disadvantage test.

We discussed previously proposed section 97VU. The treatment by registrars of what will be the relevant benefit is absolutely crucial to the benefit of an EEA and individual agreements. What does it mean when dealing with the interpretation? Section 170XA(2) of the federal Workplace Relations Act provides some alternative. It states that, subject to a couple of the other sections, an agreement disadvantages employees in relation to their terms and conditions of employment only if its approval or certification would result, on balance, in a reduction in the overall terms and conditions of employment of those employees, which is essentially what we were talking about before, although probably not in as many words. The provision in the Bill is new and is providing for a much more global disadvantage test. My concern is that it will be far too broad in its interpretation for people to have some certainty of their cost structures.

Mr KOBELKE: I accept the basis of the member's statement.

Mrs EDWARDES: Proposed section 97VV is the last in this subdivision. It provides for cases in which supported wage systems apply. It provides that an EEA does not disadvantage an employee in relation to his or her employment by reason only of a reduction in the employee's wages if the employee is eligible for the supported wage system and the EEA provides for the payment of wages to the employee at a rate that is not less than the rate set in accordance with that system for persons of a class that includes the employee. Essentially what is being recognised is that a group of people in our community is already receiving an award that may very well be less than the minimum standard conditions of employment, and that award is under the supported wage system. I thought it had a different name and was incorporated as an award and not merely in a system. I will be corrected on that if I am wrong.

A lot of federal funding is available on the basis that agencies employ people on the supported wage system. Many employees in the disability services sector will be severely disadvantaged, although not necessarily those who are eligible for the supported wage system. We previously referred to those who are earning less than employees who are subject to the supported wage system. This provision will place a huge burden on those who care for the disabled and on those disabled people who employ carers, not through the Disability Services Commission or some other organisation.

Mr Kobelke: Can you explain how?

Mrs EDWARDES: It is highly unlikely, based on my information, that carers who work for those agencies or are employed by individuals who have a disability, receive the award rate.

Mr Kobelke: I take it that you are not addressing this, but a related matter.

Mrs EDWARDES: I seek the indulgence of the minister while we are on this section and dealing with the no-disadvantage test. I am concerned that those people will have a choice. The Government will need to increase the level of funding to those agencies and/or the agencies will need to reduce their services. Activ Foundation has mentioned the figure of $1.2 million per annum and the Cerebral Palsy Association of WA Ltd has mentioned $400 000 per annum. They are two major groups. The other group about which I am concerned involves people in the community with a disability who employ a carer directly through a local planning system.

I think funds generally come through the Disability Services Commission and/or other agencies to maintain people with disabilities in their homes. Problems existed with those employment arrangements concerning the level of risk, hand-over and a number of other issues that put those carers at risk. That was because people with disabilities were not getting the support required from either the agency or the Disability Services Commission to guide them in an employment relationship. Those people will miss out on knowing how they must comply with this legislation. I hope the Government will take this issue on board and treat it very seriously, otherwise services in those areas will be reduced and carers will refuse to be employed directly by persons with disabilities.

Subdivision put and passed.

Subdivision 2: Principles to be followed in application of no-disadvantage test -

Mrs EDWARDES: Proposed section 97VX provides for the Industrial Relations Commission to establish principles and guidelines to be followed by the registrar in determining whether EEAs pass the no-disadvantage test. It is not to be inconsistent with that particular part. The Interpretation Act applies as though it were subsidiary legislation, which is interesting. How will it apply? What is intended? Subsidiary legislation comes to this place and is subject to disallowance.

Mr KOBELKE: Those sections of the Interpretation Act having application as if they were subsidiary legislation means that the no-disadvantage test instrument may have general or specific application to certain categories of employees. It may also have general or specific application to employees within the State as a whole, or within specified areas of the State. In other words, this proposed subsection provides flexibility in the application of the no-disadvantage test instrument.

Mrs EDWARDES: Is it expected that that will put it in the class of subsidiary legislation that is required to come into this place and is therefore subject to disallowance?

Mr KOBELKE: No, it is not subject to disallowance by the Parliament. That is my understanding.

Mrs EDWARDES: The document must also be published in the *Industrial Gazette* for public information. I agree that that should be a "must". In fact, proposed section 97VX(5) reads -

> The Commission must cause the instrument . . . to be published in the *Industrial Gazette* for public information.

Proposed section 97VY provides for the registrar and the commission to give effect to the instrument. The guideline has been developed and drafted up to be complied with by not only the registrar and the officers of the commission in making the determination but also the relevant industrial authority when a matter is taken to it on appeal. Again, we have learnt that that is the ability to assess whether the EEA is subject to the no-disadvantage test. Proposed section 97VZ, which allows the minister and certain bodies to seek amendment, will always attract emotion. It reads -

> The Minister or a peak industrial body may at any time apply to the Commission to have the instrument under section 97VX -
>
> (a) amended so that it makes provision to the effect set out in the application; or
>
> (b) replaced by a new instrument that makes provision to the effect set out in the application.

Obviously, the aspect that attracts emotion is who are the peak industrial bodies. From the early days of the Industrial Relations Act, the trio of peak industrial bodies has been "the Council, the Chamber and the Mines and Metals Association". I wonder if that is still suitable today, when there are far more associations. The number of employer organisations has grown, and there are now more employers in more industries represented by more peak industry bodies that perhaps should be consulted about this document.

