## WORKERS' COMPENSATION REFORM BILL 2004

*Second Reading*

Resumed from an earlier stage of the sitting.

**DR J.M. WOOLLARD** (Alfred Cove) [2.51 pm]: Prior to question time I was discussing disability versus impairment. The disability system was developed in a local context, with many professions providing input to the development of the disability benchmarks. With this change to the workers compensation system, the stability that has been in place since the 1990s will now be thrown out the window. It appears to be making change for the sake of change, rather than putting workers first. Under the Bill, doctors will be required to enter into contracts with WorkCover about procedures they are to follow, fees for performing their functions and, as stated in proposed section 146F(3), "other matters relevant to the implementation of this Act". What is it that doctors will agree to do? This will completely remove their independence if they do not meet or agree to WorkCover's demands. Under proposed section 146F(4), WorkCover will be given the power to cancel the designation of a person as an approved medical specialist. Basically, they will have to do as the Government says for work-related injuries or they will be out the door, or it can take away their designation as a medical specialist.

Under proposed section 204, arbitrators will be given extraordinary powers. Proposed section 205 allows them to insist that lawyers hand over any medical reports. Proposed section 188 allows them to conduct a formal hearing or a hearing with papers; that is, conduct a hearing in any way they want. Under proposed section 238(2) and (6), arbitrators can suspend a worker's payments for 12 weeks and then they can make another suspension. The workers will have no idea how long that suspension will last. When we try to put all the pieces of this jigsaw together, we find that it seems to have been developed by WorkCover. The Bill will determine poorly a worker's injuries, it will force doctors to use a formula rather than their own knowledge, skills and judgment to assess the injuries, and it will result in fewer compensation payments for workers.

**MR M.W. TRENORDEN** (Avon - Leader of the National Party) [2.54 pm]: I have had a long association with workers compensation. I have had an interest in workers compensation for about 20 years. As some members in the Chamber will understand, I have been a part of the process and have some degree of understanding of the workers compensation system.

The National Party will oppose this Bill. In fact, it is impossible for the National Party to support the Bill. Some of the changes in the Bill mean that if we did support it, we would be part of a disaster. I put to members opposite, and particularly to the minister, that if the Bill is passed, it will be well remembered in the process of workers compensation, because the costs will be blown right out. One of the problems with the workers compensation system is that there is a false understanding in the community about what workers compensation is. It is actually a safety net. It is not meant to totally replace employees' salaries. If that were what the scheme did, we would be talking about substantially higher funding than the current 2.2 per cent for the premium rate. For employers, it is not a process of dropping responsibility. Unfortunately, there is a feeling in the community that, once a worker is injured, that worker should be able to receive his full entitlements ad infinitum. I can understand that attitude. In fact, I have had a lot of passion for that argument, but workers compensation just will not deliver that outcome. It is like the arguments about wages and salaries that the minister likes to remind us of from time to time. There is a safety net. We catch people at the bottom of the process, and we have an expectation of life that we hope the majority of people can meet. However, a range of issues in this Bill will ensure that, if it is passed, it will fail.

One thing that I cannot accept is the reintroduction of lawyers into the process. We are meant to be speaking about a no-fault system. The only way we will ever have a no-fault system is to have just that - a no-fault system. As soon as lawyers are introduced, what is the first thing that happens? There is fault. It is an adversarial process. I will give a written guarantee to the minister and anyone opposite who wants to take me on - I will be happy to compare this date with some date in the future if this Bill is passed - that under every one of the clauses that the minister is seeking to change, the lawyers will increase the costs of workers compensation. I put to the minister that, in many cases, lawyers are taking up to 50 per cent of the total payment for individuals. They are taking far too much out of the process. When I was in government, legal firms were picking up $2 million a year in revenue from the workers compensation system. Some of that was earned, but a lot of it was not. If the minister recalls the debates of the Kierath era, he will know that I strongly supported - I still strongly support - the role of unions in workers compensation. As an advocate, that is a fantastic outcome in the current system. I know that they are included in the minister's Bill, but lawyers also are included. What better role for the trade union movement of Western Australia than the advocacy of injured workers. We should take on that advocacy, and not have the contest and the commitment to a fight that we will get with lawyers.

Each one of these new points in the Bill will be contestable. Members who have had any contact with workers compensation know that lawyers are advising their clients that if the system does not grant them a lump sum payout, they should hold out for as much as they can in direct payments. They are encouraging employees to make a claim to their utmost benefit and for an outcome greater than that to which they are entitled. The outcome should be to get employees back to work. One thing that all members of this Chamber agree on is that the vast majority of injured workers want to return to work. However, lawyers continue to advise them not to go back to work if they want to get the best from the system and to make a claim against the system for an increased payout. Although that attitude is a core part of the Workers' Compensation and Rehabilitation Commission, it must fail. The net result is that it will ultimately kill access to common law for Western Australian workers. That is an important point on which I am sure the minister would agree with me.

Mr J.C. Kobelke: These changes?

Mr M.W. TRENORDEN: No, the pressures that lawyers are putting on the process.

Mr J.C. Kobelke: I think that is a long shot.

