WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT (COVID-19 RESPONSE) BILL 2020

Second Reading

Resumed from 24 June.

MR P.A. KATSAMBANIS (Hillarys) [3.25 pm]: I rise as the opposition lead speaker on the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020. The government has asked us to consider this as an urgent COVID-related bill pursuant to the temporary orders that we passed quite some time ago to deal with the COVID pandemic. A lot of the provisions of this bill deal with COVID and a lot go beyond it, but I highlight that we are always happy to work in a cooperative manner to respond to the COVID pandemic. The Liberal Party is quite happy to agree to do that. Obviously, we will scrutinise the bill and I will set out the issues as we see them. The Liberal Party does not oppose this bill and we will not be standing in its way, but it is really important to highlight what the bill does and ventilate the issues, particularly because a lot of the stakeholders out there are keen to find out exactly what this bill will mean for them in practice going forward.

Ostensibly, the primary focus of this bill is to allow healthcare workers to have easier access to workers' compensation entitlements if they contract COVID-19. I do not think any person in Western Australia would question that or deny those healthcare workers that access. In fact, as I have done before, and I do again, on behalf of both the Liberal Party and certainly me, I want to thank every single one of our frontline workers—healthcare workers and other first responders, including police—who have been working on the front lines of the COVID-19 pandemic for months and months. They deserve the whole community's thanks and respect for the work that they do, and I know that they have that thanks and respect. I wanted to place that on the record once more. Well done for the work that you are doing, thank you for the work that you have done and, most importantly, thank you for the work that you will continue to do. We are going to make sure that frontline workers are protected when they are doing that work.

That is part of what this bill will do. It will also ensure that benefits that flow to injured workers through the workers' compensation system in Western Australia are not unfairly impinged upon by any negative consequences of measures such as the consumer price index or average weekly earnings or other types of measures that could lead to a diminution in injured workers' take-home pay, if you like, so that their actual entitlements may be reduced. We do not want to see that. Nobody wants to see that. Clearly the government does not want to see that because it is introducing this bill.

The subject matter of the bill extends well beyond matters to do with COVID-19 and the measures that will be introduced by this bill will not be confined to the COVID-19 state of emergency period; they are open-ended and will be applied into the future. In fact, I think every single measure that will be introduced, although they may have some COVID-related element to them, will exist into perpetuity until the act is amended again by this Parliament. It is important to point that out.

There has not been a lot of industry consultation on this legislation. I understand that this is an emergency response, but I would hope that in framing the subsidiary legislation that will flow from the changes that this legislation will introduce, there will be further industry consultation, particularly looking at the impact of any changes from both a regulatory impact point of view and the potential financial impact on workers' compensation premiums paid by Western Australian employers. Although we want the most favourable and robust workers' compensation system to benefit injured workers and to protect them, we also want to ensure that our scheme is affordable and that it does not act as a barrier for Western Australian employers, particularly those employers out there today who are doing it really tough. We always want to make sure that the balance is struck. The government has also foreshadowed some amendments to the bill to fix one of the unintended consequences in its original formulation, and to tidy up some other minor matters. No doubt we will discuss those amendments when we move into consideration in detail.

The bill essentially does four things. In the first aspect, it provides a mechanism for regulations to be made that establish a presumption of work-related injury for prescribed diseases contracted by workers in prescribed employment. This is one of the very broad regulation-making powers. It extends beyond COVID-19. It can be regulations for any prescribed disease and for any type of prescribed employment. As I said, it works out into the future. It will give the minister significant power to prescribe diseases and employment for the purposes of creating a presumption that the disease was contracted at work. For those prescribed diseases, there will be a presumption that the disease was contracted at work. It would then be up to the employer and the insurer to rebut that presumption and establish, if they want to, that the disease was not contracted at work. It reverses the onus of proof. The stated intention is to assist workers through the claims process to enable access to compensation in a timely manner. It is not novel; it is not new. In fact, it happens today. What is being proposed via regulation already happens by operation of the act. Schedule 3 of the act lists a whole series of prescribed diseases and what is called a "description of process", which is prescribed employment in the modern vernacular, that the reverse onus of proof applies to. It is interesting to look at that list. We do not often see some of the diseases anymore, such as arsenic, phosphorus, lead, mercury

or other mineral poisoning; anthrax; communicable diseases; and poisoning by a homologue of benzol. It goes on to list poisoning by fluorine and poisoning by carbon monoxide. Interestingly, one of the diseases mentioned in the schedule is mesothelioma. Hepatitis B is mentioned in the schedule and it particularly relates to healthcare workers. The prescribed process for where you can contract hepatitis B and have a presumption that it was a workplace injury is described as "employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank". Quite clearly, that has been envisaged. Lung cancer is also in there and a series of other diseases.

The former Barnett Liberal government introduced a further schedule to the Workers' Compensation and Injury Management Act 1981. Schedule 4A deals with specified diseases for firefighters. The intriguing part about that schedule is that it lists a series of cancers that we know, over time, firefighters can be susceptible to. It also prescribes a qualifying period. A firefighter has to have worked for a minimum of five, 10 or 15 years, or, in relation to primary site oesophageal cancer, 25 years, before they can establish that presumption that it is a work-related illness. It indicates our knowledge of how workplace injuries have developed over time.

