WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023
WORKERS COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2023

Second Reading — Cognate Debate

Resumed from 22 June.

HON NICK GOIRAN (South Metropolitan) [5.08 pm]: These two bills were last before the house on 22 June, when I delivered my contribution to the second reading debate. The house rose for the winter recess and I had a solitary minute remaining, so in that time I will simply observe these things. Firstly, that the bills are underpinned by a final report from WorkCover WA that is now more than nine years old. Secondly, for that reason alone, we need to carefully scrutinise this 706-clause primary bill and its eight-clause companion. Thirdly, although a rewrite of the legislation is something I have supported for 14 years, this is no time for a lazy approach to lawmaking. Fourthly, I urge the government to utilise the committee stage to consider enhancements to the bill to address concerns raised by experts in this field of law.

HON DR BRAD PETTITT (South Metropolitan) [5.09 pm]: I rise on behalf of the Greens to speak to the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023. I note I am not an expert on this area, but certainly we have been contacted by an interesting range of people. Lawyers, union members, workers compensation experts and even several Labor Party members have all raised with me concerns about this bill. I take this opportunity today to put some of those on the table and make sure that Parliament consider those issues as we debate this legislation.

At the heart of the concern, the theme that ran through it was that it was a bit of shock that the Labor government might be proceeding with legislation that is ultimately the result of an almost decade-old review. As Hon Nick Goiran just said, the WorkCover review is nine years old and was commissioned by a Liberal government. An ongoing theme of the concerns raised with my office was that this legislation would reduce workers' rights. Today I want to amplify some of the concerns that have been raised. Pretty well all the concerns were that ultimately this legislation will weaken WA's workers compensation protections and not improve them. A few significant issues highlighted this.

The first one is around the definition of "worker", which will change quite significantly, as some of the previous speakers have talked about. It is likely to exclude classes of workers that are covered by the existing act. The current WA workers compensation legislation may allow workers who are not included in the primary definition of "worker" to be eligible under the extended definition to make workers compensation claims. Certainly those who gave us feedback were concerned that the definition would be removed by the version of the bill they were looking at. The real concern was that some of the workers who are currently covered in WA could not claim any compensation at all. Industries in which contractors and subcontractors make up the majority of workers are the ones that are likely to be most impacted by this change. As we know, these are often some of the most vulnerable workers when it comes to workers' rights and that is something that obviously none of us want to see happen. That was the first really key issue that we looked at. If we look at the WorkCover website, we will see several submissions from law firms who represent injured workers. They all agree that the change to the definition of "worker" would leave many workers without any means to access compensation. If this is correct, it raises some questions, and I would be interested to get an explanation from the government on why reforms that have been framed as strengthening workers' rights may dilute those workers' rights.

The second key area of concern was around how the proposed legislation will exclude workers with psychological injuries. We were contacted by multiple people about this major area. The bill will increase the circumstances that would stop a psychologically injured worker from accessing workers comp. I am just going to read this because it is slightly complicated. The way that those who contacted us explained this was that the bill proposes to include all administrative action taken by an employer as circumstances that would exclude a worker from being compensated. The definition of "administrative action" as it is defined for the purposes of excluding stress claims is very broad. This will result in a lot of workers in WA who have developed psychological injuries being barred from accessing compensation. I think the minister admitted in *The West Australian* in May that this bill will reduce the entitlements for workers with psychological injuries and change how claims for psychological injury are viewed. It will reduce the rights of injured workers in WA. Again, I am interested to hear from the government whether that was the intent and whether the latest versions of the bill will adequately do that. Again, that flags a concern and I think we certainly do not want to see any other consequences come out of this new bill.

The next issue that I would like to look at is the changes to how medical expenses will be funded in the new bill. As I understand it, in the current act, medical expenses are funded based on something that is called the Napier test whereby the medical treatment must remedy, alleviate, cure or prevent worsening of the injury. This new bill before us will add an additional requirement. Medical expenses will be in accordance with a scale of fees or have a maximum amount that will be determined by the minister. Again, the fears of those who contacted my office about this matter are that it could potentially leave workers in a scenario in which they are out of pocket for medical

expenses that cost more than the insurance company is liable to pay. There has been a bit of a gap between some of the briefings we have received and some of the rhetoric from the government on access to medical treatment for injured workers and what we have been told is in this bill. This bill will increase the amount of medical expenses covered from 30 to 60 per cent. At the same time, this bill will make it more difficult to have certain medical expenses—for example, surgery costs—paid for in full. The key concern here is that this bill will place a cap of some kind on the medical expenses an injured worker can recover. This will make the injured worker partly responsible for the cost of medical treatment. This part seems to me to be contrary to the intent of good workers compensation laws and certainly the intent as I understood it from the briefing.

One more issue in this space was certainly contrary to the bill's explanatory memorandum and the briefing that I received. It appears that the proposed legislation will reduce workers compensation payments after six months or 26 weeks. The explanatory memorandum for the bill says that the amount of time within which an injured worker will receive weekly compensation payments at the full rate will increase from 13 to 26 weeks. That bit seems to be true, but it also seems to be true that there is a well-established authority in both the District and Supreme Courts whereby award workers cannot have their pay reduced from the fourteenth week onwards. That raised some questions for me. Again, this comes from some of the advice that we received, and I am certainly happy for the parliamentary secretary to respond to the concern that this will change for award workers who would not have had their pay reduced from the fourteenth week onwards. Under the current act an injured worker must be put in a situation as near as possible to where they would be if they had not been injured, which seems common sense and logical. The current act protects workers whose wages are prescribed by the award from having their compensation reduced. The bill before us, I am advised, mandates a reduction in payments for all injured workers after the first 26 weeks, with no extra provisions for award workers. As a result of the way parts of this bill are worded, many workers are likely to be worse off under the new workers compensation laws than they are under the existing ones. That was, as we can see, the pattern of the concerns from some of the people who contacted us.

In conclusion, these are just some of the matters that were raised with me by lawyers, union members, workers compensation experts and even members of the Labor Party. Many unions and law firms that represent workers raised concerns about the legislation in their 2021 submissions. I will read them out. They included the Law Society of WA, the Rail, Tram and Bus Union Western Australia PTA branch, the Community and Public Sector Union–Civil Service Association of WA, the CFMEU WA, Slater and Gordon, UnionsWA, Australian Lawyers Alliance, Maurice Blackburn and Eureka Lawyers. To the best of my knowledge, many of those concerns have not been addressed in the proposed legislation. We were told that perhaps another concern is the insurance lobbyists have been quiet about this bill and that may raise the alarm that some parts of the bill will benefit employers and insurers by reducing their liabilities more than it will benefit workers. As I stated at the start of my contribution, I am not an expert in this area, but it was good for us to meet with and talk through the legislation with a range of stakeholders. It is an honour for me today to present some of the information that they took their time to present to us. I hope that as we go through this bill clause by clause we can unpack some of these things and make sure that this legislation really does improve conditions for workers.

HON MARTIN ALDRIDGE (Agricultural) [5.20 pm]: Welcome back after the winter recess. As we embark on the spring session, I think it was Hon Dan Caddy who encouraged me to make my contribution in the five minutes that I had to speak on this legislation in June. Unfortunately for him, it will take a little longer than that this afternoon because the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023 are very important bills and they have been a long time coming. I talked a little bit about that in my introductory remarks in June when I said that I intended to confine my interest in the Workers Compensation and Injury Management Bill 2023 Bill to some discrete areas that relate to my shadow ministerial responsibilities of volunteering and emergency services in particular.

In June, I noted from the outset of my contribution that in Western Australia volunteers are not workers for the purpose of the Workers' Compensation and Injury Management Act. I am not sure whether the parliamentary secretary will respond to this in his second reading reply or whether perhaps we will tease it out at clause 1, but in June I asked whether consideration was given throughout this process to the merits of including volunteers, or at least some volunteers, under the WCIM act, keeping in mind that we are introducing a new bill to replace the existing scheme. It is interesting that in the twenty-eighth edition of the 2021 document published by Safe Work Australia titled *Comparison of workers' compensation arrangements in Australia and New Zealand*, the heading for table 4.3 is "Workers' compensation coverage for volunteers". It is quite helpful to look through that three-page table because we can see that Western Australia is an outlier in almost every respect from the other states and territories and the commonwealth on the extension of workers compensation laws, particularly to volunteers who deliver a government function. Those volunteers are largely found in the emergency management space in the emergency services sector. As we go through this list, we can see that Western Australia is the only jurisdiction that stands out because it says —

> No provision under the *Workers' Compensation and Injury Management Act 1981*.
>
> Some volunteers are covered for personal injury under private insurance.

I say that because obviously what has also transpired during the long gestation period that has resulted in the new workers compensation bill before us is that the state has implemented the new Work Health and Safety Act that defines volunteers as a worker. That relates to not just volunteers delivering a government function, but all volunteers. I know that the two pieces of legislation are not necessarily connected, but they are related in many respects to workplace safety and also when an injury occurs and compensation is required. I do not have a particular view either way, parliamentary secretary; it is perhaps just a statement of fact that Western Australia seems to be an outlier. That does not necessarily mean it is a strong argument to conform with the rest of Australia either. I am not someone who necessarily says that we should do something because everybody else is doing it or has done it. It will be interesting to explore further whether or not or to what extent that was contemplated in the drafting of the fairly significant reform that we have before us.

As I said in June, certainly with respect to emergency service volunteers, those protections are derived from the Fire and Emergency Services Act 1998. That is one of the acts that will be amended by this bill. In June, I also gave notice to the parliamentary secretary and the government that I would be particularly interested in focusing some of my consideration of the bill on the Fire and Emergency Services Act, which this bill will amend and for which there are amendments on the notice paper. The FES act, in effect, provides a duty to insure volunteers for personal injury. I would probably best describe that, to a significant extent, as being similar to workers compensation, although it is personal injury insurance. I only have to draw members' attention to part 6B of the Fire and Emergency Services Act 1998 in particular, which is titled "Compensation for injury, loss or damage". In that part there are 33 references to the Workers' Compensation and Injury Management Act. When we look through that, we can see that it covers the definition of "compensable injury", "injury", "medical practitioner", "specified disease", "FES employment", "firefighting employment", "firefighting service" and "non-FES employment" under the application of WCIM act. For example, section 36ZO(a) says —

> (a) a reference in the WC&IM Act to a worker is to be read as a reference to a volunteer;

Effectively, this bill will adopt the provisions of the WC and IM act, or what I refer to as the WCIM act because I think it is simpler, and result in an agency, whether it be state or local, having a duty to insure a volunteer as though they were a worker and as though the Workers' Compensation the Injury Management Act prevailed for them. Obviously, there is a significant relevance in my mind to the connection between the new workers compensation scheme that is being contemplated under this bill and its application to volunteers because, to a significant extent, we are, through the FES act, inheriting those provisions and applying them to volunteers for the protection of volunteers. Another example of that is in schedule 4A of the Workers' Compensation and Injury Management Act, which is a schedule of specified diseases. When the government regulates, as it did in May, to add diseases to that schedule in the WCIM act, it automatically applies to volunteers under the Fire and Emergency Services Act. That is just one example of many where the FES act effectively outsources the key decisions about volunteers and the protection of volunteers to the workers compensation scheme.