Mr M.W. TRENORDEN: I do not think it is a long shot at all. If under this Bill workers compensation costs blow out, one of the few options the minister will have available to him will be to kill access to common law. We in opposition and the minister in government have said that we do not want to kill access to common law. I do not want to knock off common law, as it would be a very regressive step for anyone involved in workers compensation. We must therefore protect access to common law. However, the more pressure that is put on the system, the more pressure will be put on common law. Unfortunately, that is what will occur with this Bill. Most cases in the eastern States - Queensland is an exception, I think - are dealt with at common law. The minister does not want that and I do not want it. That is one aspect of this legislation that both sides of the House have in common.

Mr J.C. Kobelke: I agree.

Mr M.W. TRENORDEN: It is very important. Each point in the Bill that the minister is introducing to increase the statutory benefits - which I will not oppose - will hand a bargaining tool to lawyers to take on the commission. The minister will find that if the Bill is successful, future payouts will be greater than they are now. The pressure for greater payouts will result in lawyers encouraging people to stay in the system, not get out of it. That is not what the legislation hopes to achieve, but that is where it will go. That would be an appalling outcome for workers compensation. I ask the minister what percentage of people get reasonably quick payouts? Is it 97 or 98 per cent?

Mr J.C. Kobelke: It is 98 per cent of those who use the statutory scheme; but that does not indicate the time they are in the scheme.

Mr M.W. TRENORDEN: However, 98 per cent use the statutory system. The other two per cent are important because many of them are in serious circumstances, as are the 98 per cent who use the statutory system. It is very important that that 98 per cent of people get through the system and I suggest that we try to achieve it on a no-fault basis.

Mr J.C. Kobelke: That is the key theme of this Bill.

Mr M.W. TRENORDEN: It is not. The Bill is introducing lawyers into the process and encouraging them to use the common law process. Their training tells them to do that. I support the minister's initiative of advocacy by unions. I have always supported that position and I continue to support it. If the minister could look me in the eye and be honest, I think he would agree that advocacy by some unions has resulted in the best outcome for many people. Does the minister agree with that?

Mr J.C. Kobelke: Yes.

Mr M.W. TRENORDEN: It is not as though advocacy by unions has not resulted in a good job; it has. However, the unions are not doing it at the cost of the legal fraternity. The minister and I both know from comments made by people we deal with that some lawyers do not help the process. I am trying not to be too wide in my statements. It is true that lawyers can in some cases speed up the process; however, often the reverse is true. We need to work on a system to enable people to get out of the workers compensation process as quickly as possible. I will ask the minister some questions during the consideration in detail stage. However, one issue I am concerned about is the provision in the Bill for $100 000 to be put in a trust account for training. I am concerned about the pressures that will be put on that fund and that training institutions will regard it as a milch cow. The minister and I both know that is true. Some control will have to be put on training institutions to make sure that the pressures on that trust fund are not too great. The Bill also lacks any provision for responsibility for that training. The Bill states that only people with a 15 to 25 per cent disability can access

training. There is no provision in the Bill for assessing the value of that training. There is no statement about matching the training to an individual. From past experience we know that training alone will not solve the problem. Training must be tailored to an individual and must be accountable. I say that not only for the sake of workers compensation but also for the sake of employees. We must make sure that injured workers do not go through a month's or a year's training with no outcome. How often have we heard that in the past? Training must be relevant.

Another aspect I am concerned about is the retrospective element in the Bill that will be placed on insurance companies. I am not an apologist for insurance companies, as people have often said I am. I worked in the insurance industry for many years but I was an advocate of the clients, not the insurance companies. Some members of this Chamber understand how that system works. Nevertheless, the minister cannot say that insurance companies have millions of dollars to apply to this process. We all watched with a great deal of alarm HIH Insurance hitting the deck and the Australian Prudential Regulation Authority substantially increasing the reserve requirement of insurance companies. An actuarial report was issued last Friday and I wondered where it had been hiding all this time. I have had very little time to look at that report; quite frankly, I would love to have more time to look at it in depth. The percentages referred to in the report are pretty important. Mr Lurie, the individual who wrote the report, is highly respected in Australia; I am sure the minister agrees with that. Mr Lurie has been handling these matters for more than a decade and he came out with the best case scenario and the worst case scenario on the cost of this new system, which was, off the top of my head, $94 million. That is a huge disparity with the Government's estimate of the cost. Why did the best person in Australia write a report that came up with that sort of disparity? It is because he does not know. I am not picking on Mr Lurie, but the task he was asked to perform was beyond reasonable. I am talking about a highly competent actuary with enormous company resources who was asked to come to a position. He was unable to come to a position because there is too much of a grey area between the black and white areas. I do not want in any way to be unfair to the man, as I do not know him, but I do respect his reputation.

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

Mr M.W. TRENORDEN: It is very important that those matters be put into context. Of course premiums are being paid and insurance companies are or are not making profits. If one looks at profit and loss figures over the period of a workers compensation claim - it is generally accepted to be an average of seven years - one can see a real roller coaster ride. The collection of premiums must be spread over those seven years. The Bill commits insurance companies to pay benefits on which they have not set a premium. The minister must concede that is a fact. That should be unacceptable to the minister and other members of this House.