I went through that process to indicate that Parliament has contemplated this sort of stuff before. We have COVID-19 before us and it would have been relatively simple, I believe, for the minister to have brought in either an amendment to schedule 3 or a new schedule to the act to cover COVID-19 and prescribe that disease. In relation to other legislation before this house, we have been told that COVID-19 is relatively well accepted and well known, so that can be a descriptor. We could have described the process or the prescribed type of employment that it related to. The minister has not done that. He is bringing in a broader regulation-making power. Perhaps in consideration in detail we can examine what else the minister intends to do with that broader regulation-making power, but in particular with COVID-19, what will be the wording? What is the coverage going to be? What is the prescribed employment going to be? Will it be limited to those circumstances that relate to hepatitis B in the existing schedule 3—that is, employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank? Or will it be broader? How will "healthcare worker" be defined? What settings should they have been working in? We will examine that during consideration in detail. Will it apply to aged-care workers? Will it apply to people who are testing for COVID-19? Will it apply to people involved in the chain who may not necessarily be testing for COVID-19 but may be involved in gathering up the samples and delivering them to a testing site and so forth? The bill leaves that up in the air. The stated intention is good; we support the intention. I am sure the regulations will come out in time. When we get the regulations, we will be able to see what they say. It would be good if the minister could put on record today what the actual stated coverage of healthcare worker will be.

That is probably all I can say at this stage about the prescribed diseases and the prescribed employment. It is a methodology the minister has chosen to use. The only other question that remains is: what will happen to schedules 3 and 4A once we start prescribing regulations? Will they remain in the act or is the intention to remove those schedules out of the act and incorporate them in new regulations in time to come? Also, what sort of consultation does the minister intend to undertake with industry and generally with everyone involved in the workers' compensation system before other regulations are made under this new provision? Obviously, I expect regulations for COVID-19 to be made very shortly. After all, that is what the minister has told us is his intention. Even if we had introduced this regulation-making power separately in this bill or in another bill, I would have hoped that we could have had real clarity right now about which workers will be covered. What nature of employment and which workers, if they are found to have COVID-19, will be covered by this presumption that they contracted it at a workplace and have rights under our workers' compensation regime? I hope the minister can clarify that for us.

The second area that is addressed by the legislation is a change to the way common law claims can be made for workers' compensation. Currently, specific limitation periods relate to common law claims for workers' compensation, which limit those claims to a shorter time frame than other claims that can be made at common law for personal injury. The best way to describe the history of those limitations is that they were seen as a bit of a controlling mechanism to prevent the courts from being flooded with common law claims. They were intended to guide the vast majority of workers' compensation claims through a statutory framework in which the focus is on compensating people for their loss, and getting them ready to return to work by helping them to rehabilitate physically, and perhaps also mentally, and in some cases to get them retrained, rather than focusing solely on the element of court-based legal claims that eventually lead to a compensation outcome that may not work quite as well for rehabilitation and retraining purposes.

One of those control factors was the termination day period. The other control factor, which will not be changed in any way by this bill, is that a person who wants to make a common law claim for work-related injury must meet a significant impairment threshold of 15 per cent. I will explain how the termination day provisions work. An injured worker has 12 months from the time the injury has stabilised to commence a common law claim for workers' compensation damages. During that 12-month period, the injured worker can apply for a further 12-month extension.

Once a worker's injury has stabilised, they effectively have a maximum of 24 months within which to make a claim. Thankfully today we do not need to debate what "stabilisation" of a workplace injury means, because although it is a well understood phrase, in practice there is sometimes debate around that. The statutory limitation period for other personal injury common law claims is three years. The minister's intention in introducing the termination day provisions is to abolish this separate time-limiting factor for workers' compensation claims so that a 12-month extension will no longer need to be granted. Injured workers will be given a three-year common law statutory limitation, as is the case for everyone else under the limitations acts that apply in this state.

We were advised during the briefing that in any given year, around 1 200 applications are filed for a 12-month extension, but only around 100 common law claims are lodged in the court process. Therefore, around 1 100 extensions are granted that do not result in a common law claim. However, they result in additional legal costs, costs for obtaining medical reports, and bureaucratic processing costs. Those additional costs for the workers' compensation system will be abolished when the termination day provisions are enacted. That will probably lead to a significant saving in the workers' compensation system. I am advised, and I believe from my own experience, that over time the impairment threshold has acted as a more significant limiting factor than has the introduction of a shorter termination day for common law claims. The minister is proposing to remove that process and to revert to the ordinary provisions that apply under the limitations acts for personal injury common law claims. It will be interesting to hear from the minister, either in his summing up or in consideration in detail, whether he believes this will increase the number of common law claims that are made, and the basis for that belief. It is hoped that any increase will be minimal. As I have said, the impairment threshold is probably the primary limiting factor. There is clearly scope to save money if this is done right. I hope that money will go towards helping injured workers rather than to oiling the wheels of the system, with no real benefit to injured workers. If it leads to a premium reduction or better benefits for injured workers, that will be a win-win.

I want to refer to another issue that has been raised over the years about the termination day. I do not think we should sweep this issue under the carpet. The application for a 12-month extension usually relies on a legal practitioner, although sometimes a medical professional, getting it right and making sure that the worker applies for that extension and all the paperwork and medical reports are collected. There have been instances in which legal practitioners have missed the deadline to apply for a 12-month extension and the injured worker has been disenfranchised because they have lost their right to seek compensation through a common law claim. I believe there have been such cases in the past and I believe there is currently one such case. The member for Mount Lawley might be able to enlighten me on this if he contributes to the debate.

Mr S.A. Millman: Member, will you take an interjection? The only remedy directly is a professional negligence claim against their lawyers.

Mr P.A. KATSAMBANIS: I was about to say that I think at least one professional negligence claim is in train at the moment against their lawyers. The knock-on effect of a mistake by a legal practitioner is profound. It impacts the injured worker, obviously. It also impacts the other legal practitioners who are doing the right thing. The removal of the termination day will completely take away that risk. There is still a risk that a really poor legal practitioner might miss the three-year limitation on common law claims. Hopefully, that would not be the case. We would imagine that a practitioner who was offering themselves to work in this area would know what they were doing and would get it right for an injured worker who was relying on them to obtain monetary compensation on their behalf.

