WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2011

Second Reading

Resumed from 17 May.

DR J.M. WOOLLARD (Alfred Cove) [4.14 pm]: My attention was brought to some anomalies within the Workers' Compensation and Injury Management Act, which I believe we are able to address while this bill is on the table. I received a letter from Dr Bill Musk, who is a respiratory physician at Sir Charles Gairdner Hospital and a clinical professor of medicine and population health at the University of Western Australia. The letter says —

> Dear Janet,
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> My attention has been drawn to the Workers' Compensation and Injury Management Act … concerning the addition to Schedule 3 describing pleural plaques (diffuse pleural fibrosis): any process entailing substantial exposure to asbestos dust. The description of the disease is that pleural plaques and diffuse pleural fibrosis are synonymous processes which they are not. Pleural plaques are circumscribed areas of hyaline fibrosis, usually involving the parietal pleural ... whereas diffuse pleural fibrosis is a more inflammatory process which involves the pleura lining the chest wall and also the pleura on the surface of the lung. The processes are radiologically and pathologically distinct. They have different effects on the function of the lungs. Therefore while both result from exposure to asbestos they constitute quite different bodily responses. In the interests of accuracy I believe that this Order should be changed.

Further to that letter, I was sent some correspondence, which was also sent to other members of the house, from the Asbestos Diseases Society, which refers to a patient and says Mr A —

> ... is definitely disabled by industrially caused pleural plaques and since such disease is not covered within the provision of the Statutory Legislation, we are unable to secure compensation to which otherwise he would be entitled.

The society says that for 30 years it has been trying to have amendments made to the act to include pleural disease and pleural plaque as compensable industrial injuries and that —

> … last year Workcover WA upon advice from the Medical Advisory Committee recommended ... changes to include pleural plaques as a compensable industrial injury.

However, when the act was gazetted, WorkCover had changed the pleural plaque connotation by adding it as "pleural plaques (diffuse pleural fibrosis)" under schedule 3 of the act in "Column 1: Description of Disease".

The letter continues —

> In our view with such connotation (diffuse pleural fibrosis) no pleural plaques sufferer will receive any compensation and that includes —

"Mr A" —

> … unless the diffuse pleural fibrosis is removed.

Unfortunately most members would not have appreciated the difference between "pleural fibrosis" and "pleural plaques" when the legislation went through Parliament, apart from the wonderful member for Eyre, who has a lot of expertise in this area.

Mr F.M. Logan: What are you talking about? That is what I just raised in my speech.

Dr J.M. WOOLLARD: The member for Cockburn did not raise this when this came up. The member may have raised it now, but —

Mr F.M. Logan: We knew about it a long time ago.

Dr J.M. WOOLLARD: It may have been raised by the member, but the legislation went through with that inequity two years ago.

I show the house two X-rays, particularly for the benefit of those members who have not had an opportunity to look at the differences between these conditions in detail. We can very clearly see on this X-ray a nice well-defined lung space and some white patches, which are the pleural plaques, in variation with the diffuse pleural thickening bilaterally in the lungs on this second X-ray. In the second X-ray we cannot see that air has entered the lung, because the lungs have been damaged. A major anatomical difference is presented depending on whether someone has pleural plaques or diffuse pleural thickening. A definition of pleural thickening is —

> This is a (non-cancerous) thickening/scaring … of the pleural membrane surrounding the lung(s). It usually occurs when fluid leaks into a person's chest following an accident or a rheumatic condition and then drains away. Typically, the lower outside part of the lung …

That is this X-ray —

> … is damaged and either one or both of the lungs can be affected to a degree that varies from very minor to extensive.

To go on with fibrosis, pleural thickening can cause shortness of breath and impaired lung function and can get worse over time and cause breathlessness and disability as the lungs are prevented from functioning properly. It may result in pleural infusions and may cause other problems, such as haemothorax and tuberculosis, and usually occurs 15 years after asbestos exposure. The other condition, pleural plaques, is a small, isolated thickening of the inside of the ribcage and results from breathing in any form of asbestos; it is the most common type of benign asbestos-related lung disease. Although pleural plaques are not thought to cause symptoms, they may slightly affect some lung function tests. They do not require treatment, but their presence should prompt regular medical check-ups. They usually do not develop into a more serious condition; however, they are proof that someone has been exposed to asbestos. Occupations typically affected by pleural plaques include plumbers, electricians, builders and engineers. It usually takes a minimum of 10 years following exposure to asbestos for the first signs of the disease to show up on a chest X-ray.