When those insurance companies assess profit rating, they do not include the cost of reinsurance. One of the requirements of the Australian Prudential Regulation Authority is that insurance companies must reinsure. We would all be mortified if we thought that insurance companies were not reinsuring. It would put us back into the HIH basket immediately. Somewhere between two and three per cent of the profit line over the seven years needs to be taken out of those figures because it is the cost of the reinsurance, depending on an insurance company's ability to bargain. We must add to that the very substantial increases that APRA has made in the reserves. Because of the recent history of HIH and other companies, we must expect APRA to lift those reserves. Those moneys are not available for insurance companies to apply to future benefits. The minister needs to demonstrate what is available to insurance companies instead of simply bash them. I agree with the minister that insurance company bashing is a pretty good game, and I love to do a bit of it. I would really like to tell people what I think of the AMP Society, for example, and a few others out there, but that is not the point. I want to talk about a responsible approach to the payment of benefits to workers and where it will come from, which is what we are about.

The minister's Bill gets rid of the premium committee, which has been headed by the Auditor General. I put on record that I think Mr Pearson has done a fantastic job over a period of years in that position. We would have to give him a big tick, and not just him - he only chairs the committee - but also all those people who have done a very diligent job. I will not criticise them because I do not think they warrant criticism.

Under the Bill insurance companies can vary their premiums by 75 per cent. I will not say that they will vary premiums by 75 per cent, but insurance companies will start looking for the benefits they must pay out retrospectively.

Mr J.C. Kobelke: It is 100 per cent now. We are reducing it from 100 per cent to 75 per cent.

Mr M.W. TRENORDEN: That is right, but it is not locked in so that insurance companies cannot increase premiums. Future benefits must be paid. PricewaterhouseCoopers' report refers to 30 per cent and about 50 per cent at the top end, from memory. Where will the money come from? If it does not come from somewhere, what will be the outcome? There will be a riot. Part of the result will be the loss of common law to individuals. We should be talking about due diligence in the process and making sure that the highly important process

occurs. Each of us in this Chamber is approached by countless people in a year who are desperate about their interaction with workers compensation. A couple from my electorate will be very angry with me because I did not speak to them before the start of this debate, which I promised I would do, but, quite frankly, I have been a little busy. That is no excuse, because all of us are a little busy. I need to get back to those people because they have a genuine issue with the way they have been dealt with. It is a classic argument about balance. We must balance employee benefits with what an employer can reasonably afford to pay to make those benefits available.

I would like to support some aspects of the Bill, but I cannot support having lawyers introduced and retrospectivity. Retrospectivity alone would cause me great pain, but if retrospectivity were not included in the Bill and lawyers were, I would be in the same position. I will repeat this for the fourth time: we need a fault-free workers compensation system. I concede that the system has never run smoothly and I concede that the minister is making some moves with the Bill with which I agree. Unfortunately we cannot agree to some parts of the Bill and not to other parts. I do not want to pick only on lawyers; others have done pretty well out of servicing workers compensation claims. When all these health service centres started popping up 15 years ago, it was no accident that people, having gone through a range of services, ended up with a bill. I concede that the minister is trying to deal with some of those matters. I give him a tick for that. He is probably on the right path to do just that. However, other parts of the Bill make it too difficult for us to say that we will support the Bill.

I am very concerned about the cost process. It is worth talking about some of these issues. PricewaterhouseCoopers' actuarial report summary shows that expected initial costs have risen from an estimated $100 million to between $140 million and $234 million. The fact that there is nearly a $100 million range in that guesstimate should fill us all with alarm. The figures should be much more precise than that. The fact that a highly qualified person cannot get the figures closer than a $100 million range should be of great concern to us. The prospect of the worst case scenario cannot be dismissed. If I were sitting where the minister is, I would also be talking about the worst case scenario, which is a 30 per cent increase. What does it mean? It means that the 30 per cent must be found. I am not concerned with the top end of town. I am concerned about the person who owns a small manufacturing plant at the back of Timbuktu or a person who is delivering services to people's properties or private individuals, because the cost of workers compensation is a really important issue for them. Of course, we will be arguing about the Dutch decision. There is just too much elasticity in that process for me to feel comfortable about it. The minister can accuse me of anything he likes. However, I stand by my record and will argue now that we must look after the benefits of employees, and they must be balanced with the potential impact on employers. We cannot give benefits to the employees without considering the cost to employers. That is a very important issue with workers compensation. Premiums are anticipated to increase by about six to 20 per cent. A rate of six per cent is a terrible outcome, let alone anything above that. That will not be met with joy in the community. It is an important issue.

I refer to issues with lawyers. The cap on medical entitlements will increase from $90 000 to $290 000. I have no argument with that. However, if the minister wants to have a wager on this, although we do not necessarily have to gamble, it would highlight the point. The minister cannot tell me that lawyers will not make the $200 000 a bargaining point for payouts. They will. I will not argue about the $200 000 increase in the benefit. However, I am concerned that some lawyers will focus on ensuring that it benefits them and, to some degree, employees. The whole process should ensure a speedy resolution for industry.