We would like to get some information from the minister about the likely impact on the scheme of these changes. Hopefully, it will be positive. I do not think a lot of people want the termination day to stay. There might be some medical or legal practitioners who rely on it for a bit of a tick-and-flick, but its removal will be very important for injured workers.

The first substantive area that this bill addresses is changes to the methodology by which periodic indexation is calculated for workers' compensation claims. Indexation of entitlements across the board, particularly for injured workers, is a key element to ensure that the purchasing power of the benefits provided to workers is maintained over time. The two main measures that are used by the Australian Bureau of Statistics to determine indexation are the consumer price index, and average weekly earnings. There are a number of measures for both those types of indices. We understand what the consumer price index means, and that there are various subsets of the consumer price index and average weekly earnings, such as male full-time earnings and female full-time earnings et cetera, and state-based as well as sector-based. The government has suggested that the current methodology that is hardwired into the act could have serious negative consequences for injured workers as a result of the COVID-19 impact across our community. If either CPI or average weekly earnings, or both, end up in the negative during this pandemic period, injured workers may see their payments—the benefits they receive—reduce, causing them further financial distress. We have already seen that with CPI, which has been in negative figures and may be in negative figures again. The government has determined that that should not happen. We agree with it on that. How it determines how to deal with it is its choice, and I will get to that in a minute.

Another reason has been advanced for why changes need to be made to the methodology; that is, the ABS sometimes changes the nomenclature of its statistical series of indices. It then becomes quite a cumbersome and longwinded process to amend legislation, which may potentially expose injured workers to the risk that indexation of their benefits will be unduly delayed. It might be delayed in some circumstances. That does not happen very often. The ABS does change its methodology. Sometimes it changes some of the descriptors of the subsets of its datasets, and that can cause problems. It can cause problems when something is hardwired into legislation. It can also cause problems in commercial law and leases and the like when a particular subset of a CPI figure is referenced and then it disappears and a new one comes in. It might be described as building and construction, but the following year the ABS might change its terminology to "construction and other related indices", or whatever it does. It is a real issue. It is not something that happens every day, but the government has advanced that as a reason we need to change the hardwiring of the methodology in the act.

This bill removes that hardwired indexation methodology from the act and replaces it with the possibility for the government to make regulations from time to time. It includes a draft methodology, if you like, or a starting point, with a base dollar amount for both weekly compensation and lump sum compensation for workers. We have been told that that amount reflects the current dollar amounts for those two figures that are being used for the financial year that ended on 30 June 2020. I think that is fair. Of course, the government did not need to go down the path of removing the methodology from the act and putting it into regulation. It could have put in a provision that simply said that despite any indexation, no worker will receive less in one particular financial year than they have received in the previous financial year. That would have been just as elegant an outcome. It could have also dealt with a second issue—that is, the issue of the ABS changing its nomenclature by providing a narrower regulation-making power that said something along the lines of, "However, if the particular ABS series or index changes, an equivalent series as prescribed by the regulations." That happens all the time. That is hardwired into lots of acts, in both this jurisdiction and the federal jurisdiction. It is a well-known mechanism to overcome this problem. It is not in this act, which obviously dates back almost 40 years. The government has not chosen to do that. It has chosen to use a very broad regulation-making power that essentially allows it a lot more scope, but I dare say not many other indices out there are accepted for uplift factors, so I think that in itself will be some sort of limitation to a future government just trying to write up its own regulations.

The big issue here is that this legislation was brought in during COVID. I accept that it was introduced to address an issue that COVID has highlighted—the potential for injured workers' benefits to be reduced in nominal real dollar terms. There was no industry consultation of this. I have not seen any regulatory impact assessment. I have not seen any actuarial assessment of what this will mean to the scheme. I hope and expect that the minister will give us an assurance that what he will be doing in regulations is prescribing the uplift factors, the indexation factors, by reference to what we commonly know as the consumer price index and average weekly earnings, however they may be described in the future.

The fourth limb of the changes made by this bill will allow for broader use of modern communication methods to serve documents and to allow for electronic service. Most people would say that this is a long time coming. We know that using modern communication methods, using electronic services, can have significant benefits. It can provide some cost savings within the workers' compensation system. Importantly, it can also speed up and make easier some of the very cumbersome procedures and the paperwork that has built up over time. Let us hope that happens. That would be a seriously good outcome and would make everyone's life easier and simpler. It would speed up time lines and hopefully provide some cost savings into the system.

I will address the government amendments very briefly now. They cover off an unintended consequence. By removing the termination day, the government also removed the ability of injured workers to seek a special evaluation of their impairment, even if their condition had not stabilised. I know that does not happen very often but sometimes it can be very important for particular classes of injured workers. I do not think the government meant to do that. It is proposing an amendment that will ensure that that does not happen. Now we will not have that 12-month plus 12-month termination day. The three-year limitation period will apply, as it applies to other personal injuries relating to common law claims, but injured workers will still have that ability within that period, before they reach a termination day, to seek a special evaluation of their impairment even if their condition has not stabilised. I do not think anyone will criticise that. It is a protective feature that existed in the present system and it should not be removed. Then there is some tidying up. We will probably discuss that in minor detail during the consideration in detail stage when the minister moves his amendments.

As I said, we do not oppose this legislation. Clearly, it has been triggered by a desire to ensure that injured workers are not left high and dry during the COVID period. One of the major desires is to ensure that healthcare workers, particularly those in hospital settings who are at heightened risk of contracting COVID-19, given their proximity and potential exposure to people with that disease, are protected. Sure, those healthcare workers are able to access workers' compensation payments without undue barriers. There will be a presumption that they can access those

benefits. It will be a rebuttable presumption that they contracted COVID-19 in the course of their employment. I hope everyone is in agreement with that. The government proposed it, and we are in agreement with it. We think that is a good thing. That was the driver to make some of these other changes. COVID-19 has driven down CPI and it may also drive down average weekly earnings, although that is debatable depending on who we ask. We do not want that paradox to affect injured workers financially. We think that is good.