Further to the clinical description, I have information from the British Thoracic Society, which has provided information for health professionals on pleural plaques. It makes reference to association with other conditions caused by exposure to asbestos, such as diffuse pleural thickening, which is a progressive condition that affects larger confluent areas of pleura than pleural plaques. This condition sometimes causes respiratory disability. It is very clear that the two conditions are very different.

Why was there confusion with the previous act? It is interesting that in October 2010 a copy of a letter from WorkCover came to my attention. It states, in part —

> WorkCover WA will investigate the implications of removing the *diffuse pleural fibrosis* qualification attached to pleural plaques in Schedule 3 and other relevant sections of the legislation.

We know that when reference is made to "implications", it comes back to costs. It should not come back to costs; it should actually come back to the people who are suffering from these conditions. That is why I believe it is very important, while the Workers' Compensation and Injury Management Amendment Bill 2011 is on the table, for the house to make amendments to the oversights that occurred when the legislation last came before the house. I note that the member for Eyre has listed some amendments on the notice paper. I seem to have misplaced one of the other letters I received, but one of the member for Eyre's amendments seeks to delete "diffuse pleural fibrosis". It was suggested in a letter that was sent to me that by removing the brackets in references in schedule 2 to "pleural plaques (diffuse pleural fibrosis)" we could possibly have "pleural plaques or diffuse pleural fibrosis", and that way a person would not have to have both those conditions before being eligible to receive compensation.

I look forward to the consideration in detail stage and I hope that the government will give some serious consideration to these changes. The maximum number of people in the community who are affected by this condition is perhaps five or six people each year, so it is not going to put a major strain on the government's finances, but it will make a big difference to people who, because of their diagnosis, are not able to receive compensation at the moment and are, in fact, very disabled by their condition.

MS J.M. FREEMAN (Nollamara) [4.24 pm]: I rise to speak on the Workers' Compensation and Injury Management Amendment Bill 2011. I congratulate the government on this bill, especially on the changes to age discrimination. This is an issue I spoke about in my inaugural speech, and I said that I wanted to see change; two and half years after being elected, I welcome it. I know how difficult it would have been for the minister, because I have been around long enough to know that many people are reluctant to change age discrimination provisions on the basis that they have some idea that it means that people aged over 65 will pull an injury. I know how the system works; if one is incapacitated because of an injury sustained at work, that is when one gets workers' compensation. People should in no way be discriminated against on the basis of age. There are people in our workplaces over the age of 65 who have greater fitness levels and capacity for work than some people aged in their 30s. The concept that we somehow have to protect a costly area is, I think, a false one. It was absolutely shameful that insurers continued to claim premiums and have premiums paid for workers over 65, without providing cover beyond a year of sustaining an injury. I welcome those changes.

I know that the changes are partly the result of a review established in 2009 by the current government, but that was an extension of work that was already being done by the WorkCover board. Various changes over the years

had made the act quite unwieldy. It is a bit of a concern when one has a workers' compensation act of the volume of the current act. When workers are injured, they do not need the complexities of law; they need the compassion and understanding of an overlaying system that enables them to avoid having to prove that they are sick enough to stay in the system, resulting in a compromised position because of the way the system works. We must always remember that the objective of this bill is to provide a no-blame system for the benefit of workers and to ensure that workers have enough time to rehabilitate and convalesce from injury and return to work safely.

In the times I worked at WorkCover I knew a few people who I think have had a great impact on this Workers' Compensation and Injury Management Amendment Bill and who I would like to mention. One is Linda Morich, who sits on the WorkCover board and who works for UnionsWA. She is a great advocate for workers' compensation and for the need to afford workers a fair and just system. The other is Professor Rob Guthrie, who over the years has worked in the system. Unfortunately, he left WorkCover in the past year or so to go into a different area of law. They have both contributed greatly to workers' compensation.