At this point I want to make a voluntary disclosure before I go into some deeper examination of some of these issues. As I said in June and many of us probably have been, I am a person who is a former career firefighter who is capable of making a claim under the current workers compensation act and under the future workers compensation act. Similarly, I am a person who is capable of making a claim under the FES act as a currently serving volunteer. Other members in this place are probably in a similar position arising through their volunteer service through an emergency service organisation. I want to make clear that I am not a person who is subject to a diagnosis or a claim, currently, which is the subject of either of those acts.

I will start by talking about the firefighting cancers. I note with interest we have a second version of the supplementary notice paper today. Obviously, we have not had the opportunity to consider the government's amendments —

Hon Matthew Swinbourn: For your information, they're just technical amendments from PCO.

Hon MARTIN ALDRIDGE: Okay. It looks like there are five clauses where there are now government amendments. As I understand from the interchange, they are technical amendments based on advice from the Parliamentary Counsel's Office.

Hon Matthew Swinbourn: I think it came from the commencement of the legislation, so there were consequential changes. They do not go to the policy of the bill, if I can put it that way.

Hon MARTIN ALDRIDGE: Okay. Obviously the first amendment on the SNP is the one standing in my name at clause 11 in relation to the issue of firefighting cancers. If we go back a little bit to look at how this issue has evolved, in 2013, I think Western Australia may have been the first jurisdiction to follow the commonwealth by adding a presumptive protection for prescribed firefighting cancers at a state level. The following year, in 2014, that was extended to volunteers because, at the time, as it is now, volunteer protections are primarily derived from the FES act and for career employees they are from the WCIM act. At a federal level, reform commenced circa 2010. It was a private member's bill by the Australian Greens member for Melbourne, Adam Bandt, who was elected in the 2010 federal election. It was a private member's bill that passed into law with unanimous support. It was one of

only seven private members' bills to be passed in two decades in the federal Parliament. I was working in Canberra at the time. I was not a member of Parliament until 2013 but I recall after the federal enactment, a private member's bill was introduced into the Legislative Assembly by Hon Margaret Quirk, the then member for Girrawheen—I am not sure of the electorate.

Hon Darren West: The member for Landsdale.

Hon MARTIN ALDRIDGE: It is not yet Landsdale, is it? It is Landsdale now. She was then the member for Girrawheen. It was a private member's bill introduced by her on 29 February 2012 called the Workers' Compensation and Injury Management (Fair Protection for Firefighters) Amendment Bill 2012. At the time, I was not an elected member. I remember advocating for support of that bill, which effectively adopted the commonwealth provisions at a state level. Of course, in 2012, there was a Liberal–National government in Western Australia. The relevant minister at the time was the then Minister for Emergency Services, Troy Buswell. He opposed the reforms that were proposed in the private member's bill. I was able to convince the then National Party room to support the private member's bill. When we communicated that to the minister, it was interesting how quickly it became a position of the government. History will show that the government brought forward its own bill. It had some differences, but in effect it was the same. It gave effect to adopting those national provisions at a state level. I want to recognise that perhaps the official record recognises that it was the government that achieved the reform. I certainly attribute, to a significant extent, the initial movement for this legislation at a state level to the then member for Girrawheen, Margaret Quirk, and her role in bringing a private member's bill to the Assembly at that time. That legislation, which was enacted by the government in 2013, initially established 12 cancers in schedule 4A. The thirteenth provision in that schedule is to allow for further cancers to be enacted by regulations. That regulation-making power was not used for the 10 years following the legislation's enactment, until May this year. It was 6 May—a very important day because it is my birthday—and it was —

Hon Matthew Swinbourn: How old were you?

Hon MARTIN ALDRIDGE: I never get this question right but I think I was 41.

The regulations came into effect the day after, on 7 May. That is the day on which we recognised International Firefighters Day. Annually, we hold a memorial service at Firefighters' Memorial Grove in Kings Park and we recognise the men and women who have served Western Australia and who have given the ultimate sacrifice in their service. It is interesting when we look at the evolution of the wall and the names that are on it, increasingly the names of the men and women being added are as a result of the loss of their life through their exposure to the hazards of firefighting and, ultimately, the loss of their life to some medical event, often cancer. In May this year, two additional cancers were added: malignant melanoma and malignant mesothelioma. Currently, as of today, there are not 12 but 14 cancers prescribed pursuant to the WCIM act and therefore inherited by the FES act and applied to volunteers. Obviously, there are some different provisions about qualifying, which I will come to in time, between career and volunteer service but, in effect, the cancers are the same.

I want to also reflect on some other things that have happened since 2013. Probably the most significant was a decision by the International Agency for Research on Cancer, which is a body of the World Health Organization, that on 1 July 2022 classified firefighting as carcinogenic. I will read from its press release 317 of 1 July 2022 —

> The International Agency for Research on Cancer (IARC), the cancer agency of the World Health Organization … has evaluated the carcinogenicity of occupational exposure as a firefighter.
>
> A Working Group of 25 international experts, including 3 Invited Specialists, from 8 countries was convened by the *IARC Monographs* programme for a meeting in Lyon.
>
> After thoroughly reviewing the available scientific literature, the Working Group classified occupational exposure as a firefighter as *carcinogenic to humans* (Group 1) —

That being the highest level —

> on the basis of *sufficient evidence* for cancer in humans.

In a section under the heading "Exposure of firefighters" it states —

> There are more than 15 million firefighters worldwide. The term "firefighters" encompasses a heterogeneous group of paid and unpaid workers in industrial, municipal, and wildland settings, at the wildland–urban interface, and in other situations. In some settings, firefighting exposures have become more prevalent over time, because of the impacts of climate change.
>
> Firefighters respond to various types of fire, such as structure, wildland, and vehicle fires, as well as other events (e.g. vehicle accidents and building collapses).
>
> Firefighters are exposed to a complex mixture of combustion products from fires (e.g. polycyclic aromatic hydrocarbons, volatile organic compounds, metals, and particulates), diesel exhaust, building materials (e.g. asbestos), and other hazards (e.g. heat stress, shift work, and ultraviolet and other radiation). In addition,

> the use of flame retardants in textiles and of persistent organic pollutants (e.g. per- and polyfluorinated substances) in firefighting foams has increased over time.
>
> This mixture may include many agents already classified by the ***IARC Monographs*** programme in Group 1 (***carcinogenic to humans***), Group 2A (***probably carcinogenic to humans***), and Group 2B (***possibly carcinogenic to humans***). Dermal exposure, inhalation, and ingestion are common routes of exposure, and biomarker studies among firefighters have found enhanced levels of markers of exposure to polycyclic aromatic hydrocarbons, flame retardants, and persistent organic pollutants.

That was a lengthy quote from a lengthy media statement from the IARC of the World Health Organization in July 2022. For many years, if not decades before this, we knew that the hazards of firefighting were there, but this scientific review by this organisation now puts it well and truly beyond doubt.

As I said, we saw Parliaments act about a decade ago. I think that now every jurisdiction in Australia has followed the commonwealth in adopting presumptive protections for firefighting cancers. The World Health Organization has since elevated the classification for the occupation of firefighting to the highest level. Late last year, the federal Labor government responded to this. Since then the Tasmanian Liberal government and, to some extent, the Victoria Labor government have also responded. In a press release from the federal government on 19 December 2022, the Minister for Employment and Workplace Relations; Arts, Hon Tony Burke MP said —

> Firefighters exposed to cancerous smoke, toxic chemicals and fumes in the line of duty will have improved access to workers' compensation.
>
> Amendments to the Safety, Rehabilitation and Compensation Regulations 2019 will expand the list of prescribed cancers to include primary site lung, skin, cervical, ovarian, penile, pancreatic and thyroid cancer and malignant mesothelioma.
>
> This follows changes and updates relating to the firefighter provisions of the Safety, Rehabilitation and Compensation Act 1988.

The media statement goes on. That was the federal government's response in December 2022. I mentioned that South Australia responded similarly, as did Victoria, but not to the same extent. When I placed my first amendment on the notice paper, the government had responded to and added two of the eight cancers—in fact, it was 1.5 of the eight cancers because malignant melanoma is a subset of skin cancer, so it does not cover all skin cancers. The position of the government in May, which was announced in April of this year, was to add those two cancers noting that melanoma was a subset of skin cancer, which was adopted by the commonwealth.

A rebuttable presumption recognises that with respect to prescribed diseases requiring an employee to demonstrate on the balance of probabilities the link between exposure to firefighting and injury, in this case cancer, is not without significant challenge. Obviously, with many forms of injury it can be easily demonstrated that the injury occurred to a worker in a workplace delivering a work function. That is much more difficult to do with an occupational hazard such as cancer. The point that I would like to come to in time is around the eligibility requirements to do that because in many cases the qualifying periods are arbitrary. The scientific reviews commissioned by the commonwealth basically pointed out that they could not find any scientific justification for the qualifying periods set in the legislation. I am not sure the extent to which the state review considered this but the commonwealth review certainly did. The best that the commonwealth could demonstrate was that we adopt effectively a model or a scheme from Canadian provinces and introduce it into an Australian context. Obviously exposure to the hazards of firefighting is not consistent. Some of the cancers listed in schedule 4A of the act have considerable qualifying periods. For example, primary site oesophageal cancer currently has a 25-year qualifying period. A person has to be a firefighter employed and exposed to the hazards of firefighting for 25 years in order to qualify for presumptive protection for oesophageal cancer. This bill changes that provision by reducing the qualifying period for that cancer to 10 years, I think. If we think about the work that firefighters do, it varies significantly. A firefighter could go to a very significant event and be subject to very significant exposure that, in terms of the contribution that it might make to a person's injury, may be far more significant than the following 10 years of exposure. If I get time, I will reflect on this issue and particularly the commonwealth review of the Safety, Rehabilitation and Compensation Act, which goes to this issue of eligibility requirements, because it is even more complex when we get to volunteers. The presumptive protection assumes that if a person qualifies for the protection, the injury or cancer they have developed was sustained by the nature of their work and, therefore, is an injury that is compensable under the Workers' Compensation and Injury Management Act. That claim is not unfettered or unrestricted, and it effectively shifts the burden or onus of proof to the employer to disprove that is the case, and in many respects, these employers are government agencies.