Could the government have used a different methodology? Could it have made amendments to the primary act? I think it could have, but it chose not to; it has chosen to provide a broader regulation-making power. That is a government choice, I guess. We are not going to sit here and debate it, because that will remove those benefits that we are trying to pass on to healthcare workers and other injured workers. I do not necessarily think that removing the termination day will open the floodgates. If anything, it will probably provide some savings within the internal processing of the workers' compensation system. In my personal opinion, the more we have of the electronic service, the better. Obviously, we have to have good controls and good checks and balances. An electronic service can speed things up, shorten time lines, make things less complicated for people and obviously save the system money.

With those words, we are happy to facilitate the passage of this legislation under the temporary orders.

MR V.A. CATANIA (North West Central) [4.00 pm]: I thank the member for Mount Lawley for affording me this time to represent the National Party. I want to put on record that the National Party supports the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020. The bill makes quite a bit of sense for workers' compensation and being able to make a timely move due to the uncertainty that currently exists. I commend the government for bringing it forward as an urgent bill to address some of the constraints and barriers in the workers' compensation legislation that have been exacerbated by the COVID-19 pandemic. This is one of the responses to that.

Obviously, the changes in the workers' compensation amendment bill include indexation of workers' entitlements, presumption of coverage for healthcare workers, removal of the common law termination day, and use of electronic notices. The member for Hillarys spoke well on this bill and I echo a lot of his sentiments, as well as those of the minister responsible. Firstly, I say thank you to the minister for providing his staff to brief the National Party on this bill.

The main issue that came out of the briefing on this bill that we think should be in effect is the presumption of coverage for healthcare workers. Under the current legislation, a worker's employment must be a significant contributing factor to the contraction of a disease in order for them to access workers' compensation entitlements. New division 4B in part III provides for regulations to be made that establish a presumption of a work-related injury or prescribed disease contracted by workers in prescribed employment. It will be up to the employer or insurer to rebut that presumption and establish that the disease was not contracted at work. Therefore, it reverses the onus of proof, and this will assist workers to access compensation through the claim process in a timely manner.

I believe the government will have flexibility through the regulations to add those frontline workers. It has been mentioned before that healthcare workers are the primary target of this legislation to ensure their ability to access workers' compensation if they contract COVID-19, because they are at heightened risk of contracting the disease. We have seen in Victoria and overseas that healthcare workers, such as doctors, nurses and others working in the hospital system, are more likely to contract COVID-19. My sisters-in-law and brother-in-law work in the healthcare profession as doctors and frontline workers. One of them is in London and has had to face the COVID-19 emergency over the past months. After speaking to her the other night, I know that the emergency has certainly subsided dramatically as they have tried to get it under control. The majority of her co-workers contracted COVID-19 during the early stages of the outbreak in England, particularly in London. My other relatives who are on the front line have had to make huge sacrifices by staying in hotels instead of going home, and making sure that they stayed away from family members, especially those who are vulnerable because of various diseases or health issues that they have. It has obviously been quite stressful for those frontline workers.

I have mentioned doctors, but those who look after animals also provide a frontline service. Veterinarians have to manage the welfare of animals. Even though restrictions have been imposed, animal emergencies can happen, so veterinarians are part of the mix in our frontline service.

Another issue that the National Party raised during the briefing was that volunteer ambulance officers in regional WA are part of the frontline service. Will they be protected under these workers' compensation changes? Will they be considered as frontline service providers? Perhaps the minister can elaborate on that in his response during the consideration in detail stage. Will volunteer ambulance officers, particularly in regional WA, be able to access workers' compensation, because they are part of the front line? If there were to be a breakout like that which has occurred in Victoria, will volunteers, whether they work in the mental health system or provide some sort of service, such as delivering food to the elderly because they are vulnerable to COVID-19 and are unable to get out, be considered

under these changes in the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020? That is important, because often we overlook our volunteers who provide a huge frontline service, particularly to our regional communities. I ask the minister to look at including on the list, which will be provided in due course, the most vulnerable workers so that they can access workers' compensation.

The common law termination day has been around for a while, so I think this bill is timely. We have moved on. If I am correct, it was introduced in the 1990s and the period has been amended over time. The initial period for the termination day, which has been contentious, was six months. This was extended to 12 months in 2004. Many workers were required to make an election if their condition had not been stabilised. Currently, the termination day is one year from the date of claim. However, it can be extended for 12 months. It is common sense to make it three years, and this will provide a bit of certainty and take away pressure on the person making the claim.

The other change made by this bill is about electronic notices. One thing that we have learnt from the COVID-19 situation is that we have to rely on electronic means of communication. I am sure that most members and staff are Zoomed-out and are still using electronic means to have meetings. It is critical that we embrace technology. This change to electronic notices, which is a minor change, will facilitate the creation of electronic documents and records in accordance with the regulations. It will provide for important notices, such as a liability decision notice, which is given to workers by insurers and self-insurers, to be sent by email as an alternative to serving it in person or posting it by registered mail. I have one question for the minister: will people receive both? If they receive something by email, will it also be put in the post? Obviously, a lot of people out there are not savvy. We have found that not a lot of people have the phone required to run the COVID-19 app, especially those in the older generation. That has been highlighted. That has also played a major role in regional Western Australia because a lot of elderly people have just a basic phone as a means of communication. Perhaps the government can consider using both so people receive notices by not only electronic means, but also registered mail. I think that is a way to get that information to people in a timely manner.