I also congratulate the government on this bill. I started in the workers' compensation area in 1996. I will tell members a funny story. In 1996 I left to have a baby and when I returned to work, the federal and state industrial relations acts had been changed. The federal workers' compensation legislation had been changed in 1993. On returning to work for the union, I said to the state secretary, "Wow; I don't think I can get my baby brain around these massive changes." She said, "Here; go into workers' comp, it's easy." That was the beginning of my seven-odd years of working on various aspects of workers' comp.

The timing of this legislation is a sign that this place needs to move beyond disputation over workers' comp because the more stable the workers' comp system is for employers and employees, the better. One of the biggest difficulties with workers' comp is that often the crux of who should be addressed—the employers and the workers—is lost. That is often because insurers have insurance policies that stand in the shoes of employers. I suppose that reflects one of the greatest conflicts in the system; namely, if we remove the employer–employee relationship and the benefits for employees and employers of employees returning to work and making the workplace safe, it undermines what should be the aim of the legislation.

I am somewhat concerned that the removal of the age discrimination provisions from workers' compensation legislation will not be retrospective. I understand that it could not be fully retrospective but I wonder whether the age discrimination provision could be retrospective from the point at which it was announced by this government, because I think many people will have made decisions about their ongoing employment after turning 65 years on the basis that they would have some coverage. That would certainly not incur an additional cost to insurers; they claim the premiums on it.

I agree with the minister that the common law remedy provision to cover employees when employers are uninsured is an important provision, and that omission has certainly caused unfairness. I will say, though, that that is uncommon and we need to ensure that it continues to be a rarity. We need to ensure that it is fully regulated and that employers provide adequate insurance for workers' compensation.

I feel as though the major changes to the dispute resolution system are a bit like *Back to the Future*. I lived through the 2005 changes and those in 1993, and over those periods I saw the number of disputes and dispute resolutions increase. In fact, in 2008–09 the number of disputes lodged was 1 686 and in 2009–10 it was 1 762—an increase of 4.3 per cent. The number of disputes resolved in 2008–09 was 1 566, or 93 per cent of disputes lodged. In 2009–10, 1 517, or 86 per cent, of the 1 700-odd disputes lodged were resolved. I must admit that that increase seemed to occur gradually. I think that was due to the introduction of the 2005 reforms. Although I think they were well intended and tried to address some of the problems of lengthy delays in conciliation and review, they were hampered by the rules.

That taught me a very important lesson as a member of Parliament. Departments must be committed to the way the Parliament thinks reforms should be implemented. If a department feels some resistance—I was around at the time; there was some resistance to the changes—it may consider the reforms have become legalistic and bring in rules that are extremely difficult to comply with. I think that is what happened. I was in the jurisdiction of conciliation and review and I cannot remember reflecting on the rules. There were forms et cetera, and we were able to achieve things. Under the new system in 2005, suddenly the number of rules was just as great as the number of regulations. It is really important for members in this place to pass legislation, but unless we have some way of ensuring that our departments process it according to our aims, those aims can be hampered.

Mr T.R. Buswell: Can I interject?

Ms J.M. FREEMAN: No; I really want to get through this. I am reluctant to go into consideration in detail because I think the age discrimination provision is so important that I would like to see the bill proceed as quickly as possible.

Mr T.R. Buswell: We may have to so that we can discuss the pleural plaques. You raise a really good point. All too often we get obstructionism, if I can use that term, in trying to implement legislation or policy changes. In this case, most of the changes here were driven by the agency, which is a good reflection on it.

Ms J.M. FREEMAN: Absolutely. I said that very early on. I think this bill is a reflection of a department that was very committed to amending very unwieldy legislation that totally undermined the objectives of the system. Seeing that here today shows that we have come a long way since the introduction of the changes in 1993.

Some people might not know workers' comp as intimately as I feel I do. The changes in 1993 introduced a non-legal conciliation and review directorate to replace the 1948 Workers' Compensation Board, which the Chapman report at that time called a Kafkaesque legal and bureaucratic maze. Having looked at the rules that came after the 2004 reforms, I feel that some of those Kafkaesque aspects have remained. That is one of the issues we must address. It is a jurisdiction that can argue over one word. I have had those arguments. It is my view that, although there might be a lot of money in the system, unfortunately, not a lot of it goes to workers. On that basis, we must be very careful that we do not cause something to become more legalistic.