As I mentioned, two legislative reviews were conducted, by the commonwealth in 2019 and by the state in 2022. I do not think the state review was a statutory review; it appears to have been commissioned by the government—by the minister—to ask for some independent scientific examination of the issue, I suspect in light of the commonwealth's decision. It does not appear to be a statutory review, and I am not sure whether a statutory review existed for the

provisions that were commenced in 2013. If my memory serves me right, there might have been a statutory review clause, and that was typically a five-year clause. I think that the review was undertaken, the outcome of the review was that the scheme was working satisfactorily, and the review did not recommend any changes at that time. That is the best of my recollection. The 2022 state review was something that was commissioned on the initiative of the minister.

I would like to spend some time talking about three issues, but time is rapidly escaping me. I have touched on qualifying periods, and I think there will be an opportunity during the committee stage to examine them more fully.

I will refer more extensively to the Attorney-General's Department's commonwealth review. I think it was a more fulsome review of the operation of the Safety, Rehabilitation and Compensation Act, as opposed to the discrete questions that were asked by the government for the state document. For example, in the "Findings" section, the commonwealth review states —

> Dr Driscoll stated that "there is very limited information in the published literature that provides guidance as to what a minimum exposure qualifying period should be and why this would vary between cancers" and "there is no published evidence that provides useful guidance as to what the minimum qualifying periods should be for any of the cancers".
>
> While Dr Driscoll found no evidence to support the specific length of the qualifying period prescribed for each disease, he also could not find any reason to justify why the qualifying period for oesophageal cancer should not be consistent with the other prescribed diseases. The qualifying period for oesophageal cancer is at least 10 years longer than for all other prescribed diseases. Accordingly, Dr Driscoll recommended that consideration be given to reducing the qualifying period for oesophageal cancer from 25 years to 15 years.

This bill is not changing the qualifying period. Well, it is changing qualifying period for oesophageal cancer—I will get the pronunciation by the end—but it is not changing the requirement for a qualifying period, notwithstanding that the commonwealth review, particularly, found no scientific evidence to support the qualifying periods that apply to each cancer. I think it was the same review that talked about whether there were better ways of monitoring individual exposure, and it was quickly discounted because of difficulty due to the number of firefighters. There are 15 million firefighters worldwide, according to the World Health Organization, and even Western Australia has a significant number. I would argue, and I think the review has argued, that being able to monitor and record individual exposure would be a very difficult or impossible task, so I think it is probably the most perfect imperfect solution for how somebody qualifies for these legal protections.

The other issue I want to touch on is gender, which was also highlighted in both the commonwealth and the state reviews. I want to read a section from page 19 of the commonwealth review, which states —

> Nearly all of the studies included only male firefighters or presented results only for male firefighters. This was usually because of the low number of female firefighters and the low number of female firefighters with cancer, which made the analysis of risks for females too imprecise to be useful. The main exception was the study of female volunteer firefighters, but this study was hampered by a relatively short period of follow-up.

The scientific studies are longitudinal studies that effectively examine large firefighting cohorts—as large as they can get them—over a very long period. They assume long periods of exposure, and then they compare the incidence of certain cancers in firefighters with the incidence in the general population. They then draw assumptions or conclusions about the extent to which there is a strong or a weak correlation between a firefighter's exposure when compared with somebody who works in another occupation.

One thing that is very hard to quantify is the healthy worker effect. I do not think I read it in any of these reports, but it certainly was heavily discussed in 2013 or 2010, which is when the commonwealth first acted. The healthy worker effect is that, generally speaking, firefighters are healthier specimens than the general population, but they work in a very dirty occupation. Therefore, if they were not exposed to the hazards of firefighting, we would expect their incidence to be lower when compared with the general population cohort.

Unfortunately for female firefighters, to build the scientific body of evidence will probably take many years, many cancers and many deaths before we start to see the literature responding to say whether there is a strong correlation between female cancers, particularly female reproductive cancers, and female firefighters' exposure to the hazards of firefighting as an employee or volunteer.

Currently, we have 20 cancers prescribed at a commonwealth level. When I moved or gave notice of these amendments in June, I said that we had 14 cancers prescribed in Western Australia. Since then—of very late; I think it was on Saturday—we have had a government announcement that the government will now adopt the full 20, the commonwealth standard, for Western Australian firefighters.

Hon Dr Steve Thomas: It was a big weekend for backflips.

Hon MARTIN ALDRIDGE: It was a big weekend. Maybe we should host the Commonwealth Games, Leader of the Opposition.

Hon Dr Steve Thomas: The gymnastics would go well.

Hon MARTIN ALDRIDGE: We certainly have some strong contestants for the double pike off the diving board.

When the shadow Minister for Industrial Relations and I announced in June that the opposition is committed to the 20 cancers, I said that I would be the first to welcome the government joining us in that view, and I stand by that. I am not quite sure why it took the government this long. I am not quite sure why we have done two sets of regulation changes, in May and in July, that could have dealt with this. Now, we have priority regulations to give full effect to the national standards, as supported by the opposition in June. I welcome that fully. Without that, we would have had a situation in Western Australia in which firefighters working alongside each other potentially could have had different legal protections. Given the time, I might pause.

Sitting suspended from 5.59 to 7.00 pm

Hon MARTIN ALDRIDGE: Time is rapidly escaping me, but I was just about finished on the issue of presumptive firefighter cancers. In question time today I asked the parliamentary secretary representing the Minister for Industrial Relations a question about this very issue. As members might be aware, the government amended the regulations in May to add the two cancers that I mentioned—primary melanoma and malignant mesothelioma. There is also a new presumption in relation to post-traumatic stress disorder, which is something that I will come to in a moment. The government had the opportunity in May to achieve equity with the national standard and it did not. It then, of course, had another opportunity in July—very recently—to do so. The substance of the July regulation changes was to fix an error arising from the May regulations. In respect of PTSD there has for some time been a presumption for ambulance paramedics. I have asked many, many questions in this place about this issue. That was finally extended in May, but not in the same terms. In my view, the government actually forgot about communications systems officers—the people who take 000 calls in communications centres—in respect of presumptive PTSD protections for the Department of Fire and Emergency Services, even though it was applied in early 2022 to those officers' equivalents in the ambulance service. The July regulations were therefore designed to fix that error.

Today in question time I asked what new information had been made available to the Labor government that was not known on either of the earlier occasions; I also asked the minister to please table any such information. The record will show that the information was tabled, and the only new information that seems to have been provided to the government was further consultation with the United Professional Firefighters Union of WA, United Firefighters Union Australia and WorkCoverWA, which has been campaigning for this very initiative for some time. That does not necessarily explain why the government did not do this in May or July. Now it is apparently a priority for the government to do so, I suspect because the opposition is going to move amendments to give effect to this very matter.

In question time today I asked another question, this time to the Minister for Emergency Services, about the operation of these regulations. I think another error has been identified. Maybe we will get to this parliamentary secretary; I am not sure which agency is responsible for drafting these regulations and which minister or their office is responsible for reviewing them, but I think this could be error number two. There is a position in Western Australia called the community emergency service manager—CESM. Seven of them are employed by DFES; 27 of them are employed by local government. They are effectively a creature of DFES, but the funding mechanism is that predominantly outside the metropolitan area CESMs are employed by local government but funded to some extent by DFES through the emergency services levy. Seven are employed by DFES and 27 are employed by local government. On my assessment, another inequity has been created by these regulations whereby those employed by the state have PTSD-presumptive protection and those employed by local government do not, and they are doing exactly the same job. If I am wrong, I am pretty sure the minister would have said I am wrong today. Instead, he said that questions relating to the employment terms and conditions of CESMs should be directed to the local government by which they are employed. That pretty well gives me the answer, I think, that I wanted, but if I am wrong I am happy to stand corrected. I hope to stand corrected on this issue, because it is another inequity among people serving on the frontline. We are discriminating against them based on whether their employer is the state or a local government doing the same job, delivering the same function to make our communities a safer place.

The last area that I wanted to touch on, and I already have to some extent, is the issue of post-traumatic stress disorder. I spent a fair bit of time talking about firefighter cancers. Not every firefighter is going to develop cancer, but I suspect that many will be exposed to the impacts of trauma. This year will be my twenty-sixth year serving as a firefighter in one form or another. Attending traumatic events is really just part of the job. People do not call 000 when they are having a good day. The history of this issue in Western Australia is that on 26 December 2021, otherwise known as Boxing Day, the government issued a press release. Bizarrely, the government issued a press release on Boxing Day 2021. It announced PTSD-presumptive protection for St John Ambulance paramedics, ambulance officers—this time it got the regulations right—and communications systems officers, who are the people taking 000 calls and dealing with the people who are often in distress.

Interestingly, volunteers were not within the scope of those regulations because, as I said earlier, volunteers in Western Australia are not protected by the Workers' Compensation and Injury Management Act, unlike in other jurisdictions. But even the ambulance service is not protected by the Fire and Emergency Services Act because it is effectively delivering a function for a government contractor—in this case, a very important one in St John Ambulance. These regulations had effect from 1 February 2022. The issue that I wanted to come to was that there was a considerable period during which an inequity existed between those serving in the ambulance service and those in other fire and emergency services.

I asked question without notice 84 on 16 February 2023.

I asked —

> I note that it has now been more than 380 days since the government provided a rebuttable presumption of work-related post-traumatic stress disorder for ambulance workers claiming workers' compensation.
>
> (1) Why has the government not extended similar protections to firefighters?