When the minister responds at the end of this debate he will claim that this Bill seeks to speed up the workers compensation process and get people out of the system quickly. However, most aspects of this Bill will increase the time in which people stay in the system. The minister knows also that once someone has been in the system for a long time he finds it difficult to return to work. A delay in returning to work impacts on how people feel about themselves and what is happening around them. We know from our own work situations that once work experiences change, we adapt to them. Report after report has shown that the rate at which people return to work is dependent upon not only physical health but also attitude. The minister will find that this Bill will cause the time in which people remain in the system to extend. The big cost in that is not necessarily measured in money; it is measured in the way people are physically affected.

In about 1992 when I undertook a review into workers compensation for the Court-Cowan Government, I also struggled with the question of where the payout threshold should be set. I do not disagree with the minister's direction. We must have a system and many other people will use that system. As the minister already knows, he will not be thanked for that. Regardless of where the line is drawn, people will benefit from amounts either above or below it. However, his line is better than that which I recommended 10 or 12 years ago because the threshold is based, not on injury, but on impairment. There are aspects of the Bill that are important and that provide a reasonable outcome.

Extension to the period within which people can make common law claims will not necessarily provide the outcome the minister hopes for. That is another area that lawyers will use to bargain against the commission for

increased payouts. Any sensitive workers compensation system will allow people to stay in the system. I will become involved in that debate further during consideration in detail.

**MR R.N. SWEETMAN** (Ningaloo) [3.24 pm]: This is only my second term in Parliament, yet this is the second time I have seen workers compensation legislation come before this House. In the second term of the coalition Government the amendments to the workers compensation legislation amounted to almost a rewrite of the legislation. I think that legislation was passed in 1993, shortly after the coalition was elected, or in 1994. It had some fairly disastrous consequences for premiums and people accessing the second gate provisions through common law. In light of some of the huge settlements, premiums went through the roof. Some of the imperative for change to the legislation during the second term of the coalition Government was as a result of those provisions in the first Bill. It is probably a little like one of the arguments I used for resisting the goods and services tax; namely, the other tax system has been in place for so long that we know what is wrong with it, so why can we not massage it into place so that it is a bit more user friendly rather than have a comprehensive rewrite of the tax Act to create overwhelming change? I have a similar view about the Workers' Compensation Reform Bill. Although it is amending legislation, it is very significant. This is the third piece of workers compensation legislation to be introduced into this place in 10 years. In my time in the Parliament I have not seen an explanatory memorandum containing as many pages as this one. It is complicated legislation. It warrants being released as a green Bill so that it can be circulated broadly among all the groups within the community that have an interest in it. Through that consultation process, we will probably end up with better legislation. I agree with much of what has already been said in this second reading debate by the Leader of the National Party and the member for Kingsley about this legislation.

In the introduction of his second reading speech of 5 May 2004 the minister said the following -

> The Bill will restore public confidence in a revitalised workers compensation system, encouraging competitive market forces within the privately underwritten system and minimising the social and financial impact of injury and disease.

I would like to know how. One point the member for Kingsley made was that the number of insurance companies that provide workers compensation insurance has reduced from about 13 to about eight. That is very similar to what happened to the number of general insurance companies across the board, particularly after the catastrophic storms that hit Sydney four or five years ago, cyclone Vance, which devastated Exmouth and many inland communities and pastoral country. From memory, prior to cyclone Vance, about 14 or 15 insurance companies in the north west provided insurance. Now fewer than four or five companies will provide insurance. The problem was reinsurance. Many small companies were happy to insure. However, the large companies said they were not happy to accept the reinsurance side of the business; they did not want the business. Therefore, insurance premiums above the twenty-sixth parallel increased massively. I acknowledge that the increases do match the risk considering that, during my time as a member of Parliament, three natural disasters have occurred in the north of the State.

In 1997, Ashburton was flooded, followed by cyclone Vance in 2001 and, a year later that was followed by cyclone Steve. The disastrous floods that followed cyclone Steve devastated much of the Carnarvon plantation areas. There were a lot of insurance claims and it could be argued that premiums should have increased because of that. I do not know whether it has been mentioned in the debate so far, but further on in his second reading speech the minister referred to the windfall profits made by insurance companies. I take his point. Most of us would agree that insurance companies have been cleaning up as a consequence of increased premiums in the workers compensation area. Equally, the insurance companies would argue that a lot of the windfall profits are tucked away in reserves as some sort of prudential requirement in the way that they operate. It is hard to say on the one hand that the insurance companies have made plenty of money and therefore we should not expect too much of a rise in premiums from here on in, and then on the other hand say that when the new legislation is proclaimed, and given that the insurance companies have already built up reserves, some of that money needs to be returned as additional benefits. The minister stated that some of his reforms will deliver $130 million worth of additional benefits to injured workers in the first year alone, with ongoing increased benefits of $60 million a year thereafter. It will not take long to deplete whatever reserves may have been characterised as a windfall and are separate from the reserve requirements. It stands to reason that premiums will increase.