The aim of the conciliation and review directorate was to create a fair, economical, informal and quick disputes settlement process. Those objectives are still there today. One of the differences between the return to conciliation provisions in this bill and those previously is that, prior to 2005, under the conciliation and review directorate, a matter could be referred for review, and a conciliator could also refer it. If a party to the review knew the issue was not going anywhere, it was the party's right to have it referred to the review to be argued on the merits of the matter rather than being placed in a conciliation stage. A critical problem in this jurisdiction is the delay. The delay is what causes workers to become caught up in injury psychology and a heap of other aspects. Delay and conciliation can be used by one of the parties. Conciliation is used, for example, as a delaying tactic to enable surveillance or time to prepare further reports. Unfortunately, the 1993 non-adversarial, administrative and non-legal system did not deliver in either time or in formality. As a lay advocate in the area of workers' compensation, I found it very useful to get the parties around the table but many people still believed that the delays were unconscionable. They felt that workers were intimidated by the system if they were not represented. Insurers remained legally represented, so even though the insurer represented the employer, the advocate was a paralegal. In those situations we would often try to negotiate some way forward for the worker but we could not come forward because the advocate could not make a decision until he went back to the legal firm to get further instructions. The 2000 reforms were right in reintroducing legal representation.

Post 2005, the right to legal representation was reintroduced but it could not deliver on efficiency as the rules became complex and unwieldy. Effectively, the 2005 changes brought in a Western Australian Industrial Relations Commission structure. If legislation had been modelled on the New South Wales workers' compensation legislation with its dispute resolution provisions instead of the less complex Western Australian Industrial Relations Commission–type model, we would not have come unstuck. Had the legislation reflected the intent of the changes brought about in 2005, we would not have had the complex rules; we would have had a system that was much more like the Western Australian Industrial Relations Commission. The changes that are before us effectively introduce a Fair Work Australia structure; that is, a conciliation structure divorced from an arbitration-type structure. It will be interesting to see how the separation of the two operates. I understand that there were concerns about procedural fairness.

An evaluation of the 2005 workers' compensation legislation after a year of operation basically said that the rules were outcomes-focused and caused confusion. It said that the front loading of documents in applications was burdensome. Whereas the intent was for all the papers to be on the table, it was never intended to be a burden but to get through the process quicker. The evaluation also found delays in processing applications because of strict rules. It said that the lawyers became adversarial. I do not think that much has changed since the first year of the review.

The changes that we have before us may assist but only if there is a change in the culture of workers' compensation. We need to ensure that we have a system that workers know is protecting their interests. Often the problem we have is that people enter into the system and believe that they are under attack and that their interests are not being protected. One issue that may hamper conciliation is some of the terminology and powers—in particular, the parties cannot request that the matter be referred to arbitration, which I have already spoken about; only the conciliator can do that—and the reaching of a time limit set in the rules. Delay is the tool of disputes. That is something that we need to be very aware of.

The terminology used in division 3 of the bill in reference to dispute resolutions is "fairly, economically, informally and quickly". Yet proposed section 177(1)(b) introduces the term "professional". Given the litigious nature of workers' compensation, I am really concerned about the interplay of suddenly having this new concept of "professional" when it comes to conciliation, as it has never been in workers' compensation legislation before, and how that will reflect in dispute resolutions that are done "fairly, economically, informally and quickly". I seek some clarity from the minister on how the government thinks that will play out. I hope it will not undermine the informality of conciliation.

In any event, it clearly needs to be said that the object of any process in this bill involving workers' compensation should ensure that, wherever possible, during or consequent upon the administration of any claim for compensation or in the process of any dispute resolution relating to such a claim, everything possible should be done by the employer, insurer and dispute resolution officers to prevent harm additional to any injury already suffered by the worker in the course of his or her employment. Many people have come into my office who were almost more damaged by the process of gaining workers' compensation and staying within the system than they were by the original injury. We need to ensure that the system does not create that sort of situation. People need to have faith in a system in which their disputes are fairly heard and their concerns fairly dealt with.