All in all, on behalf of the Nationals WA and on behalf of the shadow portfolio holder, we support the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020. As I said, one issue the minister could consider is whether volunteers, such as ambulance officers, who are generally put on the front line, could be considered to be part of that register. They play a large role, particularly in regional WA, and we could not do without our volunteers so let us protect them as much as possible. As I said, the National Party supports this bill.

MR S.A. MILLMAN (Mount Lawley) [4.12 pm]: I rise to make a very short contribution to the debate on the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020. I do so mindful of the fact that this legislation achieves two important objectives. Firstly, it updates our statute book in response to COVID-19. Secondly, it begins the process of implementing reforms that have had broad-based support across the community for a long time. I thank the member for Hillarys for his mature and thoughtful contribution to the debate, and for raising the issues that he canvassed in his contribution. I might touch on a couple of those, if I may. I thank the member for North West Central for outlining that the Nationals WA are also supportive of the legislation.

I want to talk about only two of the four issues that are canvassed by this amendment bill. I will deal with the third and fourth very quickly. The periodic indexation of worker entitlements and the applicable methodology, which was discussed at length by the member for Hillarys, is a very important reform and has general stakeholder support. I think it opens up the opportunity to have a broader conversation about the way workers' compensation entitlements operate. I will come back to that when I deal with what I think the Workers Compensation and Injury Management Act should do. The member for North West Central made the point very clearly about the expedition of electronic services to exchange notices and documents. That will be a time and cost-saving measure. It is exactly the type of sensible reform that can achieve consensus across Parliament and amongst all stakeholders.

As I said, this legislation commences legislative reform that has had broad-based support for a long time. I do not propose to speak at great length about the bill. I refer members to my contribution to the previous workers' compensation legislation that this diligent and hardworking minister brought before the house back in 2018. This is the latest iteration of a number of reforms that were canvassed as far back as 2014.

Looking at these amendments to the Workers' Compensation and Injury Management Act gives us the chance to reflect on the purpose of that act. This remedial legislation is designed to provide access to justice and compensation to people who have suffered injuries in the course of their employment. As the Acting Speaker would know, all the case authorities point to the proposition that remedial legislation should be construed beneficially. That is a sentiment that I reemphasise now. The Workers' Compensation and Injury Management Act should restore victims of workplace accidents to the position that they would have been in had it not been for the accident that they suffered. I think the best way to do that is by focusing on three areas: access to justice; access to compensation; and the

retention of dignity. I do not think that having to go through a workers' compensation process should be an excuse for the erosion of dignity. I will start with that point first.

It is important that if we are contemplating reforms to the workers' compensation process, we should be mindful that people should not have to give up their personal medical privacy. They should be required to give only information that is relevant to the determination of whether they are entitled to compensation for a work-related accident or injury. It also speaks to the issue of doctor–patient confidentiality. Someone making a workers' compensation claim does not abrogate or ameliorate that person's entitlement to enjoy the same doctor–patient confidentiality that everybody else enjoys. If a person participates in a return-to-work program in good faith and consistent with their obligations under the legislation, they should get the benefit of the legislation's protection. It should not be an opportunity for employers or insurers to scapegoat or target people, or suggest that their capacity for employment is greater than what has been certified by their doctor. Retention of dignity is very important.

One way we can ensure that dignity is retained is making sure that plaintiffs in the workers' compensation system have access to justice. That means transparency and accountability in the way that decisions are made by workers' compensation arbitrators and an understanding of the basis on which those decisions have been made. Reasons for decisions should be provided, which can be reviewed and decision-makers held to account. It also means access to courts. I thought the member for Hillarys spoke quite well and at great length about the balancing act struck by the current legislation with the 15 per cent and 25 per cent whole-person impairment assessment. There is absolutely no question that those assessments have been incredibly effective in limiting access to the courts for injured workers. The question now is whether they have gone too far. Are legitimate claimants, who have been injured significantly in the course of their employment, denied access to justice simply because they do not meet the impairment threshold?

This act does the right thing by removing the termination day. It caused confusion, delay and cost, all of which the member for Hillarys has already gone through. In fact, the termination day was not even related to the date of the injury. An injured worker would be injured on a particular day and he or she would then make a claim for compensation. The day on which they have to commence proceedings in a common law court, the District Court, would be three years from the day of the injury. The day on which they have to elect to make a determination about whether they would make that common law claim was one year from the date they made a claim. A person could be injured on a Thursday, be rushed to the emergency department of a hospital to undergo emergency surgery, be discharged from hospital the following Wednesday and then make a workers' compensation claim. All of a sudden, they have two separate dates in their head. Oftentimes—with decreasing frequency, I am happy to say—workers would be unable to identify the day on which they made the election. The termination day has been completely ineffective in limiting access to the commonwealth jurisdiction. As I said, the most effective mechanism has been whole-person impairment. I am certain that the abolition of the termination day is welcomed universally by the legal profession and workers' compensation stakeholders.

The final point I make is that workers' compensation legislation needs to provide for access to compensation. The member for Hillarys has already talked about the importance of maintaining the right rate of compensation, but a couple of other things should be taken into account. Provisions in the current legislation provide for the step down of compensation entitlement over time, which has the effect of punishing workers in receipt of workers' compensation payments. Those workers ought not to be punished because they have been able to establish not least of which the following: first, that they have been injured in the course of their employment; second, that as a result of that injury, they are unfit for work; and, thirdly, that as a result of that unfitness for work, they are entitled to receive compensation. To punish them again when they have established all those factors seems inconsistent with remedial legislation that should be construed beneficially.