The answer by the Minister for Emergency Services was —

> We are proud that the McGowan Labor government delivered on its election commitment to introduce a PTSD presumption for ambulance workers. Although the government is open to extending the PTSD presumption to firefighters, it is introducing a bill to modernise WA's workers' compensation laws and that bill includes a provision to list all presumptive diseases and regulations. The appropriate time to consider whether the PTSD presumption ought to be extended is when regulations are being developed to support the bill.

Of course, that was in February. As I said earlier, in May, the government used existing regulatory-making powers to address the inequity between ambulance officers and firefighters, excluding volunteers, and they have not waited. Back in February the excuse was, "We have to wait for this bill to pass because we are modernising the workers compensation laws and the right time is to wait." We had the government announcement in April and the regulations on 6 May. As I recall, I think the error in those regulations was the client services officers, the 000 call takers, who were missed, which was fixed in July.

There were 459 days in Western Australia when ambulance officers, ambulance workers and paramedics were given a presumptive PTSD protection, and the government defended its position that it was not extending those same protections to firefighters and other fire emergency service personnel at that point. The irony is that in the time leading up to this period, around Boxing Day 2021, there were firefighters driving ambulances. I am not going to call it a joke, because it is too important to be a joke, but one cannot make this stuff up. There was literally a firefighter in one seat of an ambulance and a paramedic in the other seat. There were 77 firefighters. One was protected for PTSD with the rebuttable presumption but the other one was not for 459 days in Western Australia. Volunteers are still excluded from the government's regime, which is an issue that I want to address through the amendments I will bring to the house.

In my experience of over 26 years, in many cases it is often volunteers serving in regional and remote locations who have a higher rate of exposure to trauma. That is not to diminish the service of employees, workers and career people—I was one of them—but certainly in my personal experience the trauma that I experienced as a volunteer was 10 times that I experienced as a career officer, and often with less support. Something I will come to in Committee of the Whole is an examination of the way that we support those people who have experience with trauma. Another example, when looking at road trauma, is that 64 per cent of road fatalities occur in regional Western Australia, where the primary fire and emergency service capability response is almost exclusively volunteers.

The government's position is that volunteers cannot be protected by the Workers' Compensation and Injury Management Act. However, keep in mind we will actually amend the Fire and Emergency Services Act through this bill, so there is the scope to also provide equity and protection to the volunteers in Western Australia who deliver the same role, function and response, day in and day out, 24/7. For ambulance volunteers who are not covered by the FES act, of course the state has just renegotiated the contract with St John Ambulance WA. This could have been a function of, and perhaps it is, the contract in which the government has recently modernised—the government's language—with St John Ambulance. That is, the protection of volunteers in the same way as we protect those people who are doing the same job but are getting paid for it.

I have asked many, many parliamentary questions on the issue of post-traumatic stress disorder and protections. Similar to my experience from 2010 to 2013, there are often the same arguments about costs, insurance and the increasing number of claims: the sky is going to fall in and the world is going to end. When the impact of rebuttable presumptive protections has been monitored over the course of the last decade, that has not occurred and it should not be, and is not, an argument, because we are prepared to do it for people we pay, but we are not prepared to do it for those people we expect to do it for nothing.

I think there will be a real opportunity in the next week or so for us to address this inequity issue and to make sure that frontline fire and emergency service responders in particular are treated compassionately. There are very good reasons, and the government's media statement outlines many of them, for why there should be a rebuttable presumptive protection for PTSD injury in Western Australia.

HON KATE DOUST (South Metropolitan) [7.17 pm]: Tonight I am indeed pleased to have an opportunity to make some comments on the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023. As has already been referenced in this chamber in speeches by members, this bill has had an extremely long gestation. It goes back to 2009, with the Liberal–National government of the day, under the stewardship of Troy Buswell, as the minister responsible at that time, kicking off the process for the review of the 1981 act. Obviously, during that eight-year period, progress was not made under a number of ministers, even through to Minister Mischin, culminating in the end of the Liberal government. I perhaps have a bit more experience of this than most members in this chamber because I was the shadow Minister for Industrial Relations during that period. We constantly raised questions and made speeches about this issue and tried to get the last minister in particular to deal with the issue, as well as with the health and safety legislation, which the government sat on for an enormous period and did nothing about in the end as well. I will talk a little more about why I think it is important that those two go hand in hand.

I want to acknowledge the fact that this government has pursued both these areas quite vigorously in the last six years. I listened to comments made by Hon Martin Aldridge either today or in the first stage of his speech some time ago when he made reference to the fact that perhaps this area of interest was not as great a priority as some other matters. In 2018, the government made changes to workers compensation legislation to address the issue of financial payments to partners. That came about after the very tragic deaths of two young Irishmen at a Jaxon Construction workplace. The de facto partner of one of them, whom he had been with for just under the two-year period, was not entitled to anything to support her after his death. The law was changed primarily because of that decision. I recall that very clearly because I met with the parents of those two young men and with that partner and she was very determined that although it would not be a benefit to her, it would be a benefit to other people down the track. The government made those changes and it has since made significant changes to deal with deaths in the workplace. It has now moved on to this matter. It has made the occupational health and safety changes and now we have the changes that are in front of us today.

This is not something I normally do, but I congratulate the Minister for Industrial Relations. I am always loath to do that in case people say that I have a vested interest, but from time to time I think it is quite and good and healthy —

Hon Dan Caddy: Every now and then.

Hon KATE DOUST: Every now and then. Every once in a while it is good to acknowledge the extremely hard work that he does in this space. Having worked for a long time in the trade union movement and in health and safety and workers compensation for the Shop, Distributive and Allied Employees Association of WA, I know that Bill is extremely passionate about these issues and has been at the coalface of having to take these issues from start to finish for many members of the trade union movement. This has been an important piece of work for him to deliver change for the workers of Western Australia. I thank and congratulate him and his staff. I know it has been a colossal piece of work that has included an extensive consultation process with all the stakeholders and working with unions in particular. I engaged with a number of unions in detail about the bill throughout our period in opposition and since we have been back in government. As with every bill that we deal with, we will not have a perfect piece of legislation and we will not be able to make everyone happy about every element of the legislation, but I think that the bill in front of us certainly cleans up, if you like, the legislation that we have had in place for a long time, which has had a lot of add-ons to it and has become quite a clumsy tool. I recall in the early 2000s when John Kobelke was the minister and we made a significant change to the workers compensation legislation. To be able to bring in a bill that modernises workers compensation and puts things back into the boxes and in the places they need to be to make it a more user-friendly document for all who are involved in the process is very significant. I love how when we talk about modernising legislation, we make sure that it is several hundred pages long. Anything to do with workers always has to be multiple volumes of documents. It is never simple when trying to fix things for working people. This legislation is indeed a very significant document, as we work through it, but when members go through it, they will see that the new provisions are not as voluminous as they would expect. There is a lot of movement and shifting provisions into a more sensible placement and there are a number of new criteria. I will go through those in a bit more detail.

However, I thought I would use part of my time on this bill—I seek members' indulgence for this—as a very appropriate opportunity to acknowledge a former member of the other place whom I held in high regard. In fact, I had to dig into a very archaic piece of work today—my inaugural speech back in 2001—because I referenced Judyth Watson in that speech. Unfortunately, Judyth passed away on 9 July and her funeral was held on 18 July. We get to go to a lot of those types of events, and I must say that the funeral reflected Judyth's elegance, wit and her very lovely personality. It was a room full of warmth and it was one of those very nice, beautiful send-offs. I thought

it was very appropriate for her. Judyth was a member of the other place for three terms. She was the member for Canning from 1986 to 1989 and the member for Kenwick from 1989 to 1996. He seat was then abolished and the new seat of Southern River was created. She ran for that seat but unfortunately missed out by a few hundred votes. I recall going out doorknocking with Judyth in 1996 when I was a candidate for the East Metropolitan Region. She was a very good doorknocker. Members know when they sometimes make a mistake. I have a clear memory about this, because Judyth always seemed to be a very calm person. I made the mistake one day of crossing the threshold into a house. The golden rule is not to go over the doorstep. Judyth had given me very clear instructions not to do this, but I knocked on this door and had this fellow answer—I still remember him wearing khaki shorts and that was it—and he said, "Come in, come in; I've just had this article published in the paper today", so I went, "Oh, okay", and I went in. I could see Judyth just down the road and I thought it was okay, so I crossed the threshold. The door was promptly shut and locked. Then he said, "I've got 14 guns in the house." I was starting to get a bit nervous! Anyway, it took me about half an hour to get out of the house, at which point Judyth let me know in no uncertain terms how stupid I had been to cross the threshold! It was a very valid reason and I have never done it since. She worked extremely hard.

The reason I want to talk about Judyth in the context of this bill is that as well as having been a minister, worked within the trade union movement for the miscellaneous workers' union at the time in the area of health and safety, worked in government as an adviser and been an academic at the University of Western Australia, having worked in a whole range of areas, she completed her PhD in 1982 on the subject of workers compensation in Western Australia. If we think about the context, she would have completed her PhD just after the Workers' Compensation and Injury Management Act 1981 had come into effect. She was absolutely grounded in this area and later was extremely active and involved at both the state and national level in the area of occupational health and safety. As I referenced in my first speech—I will not go back through the detail—she was very clear that, in terms of health and safety, if workers were engaged in the discussion about their workplaces and in talking about safe systems of work and how work was conducted, the potential for problems would hopefully be reduced because they knew what they were doing and it would always enhance the process.

I shared that view because that was the work I was doing at the time in the trade union movement—health and safety, and workers compensation. The first area was one that I absolutely enjoyed, but I found the second area extremely stressful. My colleague Hon Martin Pritchard would have been the same, and I am pretty sure my colleague Hon Matthew Swinbourn had the same experience. With workers compensation, you are dealing with people who, through no fault of their own, have had either a simple incident at work that has caused an accident and an injury, or a catastrophic and significant issue in the workplace. Regardless of where they fit on the sliding scale of injury, both can have a significant, life-changing impact. A number of us have seen that. It can be in terms of whether someone can return to the work they were doing or have to adjust it, or, if it is a significant impact, whether they can return to work at all. It can be debilitating and have flow-on impacts on other elements of life. It is like waves moving out in terms of how it impacts on a person's work, family, home life and community. Judyth got that. She understood the relationship between those two areas of work. She was very passionate about that and made a significant contribution, both before she came into Parliament and certainly during her time in Parliament. I wanted to acknowledge her for that. I think she would have been very pleased to see that a Labor government is again at the forefront of modernising this legislation. As I said, I imagine that this is not going to be the last time a Labor government looks to improve the lot of working people in this area, because there is always more work to be done to improve health and safety.