Since 1993 repeated changes to the act have not adequately compensated workers for the effective closure of common law claims. I firmly believe that. We have insurance premiums of 1.547 per cent. The Pearson report was presented in 2004. The member for Balcatta can correct me if I am wrong, but aged-care institutions were saying that they would not be able to afford workers' compensation and they would have to close down because the premiums were too high. The report guidelines stated that a premium should be around 2.2 per cent to 2.4 per cent.

Mr J.C. Kobelke: I think the Pearson report said 2.4 to 2.7 per cent.

Ms J.M. FREEMAN: I thank the member. It was even more than I thought it was, which is more than it currently is. That further emphasises my point that someone is missing out in this system, and I think it is the workers. Insurers are now offering mass discounting. Premiums are at historic lows and we still have insurers who are discounting. That means that insurers say to employers, "If you do a whole package with us, we will offer you workers' compensation at lower premiums." We would all like to think that they have really good workplace safety records, but that is not true. It is based on size and scale. I would like to note that QBE Insurance is one of the good insurers when it comes to dealing with the workers. It went through a major change when I was working in the area. Mass discounting by insurers is not resulting in safer workplaces. Workers are basically coerced through processes and there is a lack of adequate compensation to finalise their claims through the backdoor method of section 92(f) of the act for amounts that do not deliver sustainable futures. Compensation for a serious injury is around $50 000.

With the closure of common law claims in 1993, I believe that common law rights were pretty much extinguished in 2005. I will stand by that. The figures from the actuarial reports over the past two years show that from 31 December 2009 to 31 December 2010, there was an eight per cent reduction in claim payments in real terms for common law. The figures in the actuarial reports for the previous year, 2010, show that the decrease in common law frequency was around 0.3 per cent. The actuarial reports refer to the major decline in common law claims after 1999. The graphs showing the figures relating to claims were sitting pretty high and they have come down really low. We have just seen that occur. Workers have lost their common law right to pursue someone for negligent behaviour in a workplace. That should be a right, but we have extinguished it as parliamentarians. We have not enabled them to be given proper compensation in the statutory system to recognise the diminution of that right. The lack of benefit is demonstrated through the limit applied by the prescribed rate. The prescribed rate is a maximum amount an injured worker can receive in weekly payments for loss of earnings during the life of the claim. We are the only state that does that; no other state has this ceiling limit. While the prescribed amount is indexed, it has just gone up to $190 701. Once someone has received weekly compensation payments of $190 701, plus an extra $50 000, which has to be applied for, that person suddenly has no rights to compensation whatsoever. We should think about that—$190 000 in a booming economy. People working in the mining industry are earning that much. No wonder we need unions to negotiate claims that have make-up pay provisions and additional insurance provisions for people with injuries. Our system has not paid the compensation it should have. Further, all workers have a weekly cap on payments, which is basically inadequate for Western Australia's economy. It is currently about $2 545 per week, which is two times the average weekly earnings. The annual rate is $132 000. I have a funny story, which I told some friends recently. One of the great things about United Voice is that it covers many and varied workers, including sex workers. It also covers the former Liquor, Hospitality and Miscellaneous Workers' Union. I took a couple of sex workers' compensation cases to the Conciliation and Review Directorate. I can remember telling one worker that the cap at that time was about $2 200, or maybe a little less. This woman looked at me and asked if that was for a

day! I told her it was for a week. Needless to say we settled that claim very quickly because there was a need in terms of income. But anyway, I digress.

Mr T.R. Buswell: Is the miscellaneous workers' union now United Voice?

Ms J.M. FREEMAN: They are; we are united.

The annual rate is $132 000. If a person earns above this and has financial commitments above this, and is subsequently injured, he or she is financially at risk. Can I bring the minister back to this; I should not have let the minister go off on his own little tangent.

Mr T.R. Buswell: That is my mum's old union!

Ms J.M. FREEMAN: Stay with me! The minister has told me that 100 times. It is a shame he does not act accordingly!