Although this legislation goes a long way towards addressing two of the immediate concerns that I have about making sure that workers injured in the course of their employment have access to just compensation, I see this as the first step in an ongoing process. What I would say is this: this minister has demonstrated time and again with the legislation that he has brought to this Parliament that he has identified key issues of concern to workers in Western Australia. It has been a great privilege to serve with him in the fortieth Parliament. He has taken steps throughout this term of Parliament to ensure that where there are gaps in the ways in which workers can access justice, the remedy will be brought before this Parliament. It might not be remedied in the fortieth Parliament—it might be in the forty-first—but, clearly, this minister has a plan that is working and it needs to continue. With those words, I conclude my contribution.

MS M.M. QUIRK (Girrawheen) [4.22 pm]: The Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020 comes under the umbrella of the McGowan government's COVID-19 comprehensive response. However, its implications are much wider than the present and very real threat to workers within the health system of catching the coronavirus in the course of their employment. I know the minister and all workers

affected by these laws will be anxious for a speedy passage of the bill and, accordingly, I will curtail my remarks. I cannot, however, let the opportunity go by without emphasising one very important aspect of this bill and how it will progress the position of injured workers in Western Australia exponentially.

Division 4B contemplates a prescription by way of regulation of diseases that will be presumed to have been work related. This presumption is rebuttable. No longer will the onus be placed on a worker to prove the exact time and locus of an incident that led to contracting the disease. In February 2012, I introduced a private member's bill and I discussed this very dilemma in the context of firefighters. I explained at the time that the Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012 was about the cumulative effect of exposure of firefighters in their day-to-day duties, in some cases over many years. Although the bill was narrow in scope, it would have made an enormous difference to firefighters who contract cancer from their years of occupational exposure to a conglomeration of carcinogens, hazardous materials and toxins. Were it not bad enough that a firefighter must face the ultimate battle for life, he or she is also burdened with the knowledge that during their struggle with cancer, they are not entitled to workers' compensation payments and their family faces the additional strain imposed by their financial hardship. The reason for this is that as the law stands, a worker must point to a particular source to prove what caused the cancer. In other words, they must identify the carcinogen or toxin and when they were exposed to those toxins—namely, which fire or fires or emergency. That is simply not possible. On the other hand, if a firefighter is killed or physically injured attending a fire incident, he or she can receive compensation for work-related injuries. This unfair anomaly needs to remedied.

At the time the private member's bill was introduced, there was a large volume of highly credentialed medical research that proved the nexus between firefighting and the disproportionately high incidence of certain cancers among those carrying out that activity. In the second reading of my bill, I quoted a September 2011 report by the Senate Education, Employment and Workplace Relations Legislation Committee, which stated —

> Study after study has pointed to a higher risk of cancer for firefighters than the general population. Science has confirmed what firefighters suspected for decades: That a disproportionate number of them in the prime of their lives are brought down with illnesses usually reserved for the old and the infirm.
>
> … The committee recognises that cancer is an illness that touches many fit, healthy people in the nonfirefighter population as well. In many cases it is unpredictable and incomprehensible, due to genetics or factors we do not yet understand. But when the science tells us that a particular group of people who are routinely exposed through their service to the community to known carcinogens are at higher risk of developing certain types of cancer, then the response becomes clear.
>
> … The committee recognises that when a person spends their professional career inhaling and absorbing known—and probably some as yet unknown—carcinogens in the course of public service, it is the moral duty of the community to enable them to seek compensation should they fall ill as a consequence. For this reason the committee believes this Bill needs to be passed after being improved upon through incorporation of the committee's amendments.

Despite that compelling evidence, the then Barnett Liberal government rejected the bill out of hand, only to introduce one in identical terms 18 months later with a slightly amended title to obscure any similarity.

One of the arguments being peddled when that private member's bill was opposed was that actuaries could not accurately determine the level of financial exposure that such open-ended laws would result in. Seven years on, the United Firefighters Union of WA advises me that there have been 36 claims; four have been declined, two are pending, and 30 have been accepted. That is hardly a number that would send the state broke. As an aside, I commend the UFU for its long and tireless advocacy on these issues.

It could also be observed in this context, with a greater number of women entering the ranks of firefighters, that it may be worth expanding the list of prescribed cancers to include cervical cancer, and all thyroid and lung cancers given the lower incidence of smoking in the general population.

Consideration of these cases is not altogether straightforward however. The kidney cancer cluster at the Success Fire Station continues to confound experts and brings to the forefront whether the notion of latency periods should be used to reject claims. This bill will mean a much more streamlined approach, because there are other sectors of the workforce in which changes will be made through prescription in legislation. I contemplate that the treatment of claims in this way will facilitate establishing that the insidious and at times debilitating post-traumatic stress disorder is work related. Exposure to trauma by police, firefighters and ambulance drivers comes to mind. Trauma exerts a heavy toll on those workers who serve the community. As the law stands, those with PTSD are re-victimised by having to recount on endless occasions and to different assessors how it was that they acquired their condition. As we now appreciate, PTSD tends to be cumulative and sometimes a trigger in isolation may seem quite routine and inconsequential. In this context, I am mindful of train drivers. People with mental health issues often choose

to commit suicide by crossing the path of a train. Exposure to a number of these fatal incidents can weigh heavily upon train drivers and cause PTSD.

I return to the importance of this bill for those on the front line who are combatting the spread of COVID-19. As we have seen in recent months, nurses, doctors and, less frequently considered, ward clerks, cleaners, receptionists and others working within the health system are exposed to contracting COVID-19 at a much higher rate than the general population. In some jurisdictions, this has come about by poor hygiene systems or lack of personal protective equipment, but even when these factors are not an issue, the mere length of exposure to those with the virus very much heightens the likelihood of contracting it. For example, in Victoria at present, there are almost 1 100 healthcare workers with active COVID. An overall estimate is that about eight per cent of the health workforce in Victoria have become infected. But how can such workers pinpoint how and which patient they came into contact with caused them to catch the disease? From a public policy perspective, this raises all kinds of issues.