Before I finish talking about Judyth, the other thing for which I had the utmost respect for her as she moved away from parliamentary life and into other areas that were her passion was her work with the refugee community in Western Australia. She established both CARAD—the Centre for Asylum Seekers, Refugees and Detainees—and CASE for Refugees. She continued to work intimately at both a state and federal level for refugees and asylum seekers. My colleagues and I in this chamber who are involved with the Parliamentary Friends of Refugees worked with Judyth right up until last year in fact on issues that we were pursuing with the state government. She was very active with that group. I wanted to acknowledge her contributions to those very important areas. I want to pass on my condolences to her brother, her family and her friends. I hope that her memory is a blessing to all those who knew and loved her. Certainly, I want to acknowledge the significance of the work that she put in to blueprint where we are landing today with this bill. I wanted to take this opportunity to acknowledge that pioneer in this work so these changes can be put in place.

Coming back to the detail of the bill, we have already talked about how we have been waiting since 2009. There has been extensive consultation. Members have only to go to the website to see the vast array of submissions and comments that have been made. For my part, I want to acknowledge people like Owen Whittle who is the current secretary of UnionsWA and Ben Harris from the Shop, Distributive and Allied Employees Association of WA, as well as some of the law firms like Slater and Gordon and Eureka Lawyers who have put in quite extensive submissions. I also acknowledge the conversations I have had with my colleagues in other unions such as the Construction, Forestry, Mining and Energy Union, the United Firefighters Union Australia, the Transport Workers'

Union and others, which I will come back and reference a little bit later on. As I said, some very simple changes are being made. When we talk about modernising, the bill that was set up in 1981 was a vastly different beast because work was done in a vastly different way. I do not think we even had mobile phones back in 1981. I think we would have only seen them in sci-fi movies. We certainly did not have extensive use of computing. We did not have a gig economy. Nobody would have thought of any of those things, or they might have been thinking of them, but they were not in practice. This legislation modernises the definition of workers, picking up on the inclusion of labour hire firms and dealing with issues around a gig economy. It is a much more embracing piece of legislation. It identifies gaps that have previously existed for workers who are quite often highly casualised, low paid, or commission based. They might be subcontractors who would not have been eligible to be covered. It also includes young workers. Sometimes these days, sadly, much older workers are having to do the same types of work. In that regard, the fact that this bill captures the new types of work is very important. It sets a baseline because we do not know how those types of jobs are going to evolve over time. The issue of labour hire, separate from the gig economy or running along with it, is also very important because we have seen a significant growth in the use of labour hire across the private and public sectors. Again it is the precariousness of employment with labour hire where the labour hire company basically has all the benefits but none of the responsibilities. It leaves the worker in a position where, if something goes wrong and an injury happens, they are not covered. If they are casual and they are not sure what is going to happen, they are extremely vulnerable and highly unlikely to either make a complaint or lodge a claim. They will not have the support they need to work their way through the system. I think the fact that this has been identified in a range of submissions and picked up in this legislation is very important. It an area that, again over time with the evolution of the changes to workplaces, will continue to evolve.

Another change that the government has brought in is to the step-down point, which has been extended to 26 weeks before there is a change. That is an important change. One of the things we used to see in the retail sector, which was low income work done predominantly by females—my friends who work for the missos would know a similar thing—used to be that when they got to 13 weeks, they would start to see a decline in the amount of money that people on compensation would get. It was an extremely stressful situation. If they were paying a mortgage, paying rent or had a family, people would be looking to that period. When engaging with them and trying to work through a workers compensation claim, the stress levels were incredible. Even before we got to 13 weeks, there would always be issues with some of the insurers delaying decisions or delaying payments, which then exacerbated the stress of the person at the tail end, who was also trying to recover from whatever injury they had. The government has addressed the step-down point in the bill, but I imagine that that area needs more work. The bill is about providing people with a safety net and more security. The government has also tightened the requirements for processing a claim, which is very important. The legislation will make the process more timely and appropriate so that it cannot be used as a tool to cause distress. Earlier tonight, I told Hon Martin Pritchard that these are the things that can send people right over the edge. A man from one of our warehouses—I forget which one—was right over the edge. He turned up to our office with a gun. He was suicidal—he had had enough. He had been treated so badly by his employer and the insurer that he had lost it and he had to be talked down. I remember that some people would be beside themselves. A fellow had an accident at the old Bowens warehouse in Cannington. He had worked for the employer for many years. He had some mental health issues as well. The employer decided two days before Christmas that it was going to stop his compensation and sack him. The employer said, "We're getting you out here to talk to him because we think he might top himself." The employer wanted to sack this guy, who had been on workers compensation, two days before Christmas. The employer said, "We want you to sort this; we think he's going to top himself." We had to persuade the company that that was not a good decision; indeed, it was the worst possible decision on every level. I hope that the changes around timeliness and the way people are treated in the system will mean that we do not have those situations. This should be about treating people with dignity and respect. It should be about acknowledging that an incident has happened and treating them in the right manner, not as though they have done the wrong thing. We have seen some shockers over time. People talked down the nature of the industry, did not record an incident and parked the person in the lunch room—all bad habits. I hope that some of the changes in this bill will go towards reducing those types of problems.

Another provision that is a good change is, I think, in clause 36. A simple question is always asked—this was always an issue in the retail sector—and it is similar to when a woman goes for a job and is asked, "Do you plan on having children?" The question is: "Have you ever had a workers compensation claim?" It is a bit of a red flag that the person is not going to get the job. It should not be like that. A provision in the bill provides that employers will not be allowed to ask that question and pass on information, even if somebody has recorded it. They cannot share that information, which is a great change. A person who has a workplace injury should never be precluded from doing another type of work if they are physically able to do that work and they choose to do that work. My daughter had an accident at her workplace, Crown casino, that resulted in a slight back injury. She went through a really interesting and elongated process to get herself back into the workplace. She was really worried that the workplace injury would stop her from doing other things. When she left that employer and went to a new employer, she was worried about having to declare that she had hurt her back at work. The job that she moved to was not going to cause her any issues—it

was never going to be a problem. People should not have to declare those things. It should not be a blocker, if you like, to another opportunity. Having cited a few examples, there are some quite positive changes in the bill, and over time there will be others.

I know that the parliamentary secretary will be very keen to move this debate along, but I want to make a couple of comments about what Hon Martin Aldridge said about firefighters. I have said before that I have some sympathy personally around the issue of volunteers. I think in the past I told the member about my personal experience of my father being a volunteer fireman in Coolgardie. I saw him get hauled out of a fire when I was four years old, and he spent three months in hospital with third-degree burns to a significant part of his body—all over his body—broken legs, a broken arm and pelvis, and a hole in the back of his head. If it were not for the townspeople of Coolgardie, our family would not have managed because they looked after us. Dad had to learn to walk again. He is 85 years now, and I know the impact that that incident had on him for the rest of his life. He was not able to walk from time to time and he had skin issues—all those things. Therefore, I have real sympathy for volunteers who step-up to do the right thing being looked after. I probably cannot support the member's amendments, but I just wanted to put on the record that I understand where he is coming from. As a family, we had to deal with the outcome of that incident.

I, like a lot of members, received the United Firefighters Union of WA's correspondence and met with the union about its issues. I think that the matters it raised, certainly around the potential for a range of cancers, are valid. I congratulate the union for pursuing those issues. I understand that last Saturday, Minister Dawson made an announcement that along with the two additional cancers introduced in May, a further six cancers will be added, bringing the total number to 20. Hopefully, that will satisfy the firefighters' claim to have those matters incorporated and resolved. The government has also said that if a current or retired career or volunteer firefighter is diagnosed with these cancers, under the new regulations it will be presumed that the cancer is related to their duties. I think that is quite a significant change.

I want to put on the record that union has been absolutely acting in the best interests of its members, as it does, and acknowledge the work that the government has done with the union to take on board those issues and include them in new regulations to afford better protections for that very important group of workers and volunteers in Western Australia. I am not too sure where that leaves discussion as we move forward, and I think Hon Matthew Swinbourn has responded to, or provided, a press statement from the minister about that earlier today. I am not too sure; I have probably got that totally wrong, so ignore me.

Hon Matthew Swinbourn: It was a PQ asked by Hon Martin Aldridge.

Hon KATE DOUST: Okay.

I just want to touch on a couple of areas of change. When there are several hundred clauses in a bill, one does not want to go through each of them. I have talked about the changes in the nature and mode of employment in the gig economy; the use of labour hire, which had diminished; workers' rights in relation to health and safety and workers compensation; and the issues around step-downs and payments. Another matter, of course, is reinforcing the fact that workers compensation victims can access their own choice of doctor and—I need to be clear on this—the employer has no place being in the room with that person when they are seeking medical attention. A significant problem in the past was trying to afford protection to people in that environment when they had a manager sitting in the room with them, talking down either to them or their issue and undermining their confidence with the doctor while trying to get support, and then kicking off the formal process for workers compensation. Therefore, I think that those types of changes, reinforcing the protections for workers, are very significant. The tidying up and reorganisation of the legislation so that it flows and works better, makes more sense and is more user-friendly moves away from what was sometimes a bit of a dog's breakfast, with people having to work through very complicated and complex legislation, which sometimes could be turned to the advantage of the employer but to the disadvantage of an injured worker.

I congratulate the minister and the government on the work to date in improving and modernising workers compensation. It has been a long time coming. It will not be the last time that we deal with the bill; it is certainly not the first nor the last time I have dealt with it in the last 20 years. I think that they have stepped up to the mark and these changes will make improvements. I do not know how long it will take for this bill to go through, but I think that people in the workplace will certainly reap the benefit of it.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.45 pm] — in reply: I rise in reply to the cognate debate on the Workers Compensation and Injury Management Bill 2023 and Workers Compensation and Injury Management Amendment Bill, which we are currently dealing with.

I would like to start by first acknowledging the contributions made by all the members of the house. The first contribution was made by Hon Martin Aldridge in the few minutes he had before he had to scuttle off on urgent

parliamentary business before the winter break. That left the first large contribution to Hon Dr Steve Thomas. As I recall, it was a robust exchange across the chamber that involved —

Hon Dr Steve Thomas: It was probably more robust earlier in the day during various debates, but anyway.