I refer to weekly payments amendments. The intent to simplify clause 11 of schedule 1—can the minister listen because this is important—I understand is done on the basis that it will ensure no worker is worse off. However, the removal of clause A appears to result in workers who work regular overtime—such as those in metal workshops on a six-day roster who are paid additional overtime rates for working Saturdays—will lose that regular income if injured. That is a concern to me. If the intent is that the workers revert to definition B, there is a step down. That will result in financial disadvantage not previously suffered—that is, to 85 per cent—or at least to amount Aa, which will not include regular overtime. I understand that clause is quite difficult to get around but I believe if the intent is not to have anyone worse off, that can simply be rectified by an amendment to Aa to include the words "or overtime"; that is all regular overtime.

Mr T.R. Buswell: I will get advice.

Ms J.M. FREEMAN: The minister can answer me when I finish; I want to keep going.

Clause 16 of schedule 1 needs close examination to ensure workers injured at the time of one enterprise agreement get the benefits of subsequent enterprise agreements. I understand there has been a Magistrates Court decision. If a worker was under, let us say a 2006 enterprise bargaining agreement, and was subsequently injured resulting in incapacity to work, and paid under an earlier 2003 enterprise agreement, that needs to be checked. I understand a magistrate has made a determination. When I was involved in the 2005 amendments, that was never the intent of clause 16 of schedule 1. I would like clarification put on the record.

Pleural plaques will clearly be addressed by others. My only comment—there might be some difference in this—as a previous member of the medical committee at WorkCover, my recollection —

Mr T.R. Buswell: You were the chairperson when this issue was dealt with.

Ms J.M. FREEMAN: I was indeed the chairperson when this issue was dealt with. I am cognisant there may be issues governing how much I can say. My understanding is that pleural plaques have a debilitating effect on a worker's capacity to undertake gainful employment. Although it may not lead to or cause cancer or asbestosis, it should be covered by the same provisions in the act that are accorded to lung cancer and asbestosis. I understand that pleural plaques is quite separate to diffuse pleural fibrosis. My recollection is that pleural plaques was considered different from diffuse pleural fibrosis. That was part of the determination. There are records from that time. Perhaps that would help me to recall better, but I certainly believe that all we are talking about here is section 41(1). That section gives the worker the right to seek compensation from the last employer. Even if a worker has pleural plaques, they still have to prove incapacity to work for the purposes of workers' compensation. This bill gives them the same capacity to prove that, as they would do if they had pneumoconiosis, mesothelioma or lung cancer. That is a fair thing to do under the circumstances.

There are some questions I probably want to go through if we go into consideration in detail. I congratulate the minister for introducing this amendment bill, and I congratulate the minister in the other house for continuing this. I hope he takes the next step, which is to simplify this process. We still have this most unwieldy and complex piece of legislation that refers back and forth. It needs more work. I understand the department has been working on that for some time and is keen to do that. It would be a shame for us to stall the process and not get a document which ensures we have at heart the benefit of the people who suffer injuries in Western Australia, and which ensures they have the best system possible and the best legislation that we can afford them. We want practical legislation that provides practical regulations and does not bog us down in bureaucracy or a Kafkaesque maze of difficult processes, but ensures injured workers know that we, as legislators, recognise and believe in a no-blame system that well compensates them, and takes into account they should have more in their system to ensure they are not financially disadvantaged just because they suffered an injury in the workplace.

DR A.D. BUTI (Armadale) [4.54 pm]: I feel that by following the member for Nollamara on this issue I am part of the second XI. I am sure the minister will be happy to know he will not be bombarded with facts and figures. I will definitely not need my allotted time. The minister and I have two similarities—our surnames start with B and both our mothers were members of the misso workers' union; so there you go.

Mr T.R. Buswell: Not any more. It is now United Voice!

Dr A.D. BUTI: My mum was, until retirement.

The member for Nollamara mentioned the work of Professor Rob Guthrie on workers' compensation. I would also like to endorse those sentiments. In fact I marked his masters thesis on workers' compensation. It was an outstanding thesis. With a little bit more work, it would have been up to a level of a doctorate thesis. He is a person who has been a very important player in the workers' compensation scheme in Western Australia for a number of years. If I am not mistaken, he has moved on to criminal injuries compensation.