The minister also said that the cost of the reforms would result in the average recommended premium rates remaining within the target range of 2.4 to 2.7 per cent of payroll recommended by the Pearson report in 1999. I hope someone is keeping a book, because I bet that that will not happen. There will again be substantial increases in workers compensation premiums. A lot of the larger resource companies can probably absorb that sort of shock, but there are a whole lot of smaller employers to consider. I think the minister released a ministerial statement - it may have been only yesterday - which referred to the $19 a week increase for those on the basic wage as a consequence of the latest ruling. That is fair and reasonable, but the minister would have

seen the wave of complaints following that increase. They were not from people advocating on behalf of big business; they were primarily from people saying that this might be the few dollars that will push some companies over the edge. That may be a valid argument and it may not be. If we are to see increases in premiums the likes of which we had in the early to mid-1990s extending to the late 1990s, there will be a severe downside as a consequence. Small companies that are battling to get by will find it increasingly difficult to pay the workers compensation premiums, especially if their workers compensation bill is already around $30 000 or $40 000 and it goes up to $50 000 or $60 000. That is a very significant financial impost for those relatively small companies with a small employer base to meet on an annual basis. It is a bit much to expect industry to continually absorb these sorts of charges, as well as wage increases. I can accept the methodology of awarding wage increases, and I believe workers are entitled to them, but costs like this, on top of those increases, will put the bite on the employer. He will have to find the extra income to meet those outgoings and obligations to his workers.

If this is for the benefit of the worker, I wonder why, as an offset or a compromise in any wage increase, a proportion of the increase does not go towards workers compensation premiums. The socialist in me is suggesting that it is time we looked at this issue. If the minister is so concerned about the heinous profits that these insurance companies are making, it may be time to look at a central fund. I do not know whether that is the Queensland model, but my understanding is that Queensland does have a central fund. I do not know whether it could be readily adapted to the environment in Western Australia; perhaps not. Otherwise we would probably have gone down that road. I think the Burke Government would have looked at that in the early to mid 1980s and decided against it for whatever reason. However, it is worth looking at, especially if it provides a cap or a matrix for making payments. Surely it is not beyond the wit of man to spend a bit more time further developing that matrix and providing a methodology or formula for making payments to injured workers across the board. Money for the central fund would be collected by the State and perhaps even managed privately, if that is what the minister wanted - a little like the old local government workers compensation scheme, when local government paid into a pool that was then managed by the SGIO, I think it was, and premiums were set according to how much draw-down there had been on the pool during the preceding year. Premiums went up if there had been a lot of claims against the pool, and they went down if there had been fewer claims. A similar central pool system would ultimately benefit the community of Western Australia. A central pool would generate its own income anyway, if someone managed the fund. The imperatives for margins and profits are not the same for these private insurance companies, which have to generate a return on capital and a profit margin to provide value and dividends for shareholders. If a central fund were owned and controlled by the Government or the public of Western Australia, it would be equitable. Premiums would decrease over the long term rather than increase, and I still think it would retain fairness and equity for workers in Western Australia. Their compensation requirements would be covered by the Act.

With those few words, I reiterate what I said at the outset. It is a bit like industrial relations legislation: an Administration changes and new IR legislation is introduced. Workers compensation legislation is starting to take the same form.

Mr J.C. Kobelke: Did the sky fall in on the industrial relations changes?

Mr R.N. SWEETMAN: Not yet, but there are cracks in the legislation. The minister must have seen those.

In 10 years there have been almost three rewrites of the workers compensation Act, and that is unreasonable. Like the Deputy Leader of the Opposition, I cannot see why legislation cannot be developed by taking the good aspects. Not everything in the legislation is bad; there are things in this legislation that will work and will be good for the worker, but there are also almost critical flaws that will not over time be beneficial to anyone, other than the lawyers of this State. We do not want to go down that road. There is a better way to frame the legislation. I say again, it probably would have been a good piece of legislation to bring into the Parliament and declare as a Green Bill so that it could go out for broader, more comprehensive public consultation. As a consequence, we would have ended up with better legislation. Like my colleagues, I will be opposing the legislation.

**MR J.C. KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [3.38 pm]: I thank members for their contributions to the debate. There have been mixed contributions. The last two members who limited themselves to more specific aspects made a lot of sense. A couple of the other contributors tried to range so widely that they missed the mark. I will go through some of the points raised.

The member for Kingsley, as the lead speaker for the Opposition, suggested that "if it ain't broke, don't fix it", and that the Liberal-National coalition did not want to make any changes - perhaps a bit of tinkering, but no big changes. That is a totally different starting point from that on this side of the House. The current workers compensation system contains such levels of unfairness and inefficiency that it really does need a major overhaul, and that is what this Bill provides - a major overhaul of the workers compensation system. The

member for Ningaloo suggested that perhaps we should go back and start with a whole new scheme. We considered that back in 2000, but for a range of reasons we decided to go through the whole system, section by section, and seek to reform it, but, importantly, in an integrated way so all the parts came together.