Hon MATTHEW SWINBOURN: Yes, the member's practices in his professional field were mentioned a lot. We perhaps will not talk about where his arms or hands have been earlier today.

Hon Dr Steve Thomas: Just by interjection, there are not too many people who have experienced the other side of workers compensation insurance, so that became important.

Hon MATTHEW SWINBOURN: Of course, we then had the contribution by Hon Nick Goiran. I have lost my microphone; I am not sure why.

Hon Dr Steve Thomas: Censorship.

Hon MATTHEW SWINBOURN: Of course. Hon Nick Goiran undertook his undoubtedly forensic and high-level analysis of the bill, and we will get into that when we get to the committee stage. We had a short contribution by Hon Dr Brad Pettitt, who I understand is on very urgent parliamentary business right now, and the contributions today by Hon Martin Aldridge and by my colleague and friend Hon Kate Doust.

I hope the chamber can indulge me slightly. Hon Kate Doust mentioned that I might have a history in workers compensation, and that is in fact correct. My history is not as long or as illustrious, perhaps, as some other members', but when I first started working for what was then the Australian Liquor Hospitality and Miscellaneous Workers Union, in 2002, I commenced my employment as the workers compensation officer for the union.

Hon Kate Doust: You are showing your age.

Hon MATTHEW SWINBOURN: I am. My job was to assist union members who were making workers compensation claims. They had obviously been injured at work and consequently were making workers compensation claims. It was an interesting experience for me. I had not had any particular training in that area of law. I am not even sure whether universities teach workers compensation law as a separate unit, although that might have changed in the time since I was at law school or in other areas of study. I had the loose-leaf service provided by Robert Guthrie. Robert, who was the author, is a criminal injury compensation assessor at the moment. He wrote the loose-leaf service that was effectively my go-to source for answers to all the questions that were posed to me by union members. The coverage of the missos, as it was once known, is exactly that: it is miscellaneous and very broad. It included many different kinds of categories—in education, health, some manufacturing areas and all sorts of things.

Predominantly, the people who came to me would only come when they were seeking advice, principally when they had a problem with their claim. They tended to be middle-age and older women who were suffering what I would describe as occupational overuse injuries. Sometimes, they had only been in their employment for a short period, but they had been working all their life and, of course, when someone has been doing manual work all their life, rotator cuffs, hips, ankles and all those sorts of things become damaged. Then, they start a job, and they might be in the job for a little while when, and all of a sudden, the body breaks and collapses. There was a big debate about whether it was a pre-existing condition and how much the current employment exacerbated the injury and all those sorts of things. Often, some of the worst times in these workers' lives was when claims were being processed and in dispute. They went to this from being productive people in their workplaces. For all of us, our work is connected to our identities. They were often not even able to do ordinary things at home that they would otherwise do, including cooking and cleaning. Dealing with those workers was difficult, but I always had empathy for their circumstances. Of all the workers I dealt with, I cannot say I came across any who were trying to abuse the system.

Of course, as is on the record, I moved from that union to another union, the Construction, Forestry, Mining and Energy Union, and of course the coverage of that union is very different in terms of the kind of work done. In that industry, it was not so much about occupational overuse or strains and other pains, but usually crushing injuries that were catastrophic or fatal. Unfortunately, a key issue with that group of workers when they suffered a genuine workplace injury was that although it was a no-fault system, some of them had a reticence to make claims because of their fear of having the stain of being a compo person. I would often get quite frustrated with those workers because the whole point of the scheme, the whole reason the Parliament, the unions and others fought for it, is that workers can be compensated, supported and rehabilitated when they are injured at work. They were trying to keep themselves out of that system because they thought it was some kind of slur on them or that others would see it as a stain on them. As a society and a state, we have moved away from that to some degree. I do not suggest it is still not out there, but all debate in this chamber from both sides has been about workers compensation being a positive thing. People do not talk about malingerers, people trying to rip off the system or anything else like that. I understand that the opposition —

Hon Nick Goiran: They do exist.

Hon MATTHEW SWINBOURN: Of course they do.

Hon Nick Goiran: They are very, very small in number.

Hon MATTHEW SWINBOURN: That is right. The system is overwhelmingly about those who are doing the right thing. We wish that people in our society would not do those things, but they should be dealt with according to the law. Most of the disputation I dealt with was genuine; it was not because someone was trying to rip the system off. Alternatively, the disputation from insurers of employers was overwhelmingly genuine. They did not agree that the worker was entitled to compensation; they were not simply refusing to do it.

As has been said in the second reading speech, the purpose of these measures is a rewrite of the act; we do not want to characterise it as a reform of workers compensation. It is not a paradigm shift from where we are. Elements obviously relate to the election commitments about improvements in the bill. We do not resile from those, but we do not want to present this as a radical change to the regime. That is not the way that it has been worked through from 2013 when the review was commenced to the delivery of the report in 2014 and moving to this point.

Curiously, the review process, and I presume the re-drafting of the legislation, started under the previous government and has been continued by this government. It would be fair to say that some have criticised us for continuing the work of the previous government, but when regard is given to the true nature of what we are doing here, this is not an ideological or philosophical argument about whether workers compensation should or should not be; this is about making the law as clear as possible to as many people as possible.

A number of issues were raised during debate, and I will try to get to them all in my reply, so please bear with me. If I miss anything, of course, we are going into Committee of the Whole House where we can cover those matters more thoroughly.

I will start with Hon Martin Aldridge because he kicked off the debate. He raised the issue of inserting nine additional cancers into the list of presumptive firefighter cancers under clause 11 of the principal bill and wants to insert a provision in the Fire and Emergency Services Act 1998 to provide a rebuttable presumption of post-traumatic stress disorder for emergency response volunteers via the consequential amendment provisions under part 15 of the principal bill. As has been already indicated, there was the announcement on the weekend about the inclusion of new regulations under the current act, with two of the eight cancers proposed, skin cancer and malignant mesothelioma, based on the findings of the Fritschi review. This review was conducted in consultation in agreement with the United Firefighters Union of Australia. The government will now include the remaining six cancers by further amendment. I think that is in the process of formally happening for gazettal. I anticipate that it will be in the tabled papers tomorrow.

Hon Martin Aldridge: Really?

Hon MATTHEW SWINBOURN: Possibly, yes.

That will see WA consistent with the commonwealth and the Australian Capital Territory and Tasmanian governments on this issue. We do not support Hon Martin Aldridge's amendments by proposing that they be inserted into the legislation. It is not difficult to understand why we do not do that, when we are in process of making it under the current regulations. We think regulations provide for more immediate action and are the appropriate method to include any additional presumptive firefighter cancers in the future. I suppose for a technical reasoning, if we prescribe them in the bill, as the member proposes in his amendment, and we wanted to reduce the time frames for the presumption, we would have to amend the act rather than change the regulations. It would not allow for flexibility into the future; it would require a new bill to come to Parliament.

Hon Martin Aldridge: Those are all very good arguments.

Hon MATTHEW SWINBOURN: I think the member is getting what he wanted and what the UFU wanted, just not in the same form.

As I said, the commonwealth introduced the eight additional cancers in late 2022, and it did that by regulation not by amendment to its legislation. The government gives its assurance, and I give the assurance to the house, that the eight additional cancers will also be covered when new regulations are made under the new act. Regulations have been made under the current act. On the presumed passage of the bills through Parliament, they have to of course go back to the other house because we have also put amendments on the notice paper, but when the new regulations are gazetted, they will include those eight additional cancers.

Section 36ZN of the Fire and Emergency Services Act will also continue to automatically deem any presumptive cancers for career firefighters added by regulation under the workers compensation legislation, to apply as presumptive cancers for volunteers who make claims for personal injury under the Fire and Emergency Services Act 1998.

Now to the presumption regarding PTSD for volunteers. We do not support the member's amendments, as he probably already anticipated. We do not support the amendment to the Fire and Emergency Services Act through the legislation. This legislation is concerned with modernising the workers compensation legislation. A number of

consequential amendments are made to other acts in part 15 of the principal bill, including section 36ZN of the Fire and Emergency Services Act with regard to existing presumptive cancer arrangements for volunteers; however, amendments to that act and other acts in part 15 of the principal bill relate to matters that are consequential to changes in terminology and legislative references. I might add that the long title of the Workers Compensation and Injury Management Bill 2023, in further support of our view that it should not be in here, provides for —

> **An Act —**
>
> - **to provide for employers to be liable to compensate workers who suffer injuries from employment** …

The member is talking about volunteers, he is not talking about an employment relationship, and I struggle to see how his amendment fits within the subject matter of the bill. In any event, we will not be supporting the amendment that the member proposed. As I said, we were of the view that, based on historical data and DFES's current mental health support program, there was adequate and appropriate protection for volunteers who suffer PTSD as a result of carrying out volunteer activities.

I just want to move to the point of gaps that the member was speaking about. The member talked about errors that he thinks we have made in terms of regulations. We do not accept the member's characterisation of them as errors. Although the member has made a strong case about the rebuttable presumption, I would also like to make an important point; for people who are listening to this debate who might think that they are excluded because they do not have the rebuttable presumption, that is not in fact the case at all. That is not the argument that the member was trying to make, but I just wanted to make it clear that even before the rebuttable presumption was part of the coverage of DFES employees, claims were being made for PTSD. Although probably not all, a significant number of the claims were being accepted by the employer. That still remains open. Of course, each matter in those circumstances will return on their own facts. People will still have access to the dispute procedures under the act to settle and work out whether they are in fact entitled to their claim.

Hon Dr Steve Thomas quoted from the Australian Bureau of Statistics on work-related injury and illness in Australia relative to the size of the workforce. He speculated about the proportion in WA and asked for specific figures on the number of WA workers injured and whether the injury rate is trending down. He also cited figures from the ABS report on the proportion of workers who continue to work in the job where the injury or illness occurred, changed jobs, left or lost their job. Without wanting to paraphrase the member too much, I think he quoted a figure of 85 per cent of those who returned to their pre-injury job in the ABS report as a vote of confidence in employers.