The last word should go to emergency doctor Thomas Kirsch, who wrote an article in the 24 March edition of *The Atlantic* titled "What Happens If Health-Care Workers Stop Showing Up?" He writes —

> The COVID-19 pandemic is certainly not Ebola—the case-fatality rate is perhaps 1 percent, not 50 percent—but it raises an important practical and ethical question: How much risk do health-care workers have to take? Or, more bluntly: How many of us will die before we start to walk away from our jobs?
>
> This is not a rhetorical question. In the SARS outbreak in Toronto, Canada, in 2003, 44 percent of all infections were in health-care providers. Two nurses and a physician died. In Arkansas, four of the first 12 COVID-19 patients were health-care workers. Last Sunday, the American College of Emergency Physicians reported that two ER doctors with COVID-19, the disease caused by the coronavirus, are being treated in intensive-care units.
>
> In China, about 3,000 health-care workers have been infected, and 22 have died providing care for COVID-19 patients. Consider also that "transmission to family members is widely reported."
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> …
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> Yes, physicians and nurses have an ethical duty to provide care … The perspective of medical ethicists is pretty straightforward—health-care providers, especially physicians, should continue to care for the sick even if it puts their life at risk. We have an obligation to treat all patients, because we chose our profession and are well rewarded by society with money and respect. Nurses have a similar professional duty, but have specific exemptions. But there are few, if any, obligations for all the support staff that make my work possible—the techs, clerks, registrars, environmental staff. They don't take an oath. Some are paid minimum wage, have few benefits, and get none of the societal accolades reserved for doctors and nurses. Why should they die for a $25,000-a-year job and $10,000 worth of life insurance? Who's going to feed their kids when they're gone?
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> When you're the one wearing a flimsy paper gown and mask in the same room as someone dying from an invisible virus that makes its home in the same air you breathe, nothing is simple.
>
> Our duty is not boundless, and in bad situations, sacrificing providers is not what is best for society. If health-care providers are going to risk their life, then there is a reciprocal obligation—the *fairness principle*—that society, employers, and hospitals keep them safe and ensure that they are fairly treated, whether they live, get sick, or die.

This legislation certainly does that and I thank the minister for bringing it to Parliament. I commend the bill to the house.

MS J.M. FREEMAN (Mirrabooka) [4.34 pm]: Thank you very much for giving me the opportunity to speak on the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020. I acknowledge the good work of the minister in this area and his long and associated history of working on workers' compensation matters. He has good knowledge in this area. I also acknowledge the advisers who are at the back of the chamber—although I cannot see them—particularly for their ongoing commitment to this area and making sure that Western Australia has the best workers' compensation system that it possibly can have.

In particular, I am responding to the COVID-19 pandemic and ensuring that workers who become ill because of COVID-19 will not have to go through the onerous task of proving that they caught COVID-19 at the workplace and that, in this case, if they are healthcare workers whose workplace is a nursing home or a hospital, the onus of proof will be on the employer to show that COVID-19 was not contracted at work and the worker would not have been placed at risk in the workplace. That is a really important aspect.

The changes in the legislation to provide regulations to establish a presumption of work-related injury prescribed diseases—COVID-19 will be one of those—contracted by workers in prescribed employment, through two regulations in the provisions of this bill, are to be congratulated. That is to be congratulated in particular because it is based

on acknowledging the great work of our healthcare workers during the pandemic and the risks that they place themselves in. Who would have thought that people who are not often recognised or held up as being leaders in employment in our community would become the people upon whom we depend the most—our retail workers and healthcare workers?

I note in particular that this bill will ensure that employers will have to understand that they have a responsibility beyond not only their acknowledged responsibility for their patients and residents in nursing homes, but also an increased responsibility for the liability of ensuring that people do not contract the disease in their workplace. That is a really important aspect because it increases the focus of the employer on safety. We all know of, and have probably all had phone calls at different stages from care workers, home community care workers or disability workers who have gone into homes when others would not and who have placed themselves at risk of exposure. I think that is really important.

There is a great reliance on patient care assistants in nursing homes. Those workers have often been casualised over the years. The nursing home industry has struggled to get funding from the federal government to provide certain, ongoing and permanent employment for them. It is because of that that the industry has been increasingly casualised. Understandably, because of the funding situation for nursing homes, institutions lean towards the possibility of using patient care assistants to do the work that would normally be done by enrolled nurses or registered nurses, and that has placed people at risk.

We know from what happened in Victoria that part of the risk in nursing homes is that casual staff go from nursing home to nursing home and that that transmits the risk. We also know that when that risk and the health of workers was not responded to quickly enough, and workers became impaired by COVID-19, in Victoria some nursing homes had only a few workers turn up to work. I am not sure about this—the minister may know—but I understand a couple of nursing homes left the people who they were caring for in quite abysmal situations because staff were ill with COVID-19 and could not attend those nursing homes.

It is to be commended that as part of the nationwide response to the COVID-19 pandemic, Western Australian nurses went over to work in those nursing homes in Victoria. They are to be commended for putting themselves in danger. There is no doubt about that. I would like to send out my deepest personal regards and thoughts to and respect for everyone in Victoria who is dealing with this pandemic. We do not have an understanding of what that must feel like. People's concerns about the situation and the deaths that are occurring must impact on their wellbeing. I send my deepest sympathies to all those families in Victoria who are suffering at this time. It is really important that if the COVID-19 pandemic starts to enter our community, particularly if we have the terrible situation in which the onset of the disease is in nursing homes, we ensure that we have a really effective response. This legislation gives us an effective response. When people know that if they find themselves sick with COVID and leave their workplace, they will have compensation and their financial security will be protected. These are marginally paid workers; these are not well-paid workers. Therefore, we need to ensure that these workers have the capacity to have proper incomes. It is important that we have this protection for workers.