It is crucial in a system as complex and dynamic as that of workers compensation that we try to make sure that the various elements complement each other and that one good part does not undermine another part. An example of that is the changes made in 1993 by Graham Kierath in the previous coalition Government. On the whole, those changes were quite disastrous. I accept the minister of the day's word that the ability to get redemptions was seriously curtailed because he thought that injured workers were being bought out with redemptions when it was not in their best interests. He wanted to toughen up that practice. He was advised at that time that for administrative reasons - it had nothing to do with philosophy or policy - that was not a good move. It is my judgment, which I think has some basis, that the huge cost blow-outs experienced in common law in the late 1990s were driven by the changes that the minister made, which were well intentioned. When workers could not get redemptions, they used common law as a backdoor way to get lump sum payments. The growing pressures in common law were not driven only by that, but that was the catalyst. That is what started matters going out of control. Costs then spiralled to 3.4 per cent. The point I am making is that the minister of the day did something that, on the face of it, was for the benefit of injured workers. He had good intentions, but the changes had disastrous consequences for the system. Therefore, the Government has sought very hard to try to integrate the whole package so that it hangs together.

In response to the member for Kingsley, the Government concedes that there is a need for change. I will come back to how this legislation was developed. The member for Kingsley said that this legislation does not meet our election promises. It does meet the election promises the Labor Party made in 2000 when it released a directions statement. I will provide the member with a check-off list of all the key promises we made and how they have been delivered. We have not implemented some administrative changes because we decided that it would be best to implement them after the reforms have been introduced. However, all the ALP's legislative promises have been delivered on in this Bill in spades. There is no basis for saying that the Government is not delivering on its election promises.

Connecting that to what I said to the member for Ningaloo, the Government released its directions statement. The Government then employed Dr Rob Guthrie, who is recognised Australia-wide as an authority in this area. The Government was lucky that he was available to work on the legislation. He took our directions statement and consulted widely with all the stakeholders in the community and put together a position paper. Many areas of the directions statement needed more detail. He tied down that detail and showed us how to deliver on the directions statement. There were a couple of areas in which he said that his recommendations did not fully back up what the Government wanted to do. However, the total package was a better package. The Government then considered Dr Guthrie's recommendations, which were released for public consultation, and decided on its response, which picked up 90 or 95 per cent of what Dr Guthrie had recommended. There were a few areas of difference in our judgment. The Government then released its position so that the stakeholders knew what it was thinking. After lengthy discussions on that position, the Government began drafting this legislation. The Government committed to drafting the legislation in June or July 2003. The member for Alfred Cove said we sat on it for 12 months. The legislative drafting was finished only early this year. We then released the draft Bill in sections, as it became available, to the key stakeholders. That was not done for the purpose of going back over the principles that had been developed over three years, but to check off on the technical details. That has been a very thorough process, which the Government has pushed reasonably hard, and yet it has taken three years. The Government engaged in feedback from all the key stakeholders as it sought to reach a compromise with the various interest groups that have different priorities. The Government wants all the bits to fit and lock together in a complementary way. That has been the agenda the Government has set.

I refer to the issue of undermining workers' return to work. A key principle - there are several of them locked together - is to help workers get back to work quickly. It is accepted across Australia and in other countries that have modern workers compensation systems that it is better for injured workers to go back to work quickly. They can then get on with their lives and cost savings are made. That is the key to what the Government is doing. Someone might draw a long bow and take one or two elements and say they are contrary to that goal, but that does not undermine the many elements of the Bill that are directed to getting injured workers back to work as soon as it is in their best interests to be there. That is a clear element of the legislation.

Will premiums increase as a result of that? The commitment we gave during the election was not to increase premiums. That was not a commitment that in the future premiums would go down, not up. Anyone who looks at the cycle knows that premiums go up and down all the time. They were well over three per cent in 1991 and in 1999 they were back up to 3.4 per cent. Currently they are predicted to decrease to 2.5 per cent. During the election the Labor Party said it would not raise premiums at that stage. When we came into government, premiums were three per cent. We said we would like to keep premiums between 2.4 and 2.7 per cent. We

would like to do more. We have prioritised premiums to keep them within that 2.4 to 2.7 per cent band. Next month they will increase to 2.5 per cent. They will increase from 2.25 per cent to 2.5 per cent. That will meet the Government's commitment and is well below the level premiums were at when we came into government. Keeping premiums within that 2.4 to 2.7 per cent range is not done by wishful thinking; it is done by actively managing the system and making sure that it works efficiently and effectively. The Government must react if there is a cost blow-out in any area. That is the clear commitment the Government has given.

The Leader of the National Party pointed out that when he looked at the actuarial statements, he was concerned that the eroded costs - as they are called in the statement - would become a reality. I tend to loosely refer to the eroded costs as the worst-case scenario. It is more complicated than that, but it means that if things go wrong, the Government is not managing the situation. That would cause a cost blow-out, which would be a real concern. People are right to be concerned about that. That concern translates into the Government effectively making sure that a good management system is in place when the system is put together.

The member for Kingsley claimed that when the Labor Party was in opposition, it was responsible for a blow-out in premiums to a level of 3.34 per cent as an average of all wage costs. She said that the Labor Party did not jump on that matter quickly enough when the changes were made in the 1990s. That is drawing a very long bow.

Mrs C.L. Edwardes: No, you opposed the 1997 changes.

Mr J.C. KOBELKE: It was the changes made in 1993 that caused the problem. I remember at the time asking questions of then Minister Kierath who claimed that it was the best system in the world. I told him that there were problems and I asked him why he was not doing something about them. The problem was that the then minister had too much pride to make adjustments when clearly the system was starting to fall off the rails. The Government's proposals were right over the top, and clearly the Labor Party would not accept them. Reluctantly, we accepted a package that we did not like. We did not think it was the right way to fix the problem, but we recognised that something had to be done. Therefore, we very reluctantly accepted those changes.