WorkCover WA publishes quarterly statistical information about the performance of the WA workers compensation scheme on its website. Safe Work Australia publishes an annual comparative performance monitoring, CPM, report that compares the work health and safety regulations and workers compensation performance of the states and territories. The latest edition of the CPM report indicates that the rate of serious injury in WA in 2021 was 9.6 per 1 000 workers. This compares favourably with the national average incident rate of 10.5 per 1 00 workers. The CPM report also indicated the standardised premium rate for WA was 1.22 per cent, below the Australian average of 1.3 per cent, and was the jurisdiction with the second lowest rate. Again, I think that is favourable for the system that we currently have.

Hon Dr Steve Thomas: I would have thought so, especially if you have got this mining sector higher-risk profile. It is actually not a terrible result for the state, despite some high-profile exemptions.

Hon MATTHEW SWINBOURN: Of course. I will just go on. I have some more figures for the member; I know how he loves them.

In WA, total workers compensation payments were $1.3 billion and 53 per cent of payments were paid directly to claimants. Of the payments, 20.4 per cent were for services to claimants including medical, hospital and workplace rehabilitation. WA provides the highest coverage across all jurisdictions for low income earners. Award wage earners are eligible for full coverage of preinjury earnings for all periods of incapacity. Every two years, Safe Work Australia conducts a national return to work survey of the experience of injured workers. Workers are surveyed approximately nine months after injury. The 2021 survey showed that in WA, 90.5 per cent of injured workers had returned to work for some period following their injury and 81.1 per cent were working at the time of the survey. These outcomes are very close to the national averages. WA's current return to work rate has increased from 78 per cent in the 2012 surveys to 81.1 per cent in 2021.

Hon Dr Steve Thomas: That doesn't break it down to whether they are returning to the same level of work—that level of detail?

Hon MATTHEW SWINBOURN: I do not think we have got that available to us, but those statistics indicate that there has been a significant—over 13 per cent—percentage point increase from 78 per cent to 81.1 per cent in nine years. I think that is a positive and it is good to see that that is happening. There will always be the law of diminishing returns in these areas, as well; the hardest parts are always the last one to two per cent.

Hon Dr Steve Thomas: Yes, the low-hanging fruit.

Hon MATTHEW SWINBOURN: Yes. Hon Dr Steve Thomas also asked whether the government had done a regulatory impact statement on the bill to assess the cost impact on employers. The cost impacts of the bill on employer premiums have been independently assessed by the WA workers compensation scheme actuary, PricewaterhouseCoopers Actuarial.

Hon Dr Steve Thomas: PwC? Oh-oh!

Hon MATTHEW SWINBOURN: In any event, it is the actuary in this instance. The scheme actuary made a preliminary cost estimate on the consultation draft of the bill in 2021, and WorkCover WA disclosed the preliminary cost impacts to stakeholders as part of its consultation process. The scheme actuary then completed a final and comprehensive costing on the bill now before Parliament. The final cost impact of the bill on premium rates was disclosed in the second reading speech. There are likely to be very small increases to scheme costs and employer premium rates associated with entitlement improvements resulting from the government's 2021 election commitments to increase the medical and health expenses cap, extend the income compensation step-down point, and the important improvements to cover catastrophic workplace injuries. The scheme actuary estimates a 2.83 per cent increase in premium rates resulting from these changes.

Hon Dr Steve Thomas: I will probably ask in the clause 1 debate, but is the detail of that report public? Are you able to table it?

Hon MATTHEW SWINBOURN: Yes, I can table it; I just do not have it with me, so we will table it when we are at the committee stage. To put this into perspective, the average recommended premium rate each year fluctuates based on a range of variables unrelated to changes in legislation. For example, the average recommended premium for 2022–23 increased by 6.9 per cent from the previous year. The rate for 2023–24 decreased by 5.2 per cent. The number and cost of claims, wage costs and general economic factors have bigger impacts on the recommended premium rate than this bill will have. The entitlement improvements are the only areas in the bill that have cost impacts on employers in the form of higher workers compensation insurance premiums. There are no new compliance requirements or processes that impose business costs. Of course, the government is —

Hon Jackie Jarvis: Cognisant?

Hon MATTHEW SWINBOURN: Yes, that is it!

Hon Dr Steve Thomas: First day back, parliamentary secretary!

Hon MATTHEW SWINBOURN: Yes, I started too early this morning! The government is aware of the economic challenges facing WA businesses and has not made fundamental scheme design changes or costly workers compensation reform. The cost impacts of this bill are modest, fair and reasonable.

Hon Dr Steve Thomas also suggested that there would need to be further debate on workers' rehabilitation and return to work and the respective rights of workers and employers. He suspected that the government's expectation is that workers will be required to return to their pre-injury role and suggested that there be some flexibility for workers to be placed in other areas of the business if they cannot do the pre-injury role for whatever reason. He also asked for details of how rehabilitation expenses are applied and whether any shift in rehabilitation costs has been assessed.

In relation to return to work, the framework for a worker's rehabilitation and return to work will not change under this new legislation as compared with the current act. This is reflected in the definition of "return to work" in clause 5 of the bill, which is, in substance, the same definition as in the current act. The employer's obligation to establish a return-to-work program for workers who are unfit for work is retained in the same form as the current act. The bill will also maintain the existing obligation for employers to make a worker's pre-injury position available for 12 months unless it is not reasonably practical to do so, or provide a suitable position for the worker. A suitable position is a position for which the worker is qualified and capable of performing and is comparable in pay and status to the worker's previous position. The priority is to return injured workers back to their pre-injury position, but sometimes, of course, this is not possible. The bill will continue to provide flexibility for a worker to be given an alternative position in these circumstances.

I refer to workplace rehabilitation expenses. Under the current act, a worker is also entitled to workplace rehabilitation expenses up to a capped limit, which are paid to an approved workplace rehabilitation provider, in order to assist the worker to return to work. The bill provides for the continuation of workplace rehabilitation expenses as a worker entitlement and the same capped limit as the current act will apply—that is, seven per cent of the general limit. There will be no shift of the rehabilitation expense to employers and no cost impact because nothing is changing.

Hon Nick Goiran sought a statement from the government about the impact of the bill on workers' rights. More specifically, he asked —

> Is it intended that the bill before the house will remove any existing statutory rights for workers? Alternatively, is it intended that the bill before the house will restrict any existing statutory rights of workers? If either scenario is the case—the removal of a worker's statutory rights or the restriction of a worker's rights—which provisions will be removed or restricted? More importantly, what is the justification for the removal or the restriction of the worker's statutory rights?

The bill is a rewrite, not a reform. The government made a clear decision to rewrite the act based on WorkCover WA's 2014 final report, the additional entitlement changes announced by the government as 2021 commitments, and to provide lifetime care and assistance for catastrophically injured workers. The bill has been drafted to protect the benefits and entitlements of injured workers, with the one exception of the psychological injury exclusion for formal performance management, where the intent of the change was clearly made in WorkCover WA's 2014 final report. That said, the impact of that change is not expected to be significant. I might have more to say on that later.

Very careful and detailed consideration has been made in the drafting of all provisions to ensure there are no unintended consequences as a result of the modernisation of the act. Rather than restricting or removing rights, there are a number of key improvements beneficial to injured workers, including doubling of the medical expenses cap, increasing the weekly payment step-down point from 13 to 26 weeks, prohibiting employer attendance in medical consultations, early access to financial support by requiring provisional payments of compensation to be paid when insurer liability decisions are not made in time, coverage of catastrophic workplace injuries, protection against discrimination and pre-employment screening.

Hon Nick Goiran also requested the government disclose whether any current concerns had been raised by stakeholders about the bill and since the bill was made public, and also what those concerns are, and ideally from whom, unless there are some compelling reasons when confidentiality is required or has been expressly requested by the stakeholder, and, in particular, to which of the 15 parts in the 706-clause bill those concerns relate.

The government consulted stakeholders on the draft bill in August 2021 and stakeholders provided valuable input by making submissions. Although there is strong support for the bill, there is not universal support for a small number of issues. Stakeholders made their views known to government in the submission process. Of course, that is to be expected in any rewrite of an act. The government does not intend giving an account of every stakeholder submission on every issue. Fifty-four of the 86 submissions received are publicly available on the WorkCover WA website, and give an account of stakeholder views on the bill. Thirty-two submitters requested confidentiality and did not authorise WorkCover WA to publish their submissions.

The government has made refinements to the bill before Parliament in light of submissions received on key issues. Clause 7 will remove informal counselling and informal actions from the psychiatric injury exclusion for reasonable administrative action. Clause 12 will amend the definition of "worker" to have the same application as the first limb of the definition in the current act and clarify the second in relation to contractors. Clause 57 will ensure award workers are no worse off under the bill compared with the current act in relation to the weekly payment step-down provisions.

Hon Nick Goiran: These are things that the government is saying that stakeholders have indicated are a problem and have been addressed or have not been addressed?

Hon MATTHEW SWINBOURN: These are things that they had raised and we say we have addressed.

Further refinements include changes to clause 152, removing barriers and facilitating easier settlement of claims; and clause 5 will reinstate in substance the same definition of "return to work" as the current act.

I received a letter from the Australian Lawyers Alliance, so I presume every other member received it as well. The Australian Lawyers Alliance wrote to the government and members of Parliament, attaching a list of its concerns with the bill. The government does not agree with the Australian Lawyers Alliance's assessment of the bill, in particular the statements made about the negative impact of various provisions of the bill on injured workers. A number of issues raised by the ALA were addressed in refinements to the bill following the consultation process, including the definition of "worker" and the psychological injury exclusion for reasonable administrative action.

Other concerns raised relate to proposed reforms, which are outside the scope of the decision of government to modernise the act. The minister disagrees with the ALA's assessment of the bill, and has responded to the ALA accordingly on each of the issues that have been raised.

A letter in April 2023 from Chapmans Lawyers—I disclose that I once worked for that firm—was sent to the government and various members of Parliament. The minister disagrees with Chapmans' assessment of the bill and has responded to Chapmans accordingly.

Concerns were raised recently by Mr Peter Parker—no, not that Peter Parker—one of the five current independent registered agents who has written to the government and various members of Parliament on several occasions opposing clause 577, which discontinues the arrangement for registered agents and provides for existing independent

registered agents to be transitioned out of the scheme over a two-year period. The intent of this change was clear in the 2014 final report. Nothing in the registered agent's letter supports a change in the government's position with respect to discontinuing the registered agent regime.