In an article by Michelle Grattan published in *The Conversation* yesterday, I noted a statement made by Peter Rozen, QC, senior counsel assisting the Royal Commission into Aged Care Quality and Safety. He commented that Australia's aged-care sector was unprepared to deal with a COVID-19 outbreak and federal authorities had no specific plan for it. Of course that view will be questioned and there will be counterarguments around that. Today, thanks to the member for Balcatta, I had the opportunity to talk to some people from Osborne Park Hospital. I asked how prepared we were for an outbreak and whether we would be able to respond accordingly. I was told that that they have considered how they would deal with an outbreak in nursing homes in Western Australia. This legislation is part of that response. This legislation will mean that a critical eye has to look over and consideration has to be given to worker's compensation liabilities for not protecting workers and giving them appropriate PPE and other aspects of things.

In the article, Peter Rozen, QC, senior counsel assisting the royal commission, is quoted as saying —

> … while much was done to prepare the health sector more generally for the pandemic, "neither the Commonwealth Department … nor the aged care regulator developed a COVID-19 plan specifically for the aged care sector".

When we look at the response to COVID-19 in Western Australia, we see that, as state members of Parliament and a state government, we were better able to deal with COVID-19 than the federal government was in the critical and vulnerable area of aged care. State governments responded and their public health officers had plans, but there was some inability of the federal government to recognise this was a vulnerability and that it was its responsibility to ensure that those people were protected.

I have always been a bit of a federalist. I have always thought that it would be better to pass many of the state's responsibilities to the federal government. Indeed, if we look at workers' compensation, we see workers' compensation differ in every state. Workers' compensation systems operate differently in every state. The operation of our system in Western Australia is effectively funded through insurers. We place premiums on employers and those premiums reflect the cost of the workers' compensation system. Indeed, the Western Australian system is very effective. In other jurisdictions, there has been debate about whether costs should be borne internally by government through consolidated revenue because they cost too much, and there have been major changes to reduce those costs. But our system also makes us vulnerable to community outrage because we could end up with a system in which employers' premiums are increasing at such a rate that they start putting on pressure to undermine the philosophy and underpinning principles of workers' compensation in Western Australia; that is, it is a no-blame system and workers should be properly compensated for their injuries. The system we have is bound up with employers effectively paying insurers. This means that employers could put such pressure on the Minister for Commerce, or previous ministers and governments, that workers' compensation becomes a political hot potato and the common law system is closed down. But, in closing down the common law system, more money is not placed into the workers' compensation system to compensate for taking away a fundamental right of workers. Unfortunately, that is what a previous Labor government got sucked into. That is my view. I think we got sucked into this narrative that it would cost too much unless we got premiums down and that we were all doomed. We effectively closed down common law claims by putting in a 15 per cent injury threshold. I do not actually have a problem with that. The bigger thing we did that was problematic and unfair for workers was to require 12 months to make the decision. Because of COVID, we now realise that 12 months is not realistic because it is difficult to see a practitioner to get the details needed. But the reality is that it was always difficult and unfair. It has never been a good way for people to make decisions within that 12 months. It was unfair because their injury had not stabilised, yet they suddenly had to make a decision. It was unfair because they would get a letter that said, "You have to make a decision", but their wellbeing was not very good.

I congratulate the minister on removing that. I understand the decision must still have the three-year limit. That is what it is in terms of the legal system. When I was involved in the jurisdiction, it was six years. That seemed to be a particularly reasonable period. It gives people an opportunity to stay within the compensation system to get compensation, rehabilitation and opportunities to work. My problem is that those limitations have never been reflected in increased compensation payments for workers. We made workers pay for decreased premiums over many years. The previous Labor government that brought in these changes did not just stabilise the system; it also markedly decreased the cost of the system—massively. Workers have never ever benefited from that. It is only appropriate that the existing compensation payments are maintained and not negatively impacted by any reduction in CPI. It is appropriate that CPI increase. Actually, I think increases by wage price index would be more appropriate. However, this does not remedy the unfairness of the 13-week stepdown, which financially disadvantages workers. Workers on enterprise bargaining agreements have made financial commitments on the basis of their income. If they have an injury at work through no fault of their own and no fault of their employer, they are in a system that closed off the capacity for them to even argue for negligence, such as a serious threshold injury, but we still expect them to live their day-to-day life and meet their financial commitments after 13 weeks of stepdown. What is even more outrageous, minister—I have put this on the record before—is that Western Australia is the only state in Australia to have a prescribed amount.

[Member's time extended.]

Ms J.M. FREEMAN: The greatest unfairness of the workers' compensation changes that closed down common law for many workers was that those workers who paid for the system still have the threshold of the prescribed amount, which is currently $232 000.50. If a worker in a member's office makes a workers' compensation claim—none of us can because we are insured differently; we are not employers—they can claim for a period of time. Think about it: most of our workers are probably on about $80 000 to $90 000 a year, maybe $100 000; $232 000 is when their compensation will cease, unless they can make an application for extreme circumstances. That is just not fair given that we drove down the premiums. That is something that still needs to be adjusted.

Also, in a modern-day workers' compensation system, we should not still have the Kierath provisions that punish people for claiming for stress and mental health issues. We should not have a legacy of a mean-hearted member of the Liberal Party who punished people for becoming mentally unwell in their workplace. Although I welcome this bill, it does not remedy the harsh provisions in the act with respect to mental health and injuries sustained in employment. It is an issue that we should address considering our modern-day workplaces and our communities and also the health response to COVID. I commend the bill to the house.

Debate adjourned until a later stage of the sitting, on motion by **Mr D.A. Templeman (Leader of the House)**.

[Continued on page 4599].