Mr R.N. Sweetman: How will you quickly change the proposed system if it goes off the rails?

Mr J.C. KOBELKE: Some of those matters can be dealt with through the management levers within the system. If major problems arise, we will have to introduce legislation. One of the problems with the changes made by the previous Government was that they were made on the run.

Although I wish the Government could have introduced these changes sooner, the appropriate level of consultation, the process of releasing a paper and getting feedback on it and taking the next step have meant that the Government has worked through this very carefully. As a consequence, I will be loath to accept amendments here or in the other place. Very simple amendments could be made. However, the process of thinking that changes can be made on the run and that we can jig this bit and that bit led to the Dutch decision and other problems in the courts. I will be resisting with all my might all changes other than the most minor ones that need to be made because it is clear that the legislation is slightly wrong technically or that the implications are absolutely certain. So much work has gone into this legislation that we do not want to undermine it by thinking that it can be improved on the run, but then find that those improvements will have unforeseen consequences and will create more problems.

The member for Kingsley said that no-one supports the legislation. The member read out letters that were written during those years of consultation. The groups wrote to us and said that they did not like the legislation. The Government consulted with those groups and managed to fix some of their concerns. We were not able to fix many of their concerns because a range of interest groups were pushing in different directions. We had to weigh up those concerns, but when we thought that a matter clearly had to be fixed, it was fixed. I will give a very clear example of an issue that was raised by the member for Alfred Cove; that is, the Bill does away with legal professional privilege. It does not and that was never the intention. However, the first draft of the legislation did just that - that is, the drafting instructions were over-interpreted - and it basically removed legal professional privilege in this area. That was not the intent. Plaintiff lawyers, who are now decrying the fact, said that insurers could get a medical opinion in favour of the injured worker, and then go to doctor after doctor until they got a negative opinion, which they would put to the injured worker, and hide all the other medical reports. Plaintiff lawyers have said that those reports should be made available. That is what the Bill seeks to do. We are looking at a further refinement, because we are not trying to capture surrounding information that the worker may wish to keep confidential. There might be a letter stating that the person has a family history of psychiatric illness. That person may not want that letter released. If it is not relevant to the medical assessment of that person's injury, it should not be released. If a medical report is clearly done for the purpose of a workers compensation assessment to help that person through the system, legal professional privilege should not be able

to be used to hide it. That is what the Government is seeking to do. I raise that as an example in which earlier versions of the legislation are still being used to drive the people who are campaigning against it, when we either have fixed or are well on the way to fixing the problem.

There is very strong support from UnionsWA for this legislation, and a number of other service providers also see it as being of interest. When I have spoken to injured workers about the legislation, they have been very supportive. In fact, one government member brought an injured worker to me this morning. Although his case will not be helped by this legislation, particular problems that he raised with me will be fixed under this legislation. When we sit down and talk to many injured workers, we find that they are very supportive of what we are trying to do.

A very important area - this goes back to the comments made by the member for Kingsley - addresses a matter that the Leader of the National Party raised about how people can move through the system more quickly. This relates to a promise in our pre-election position paper, which was to better balance common law with statutory benefits. That is always a challenging issue, and we are improving the balance. I am not saying that it is perfect; we could still do a lot more. We have enhanced the statutory benefits system, which of itself is needed to give greater levels of benefits, but we have done it so that the people who perhaps will not go to common law will be looked after. If the statutory benefits system offers better assistance and support for injured workers, they will not feel driven to go to common law. The downside with common law - like the Leader of the National Party, I am very much committed to common law in our system for the most seriously injured workers - is that injured workers must prove that there was negligence, or culpability, for their claims to succeed. Many injured workers who go to common law - many files have been presented to me, and when we go into consideration in detail I will present more statistical data - find that they are no better off. The lawyers are much better off. That select group of lawyers who tout for common law make a lot of money out of it, but the injured workers do not. This is all about ensuring that the benefits flow to the injured workers to help them get back to work or, if they cannot get back to work, to look after them properly. Getting a balance between common law and statutory benefits is very important.

Another issue is the gateway to common law using the whole-of-body impairment assessment. For many injured workers the whole-of-body impairment test, as opposed to the disability test, will be tougher. I have said that publicly and I accept that. However, it will be much better for injured workers in that it is far more objective and gives certainty. Therefore, injured workers will know with greater certainty whether they have a chance of going to common law or whether they should stay with statutory benefits. Those many hundreds of injured workers who currently just get over the disability boundary and see this pot of gold in common law only to have it taken away from them are worse off because their case has dragged on for one or two years. The lawyers might have made money out of it, but the injured workers who have put their lives on hold for one or two years end up with less than or the same amount they would have received from statutory benefits. It is not serving their interest. An absolutely fundamental point of using the whole-of-body impairment test is that it is a much more objective test. Different doctors with the same case will come very close in the percentage of whole-of-body impairment, workers will know at an earlier stage whether they have a chance of going to common law, and we will get rid of that grey area in which lawyers like to play.