Mr KOBELKE: This proposed section reflects the section 50 parties. I accept that a genuine issue has been raised by the member about the changes that have taken place in our community, but this is not an appropriate time to address that. The Government intends to carry out a range of tidying-up matters with regard to the commission. It may be appropriate at that time to consider that issue. The Government hopes to bring that legislation forward after fairly thorough consultation with all the key players. I will take this question on board as a matter to be considered at that time.

Mrs EDWARDES: The minister may at any time apply to the commissioner to have the instrument we have been referring to amended or replaced. In what circumstances would the minister contemplate this?

Mr KOBELKE: It would happen when there is some public concern, or as a matter of public policy. The Government may believe that the whole system is not working effectively, or be aware of concern about lack of fairness or the maintenance of general standards set by an award. If it was decided that as a matter of public policy the Government or the minister should intercede, then that power exists. Of course, either the peak employer groups or UnionsWA would also be able to take up such matters with the commission. Under proposed section 97VZ(2), the commission may use its powers under proposed section 97VX(4), or it may decline to do so if that would not suit the overall purposes of the administration of the Act or would be vexatious or troublesome.

Mrs EDWARDES: There is no requirement in this or subsequent provisions to notify any other parties. If the minister were to make an application, there would be no requirement for him to notify the section 50 parties or to bring it to the attention of the public so that others could provide submissions. Similarly, if any section 50 party were to apply -

Mr Kobelke: Proposed section 97WA does not refer to a publication, but it does require the commission to make a draft available for public comment.

Mrs EDWARDES: I accept that, but it happens after this process. Proposed section 97VZ provides that the minister and certain bodies may apply to the commission to have the instrument amended and/or replaced.

Mr Kobelke: Proposed section 97VW deals with the first point at which public comment must be invited. Proposed section 97WA deals with the exposure draft.

Mrs EDWARDES: Will the minister ask the commission for the instrument to be amended and/or changed? Will the commission then automatically call for public comment, stating that the minister has made a request and publishing that in -

Mr Kobelke: It must publish a public notice stating that it is undertaking such a review.

Mrs EDWARDES: It must also allow sufficient time for those submissions to be made.

We have just discussed proposed section 97VW. Before the commission exercises any power under that section, it must call for public comment. Under proposed section 97WA, it must make the exposure draft available for public comment and so on. The guidelines prepared under proposed section 97VX must be published. However, the commission will not call for submissions prior to its original drafting.

Mr Kobelke: That is correct.

Mrs EDWARDES: The original guidelines will be published as the guidelines for the no-disadvantage test. They can be changed only if the minister or one of the section 50 parties makes an application to the commission. The process involves public submissions, the exposure draft and the determination. How long will that take?

Mr KOBELKE: The first round does not appear to include any requirement along those lines. It might be done informally. Clearly, a public consultation process is likely to delay the matter. As indicated earlier, a range of complex matters must be lined up to get it running effectively and efficiently. In that first establishment of the instrument for the no-disadvantage test there is not the requirement that there is when people seek to appeal or to vary the operation of the instrument.

Mrs EDWARDES: Given the reduced time for consultation that occurred when the prior draft of the Bill came into the Parliament, the fact that it did not go to every person that might be affected by the impact of the legislation, the huge impact that this legislation is likely to have on transaction costs leading up to the development of an employer-employee agreement and the business costs that will flow from it, does the minister consider it appropriate that the registrar develop guidelines well and truly in advance of the proclamation of these clauses so that the registrar could seek some guidance from the public and the stakeholders about what is likely to occur? I know that I can be persuasive in the arguments I put forward on the amendments I move; however, I do not believe the minister will change in any substantive way these clauses between the Bill's passing through this Chamber and arriving in the other place. There is no reason that the process could not be started and released to the public before the Bill completes its passage through this Chamber.

Mr KOBELKE: It would be inappropriate to pre-empt what the Industrial Relations Commission might do. We are giving powers to the commission, which will rely on the registrar to perform certain duties. Clearly, preliminary work is already taking place at the commission, such as the review of awards and so on. It is the call of the appropriate people at the commission to decide whether it is wise to do some preparation. However, I know that the commission is seeking to do the preparation that can be reasonably done and it is up to it to decide on the appropriate time for that and how it might be done. As I said, it is the call of the commission.

Mrs EDWARDES: I am sure the people at the commission will read members' comments with a level of enthusiasm and, hopefully, take them on board. It would give a greater level of certainty to people as they move into a new system which will impact on their lives and livelihoods to have some certainty about where they are likely to be going with a no-disadvantage test. Although I recognise that the minister cannot direct the commission in that way, I hope that the officers at the commission take on board the comments that have been made in the Chamber and release their views to the public as soon as it is possible to do so.

Dr WOOLLARD: Does the no-disadvantage test apply to salaries in different areas or will it apply to other areas such as working hours and breaks between shifts?

Mr KOBELKE: Proposed section 97VU states that the registrar must take into account all relevant benefits, whether in the form of money or otherwise.

Subdivision put and passed.

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

House adjourned at 1.54 am (Wednesday)