Hon Nick Goiran suggested the government is proposing a new definition of "return to work". He asked—I do not quote, but this should be the thrust of what he said—why will the definition of "return to work" change and who has requested that the definition be changed? He added that if changes are to be made, it is important for us to understand what are considered to be the deficiencies in the existing definition that would be remedied by this new definition. There is no material change to the definition of "return to work" compared with the current act. The 2021 draft of the bill proposed a substantially different definition of "return to work" from what is in the final bill before Parliament. In light of submissions received, the government reverted to the definition of "return to work" in the current act. The definition of "return to work" as it relates to an employer's obligation and the worker's entitlements is the same as that in the current act and continues to place primacy on returning to the pre-injury position.

Hon Nick Goiran asked—it was also raised by Hon Dr Brad Pettitt—about the psychological injury exclusion and performance management. I think Hon Nick Goiran was more specific in his points than was Hon Dr Brad Pettitt. They asked whether a significant number of stress claims will be excluded from the workers compensation scheme moving forward as a direct result of clause 7 of the bill. They also asked whether that is the intention and whether the government understands that outcome will be achieved as a result of this change. There will be a slight extension of the circumstances for excluding psychological injury claims on the basis of formal appraisal of performance, but the government does not agree the provision will result in a significant number of denied stress claims.

Clause 7 of the bill provides that an "injury from employment" does not include a psychological or psychiatric disorder resulting wholly or predominately from administrative action taken by an employer in relation to a range of formal administration actions so long as the administrative action is not unreasonable or harsh. The bill integrates many of the current exclusions for stress injuries in the act relating to disciplinary matters while excluding from a compensable injury "reasonable actions" associated with appraisal of worker performance. The intent of the psychological injury exclusion for formal performance management was clearly made in WorkCover WA's 2014 final report. The exclusion for performance appraisal reflects an appropriate balance between allowing employers to formally manage workplace performance and protecting the mental health of employees. If an employer's performance appraisal of a worker is undertaken in a formal and reasonable manner, it should not result in a psychological injury claim.

The existing protections in the act are retained in that the psychological or psychiatric disorder must result wholly or predominantly from the administration action and the action cannot be unreasonable or harsh on the part of the employer. The exclusion continues to be significantly narrower than the equivalent provisions in the Comcare scheme. I am sure members are familiar with Comcare. Did they do much work in Comcare? Comcare is "up here" when it comes to that aspect. Notwithstanding this, and in light of submissions received, the government made further refinements to the bill now before Parliament by removing "informal counselling" and "informal actions" from the psychological injury exclusion for reasonable administrative action.

Hon Nick Goiran also made the following comments—again, I am not quoting but just paraphrasing—about the definition of "worker" under clause 12. Firstly, he asked whether the government intends to reduce the number of workers who can apply for workers compensation under the new scheme. Secondly, he said the complete removal of the extended definition of "worker" will occur, which will leave many workers without coverage and with disturbing uncertainty in the workforce. Thirdly, he sought an explanation from the government as to why the proposed definition of "worker" will see a reduction in the number of workers in Western Australia who are able to access the scheme; I think Hon Dr Brad Pettitt might also have raised a similar point in his contribution to the second reading debate.

The bill is not expected to have any significant impact on the number of contractors covered by the scheme, as indicated in the second reading speech. The extended definition of "worker" in the current act, in relation to contractors, fails to provide clarity to workers and employers. We say that it is not fit for purpose for determining who is covered by the scheme because neither contractors nor employers know in advance of a claim, obtaining legal advice or running a dispute through WorkCover WA's conciliation and arbitration services or the courts, whether the contractor is covered or not covered or whether insurance is required.

The significant problems with the definition of "worker" in relation to contractors were discussed in WorkCover WA's 2013 discussion paper and 2014 final report, and it is important that there is a workable and clear solution. The recommendation in the 2014 final report was to align the definition of "worker" with the PAYG test of "employee". However, in light of submissions received about the potential exclusion of some workers under the PAYG test of "employee", including contractors, the government revised the definition of "worker" in the bill now before Parliament. The revised definition of "worker" under clause 7 reinstates the first limb of the definition of "worker"

in the current act with respect to employees under a contract of service or apprenticeship but no longer excludes contractors; it instead clarifies the circumstances under which contractors are covered.

Clause 12 of the bill provides clarity, as it looks to whether the contractor is actually doing work in their own name or for someone else. This provision is consistent with the approach taken in many other jurisdictions to distinguish between employees and independent contractors. This change is not expected to have a material impact on the number of contractors covered by the scheme. Over the nine-year period from 2014 to 2022, fewer than one per cent—that is, 0.9 per cent—of workers compensation claims were self-reported as involving contractors or subcontractors. The proportion of workers who are contractors under the current act is very small and the impacts of a change in the definition are expected to be minimal.

I turn now to the issue of step-down in income compensation, which also was raised by Hon Nick Goiran and referred to by Hon Dr Brad Pettitt. Hon Nick Goiran suggested that a reduction in weekly compensation will now take place for every Western Australia worker, pursuant to clause 55, and asked why it is the case that there are currently a number of workers who do not suffer from this 15 per cent drop in the rate of compensation, but who will under this legislation. I want to make this very clear: clause 55 of the bill will not apply a 15 per cent reduction to workers covered by an industrial award who do not currently receive a 15 per cent reduction. Clause 55 is subject to the minimum weekly rate provisions under clause 57. The minimum weekly rate under clause 57 will prevent the 15 per cent step-down, if that otherwise fell below a worker's award rate of pay plus any regular additional earnings. The meaning of "regular additional earnings" is the same as it is in the current act under "Amount Aa" in schedule 1, clause 11. This means there is no change to the rate of income compensation payable to workers covered by an industrial instrument, such as an award, before or after the step-down, compared with the current act. This means many workers will continue to have no step-down at all.

Hon Nick Goiran also raised the issue of the payment of superannuation and asked whether, since we are going to modernise the act, there will be an opportunity to consider a mechanism under which the employer might pay a worker's superannuation contribution while the worker is on workers compensation. He also asked whether such a mechanism has been contemplated by the government during the course of this 14-year, two-phase law reform project. The payment of superannuation in circumstances in which a worker is receiving workers compensation has been considered, but it cannot be mandated or required in the workers compensation statute. Superannuation is paid upon retirement and the complexity of superannuation and tax law makes it difficult to legislatively establish that as part of a worker's entitlement or via the workers compensation legislation. The Australian Taxation Office's superannuation guarantee ruling SGR 2009/2 provides that an employer is not required to make superannuation contributions for workers compensation payments if a worker is not working or required to work—for example, because of an incapacity for work. As a concurrent entitlement, any change to the arrangements for superannuation are best addressed via approaches to the Australian Taxation Office or as part of negotiations in awards or industrial agreements.

Hon Nick Goiran also referred to workers earning in excess of the maximum rate, for example, a fly-in fly-out worker who is also supplied with board and lodging as part of their remuneration and is not adequately compensated under the act, and there is no opportunity to remedy that by increasing the maximum rate to a more realistic amount and providing an additional amount for board and lodging, where applicable. He asked the government to inform the house whether that has been contemplated and whether it is intended; and, if it has not, the justification for the maximum rate remaining. An increase in the maximum weekly rate of income compensation is outside the scope of the decision of government to modernise the act. Apart from those parts that relate to election commitments, this bill is a rewrite, not a reform. The government made a clear decision to rewrite the act based upon WorkCover WA's 2014 final report and the additional entitlement changes announced by the government as 2021 election commitments. In relation to board and lodging, the weekly rate of income compensation is based on the worker's pre-injury earnings and takes into account the monetary value of board and lodging provided to the worker by the employer as payment for work, in addition to any other earnings.

We will come to workers' rehabilitation and the continuation of specialised retraining programs. Hon Nick Goiran asked: Why are specialised retraining programs being abolished and how many workers have accessed them over the years? Who receives funds for workplace rehabilitation expenses—worker or provider—and what is the effect of clause 93? Are workers' rights maintained, or will they be reduced or abolished with respect to specialised retraining programs or workplace rehabilitation expenses? There will be no change to workers' rights or funding associated with workplace rehabilitation services or expenses. Clause 93 of the bill provides for workplace rehabilitation expenses to be payable as a form of compensation—being a benefit to workers—in the same way as these expenses are a form of compensation in the current act. Workplace rehabilitation expenses will be payable to an approved workplace rehabilitation provider, like they are under the act. Approved workplace rehabilitation providers have the skills, training and expertise to develop specific services or programs depending on the needs of the worker and employer, and provide solutions for optimal recovery and return to work.

Although the bill will not replicate the specialised retraining provisions of the current act, there is no impact on worker rights as the entitlement has never been accessed since the inception of that entitlement in 2004. The 2014 final report recommended the specialised retraining program provisions be discontinued as this type of retraining program is not fit for purpose and will not deliver better return-to-work outcomes for workers. Retraining is already one of the many potential options available to workers as a workplace rehabilitation expense and there are adequate funds available. Workplace rehabilitation programs are more outcome focused and can be tailored towards developing a worker's skills and knowledge to enable them to return to work in a new role. I hope we covered as much as of Hon Nick Goiran's stuff as we can. Of course, I am sure we will cover more in committee.

Hon Dr Brad Pettitt raised concerns about workers' access to reasonable medical expenses and I can confirm there is no change to access to workers' access to reasonable medical expenses. We will increase the cap from 30 per cent to 60 per cent of the limit and the scale of fees paid for services will be set by the minister rather than regulations. That scale of fees will be a disallowable instrument so if any issues arose as a consequence, it would still be disallowable by Parliament.

I think I have covered off most of my notes and I do not know that I have a lot more to add before we move on.

I will come back briefly to the comments or the disclosures made by Hon Martin Aldridge regarding his previous time as a professional firefighter and a current volunteer firefighter. I think the purpose of his disclosures was to make us aware in the house that he may be a potential claimant in the future for some of the presumptive matters that have been raised. I hope for your sake, member, that is not the case and you are never in a position in which you have to rely on any of the provisions of the act. I mean that genuinely. I also obviously commend you for your service both as a professional firefighter and as a volunteer. I think that is a service to the community. I will make a small disclosure. I am related to a professional firefighter. My cousin Ryan Blakely is a firefighter, and of course he will be a beneficiary of some of the changes that are being contemplated in relation to the presumptive stuff. He also deserves to be commended for the service he provides to the community.

With those comments, I commend the bills to the house.

Questions put and passed.

Bills read a second time.