Although I accept that the system is a bit tougher on some injured workers in certain circumstances - we have tried to look after them in the statutory system - it will help many hundreds of injured workers by giving them greater certainty about their case. Then they can make their decision and get on with it. Of course, that very definitely helps control costs. Basically, in the insurance system, the insurers take a percentage. When changes are made, they get a bit nervous, because they are not sure whether they will make the right judgment on premiums. However, they take a percentage off the top. The issue for us is how we lower the cost of the system. If we give greater certainty, it also helps insurers, who have to put aside money for outstanding liabilities. Therefore, if there is a big grey area, they have to put aside more money for outstanding liabilities, which factors back into the cost of the system. The issue of giving greater certainty is a win both for employees and injured workers and will ensure that there are more controls in the system.

As I commented earlier, the Deputy Leader of the National Party confined his remarks to a more limited area, and therefore made a lot of sense. I did not agree with everything he said, but he did get down to very important matters that we need to address. Certainly, when we go into consideration in detail we will have the opportunity to do so. He is opposed to the reintroduction of lawyers into the system. Again, when we go into consideration in detail, we will have more opportunity to tease out the issue. The statutory system is complex; it has always been complex. If we do not allow injured workers to be represented by a lawyer in a difficult case, they will not have an opportunity to uphold their rights. We must allow lawyers to give injured workers support. However, we are trying to put in place a system that will control those costs. The cost system will be based on the work they do, and not on the hours they take to do it. If the employer and insurer refuse to accept that the injury is work related and there is a dispute, that might be classified as a complex, serious or very difficult case and there

will be a set fee for it. There will be a set fee structure for lawyers who assist people in the statutory scheme. That ties into our dispute resolution system to get people through the system a lot quicker. Lawyers are needed to represent injured workers in the statutory scheme; however, on the other side of the ledger, clearly injured workers must have a lawyer for common law cases. However, we do not want to make this a feeding frenzy for a small percentage of lawyers who see advantage in getting people into the common law system and who take their cut even though it leaves the injured workers worse off. We are making sure that there are better reporting procedures on common law payments. We are giving power to the board that will now run the system, so that it will be able to check on lawyers and what they are being paid for. If the board can develop a case that a particular lawyer has put people into common law when it was not in their interests, it can take that lawyer to the Legal Practice Board. Clear examples are now available. The Bill ensures that there will be a clear opportunity for WorkCover to gather the data for the common law payments that lawyers will receive for representing their clients, and if there is evidence that a lawyer or a small group of lawyers is taking common law action that is not to the clear advantage of the clients, we will take that matter to the Legal Practice Board to have action taken.

There are a lot of technical issues through which we are trying to drive the package. I am not saying that it is perfect, but over the three years we have looked at how to balance the various interests. Lawyers are needed, but people also are aware that a percentage of the legal fraternity do not necessarily deliver as they should for injured workers. Therefore, we want checks and balances for that, just as we want checks and balances for the other service providers to ensure that the services they provide deliver for injured workers. Not all the various service providers are necessarily happy with that. However, we have to build that into the system if we are going to monitor the system and make decisions based on the outcome for injured workers. As members have commented, this is a complex piece of legislation. The Government is setting aside three weeks to allow the House to go through it in detail. I certainly look forward to the contribution of members as we go through the consideration in detail stage of the Bill. I commend the Bill to the House.

Question put and a division taken with the following result -

Ayes (26)

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| Mr J.J.M. Bowler | Mr S.R. Hill | Mr A.D. McRae | Mr E.S. Ripper |
| Mr C.M. Brown | Mr J.N. Hyde | Mr N.R. Marlborough | Mr D.A. Templeman |
| Mr A.J. Dean | Mr J.C. Kobelke | Mrs C.A. Martin | Mr P.B. Watson |
| Mr J.B. D'Orazio | Ms A.J. MacTiernan | Mr M.P. Murray | Mr M.P. Whitely |
| Dr J.M. Edwards | Mr J.A. McGinty | Mr A.P. O'Gorman | Ms M.M. Quirk *(Teller)* |
| Dr G.I. Gallop | Mr M. McGowan | Mr J.R. Quigley | |
| Mrs D.J. Guise | Ms S.M. McHale | Ms J.A. Radisich | |

Noes (16)

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|---|---|---|---|
| Mr C.J. Barnett | Mrs C.L. Edwardes | Mr R.F. Johnson | Mr M.W. Trenorden |
| Mr D.F. Barron-Sullivan | Mr J.P.D. Edwards | Mr P.D. Omodei | Mr T.K. Waldron |
| Mr M.J. Birney | Mr B.J. Grylls | Mr P.G. Pendal | Ms S.E. Walker |
| Mr J.H.D. Day | Ms K. Hodson-Thomas | Mr R.N. Sweetman | Mr J.L. Bradshaw *(Teller)* |

Pairs

| | |
|---|---|
| Mr A.J. Carpenter | Mr M.G. House |
| Mrs M.H. Roberts | Mr W.J. McNee |
| Mr R.C. Kucera | Mr A.D. Marshall |
| Mr F.M. Logan | Mr M.F. Board |

Independent Pairs

Dr J.M. Woollard
Dr E. Constable

Question thus passed.

Bill read a second time.