I would like to congratulate the minister on the Workers' Compensation and Injury Management Amendment Bill 2011. In his second reading speech, the minister broke the amendments down to changes to age entitlements, the common law safety net, dispute resolution, and legislative anomalies and inefficiencies. All those matters are dealt with well in the bill, although I have some concerns about the dispute resolution part of the amendments. Before I deal with those, I will make some general comments on workers' compensation. I agree with the expressed views of the member for Nollamara. I have not the experience the member for Nollamara has in the area, but I started off my legal career in workers' compensation as an articled clerk for Dwyer Durack in the heydays of Dwyer Durack in the early 1990s, when they used to be the old —

Ms J.M. Freeman: The old WorkCover board.

Dr A.D. BUTI: Yes; in West Perth. I remember every morning at nine o'clock getting in the taxi up there to argue section 58s and section 64s—commencement and termination of payments. I realised it was a very imperfect system. Even with these proposed changes, we will still have an imperfect system because it is a system that is very hard to manage one way or the other. We have to find a fine balance to ensure we compensate injured workers. Once a worker is injured, their whole economic future can be put into a very grave situation. We also need a system that assists with the rehabilitation of the injured worker and provides incentives for a worker to recover to a stage at which they can return to work—hopefully to the same level that they were before they were injured. That is not easy. I am sure this government and future governments will always be battling with that system.

I will address my comments more to the administrative changes that have been proposed by this legislation. It concerns the separation of conciliation officers and arbitration officers. From the way I read the bill, it would appear that the chief executive officer will have the responsibility for the appointment and, I assume, termination of conciliation officers. That happens now to a great extent. The proposed changes will formalise that process into a strictly administrative function, which has its own problems. Although it can be argued that there is no WA state constitutional right to a separation of powers in workers' compensation matters, there is over 100 years of tradition of separation of powers in workers' compensation matters, particularly relating to workers' compensation tribunals. I worry that by giving the CEO in effect the responsibility for the appointment and, I imagine, termination of conciliation officers, the process is really more of a formalised administrative function than a quasi-judicial process. I wonder how that will play out if these amendments pass through both houses of Parliament and are eventually proclaimed.

My other concern is the attempt to put time restrictions on the conciliation process. Having worked in the area—I am sure the member for Nollamara would agree—I know that it is a worry when there is a great delay in determining a matter. That is a major concern. I assume part of the logic behind the minister's attempt to bring in time constraints is to try to ensure that the process is not prolonged. The problem is that all matters are not the same; many matters are different. Some matters deal with simple matters of law; others are more complex. Some matters may be able to be dealt with very quickly, while others may take longer. By imposing or prescribing certain time limits, which are in effect artificial limits, I am concerned that all cases will be treated the same even when they should not be treated the same, because they are not the same. Many cases come before workers' compensation systems and schemes, and they vary in complexity, whether it is with regard to medical complexities, rehabilitation complexities or the general factual information that is presented before the arbitrator and the conciliation officer.

From my understanding, the proposed amendments will result in arbitrators and conciliation officers being appointed initially as officers of WorkCover, and then they will be designated a position from that initial appointment. I am led to believe that this will then eliminate the ministerial process that is in place at the moment whereby a nominal appointment is made by a minister, and then they are employed pursuant to the

Public Sector Management Act. If that is being changed, I wonder whether this is eroding the traditional separation of powers that we have enjoyed. I am not saying that there is a legal constitutional imperative that there be a separation of powers in these matters, but at least there has been a tradition of it.

Mr T.R. Buswell: I think we also have to acknowledge, from my recollection, that the separation or that perception of separation has in the past created some significant issues in terms of trying to manage the processes required to have a good compensation system. I think it is about just trying to find a balance.

Dr A.D. BUTI: I understand that, minister. The system we have at the moment has had a good settlement rate. From my understanding, over 90 per cent of matters that become before the arbitrator and conciliator are settled. One of the arguments is that, if the arbitration and conciliation roles are fulfilled by the one person, that person will have a greater knowledge of the case and will seek to bring a settlement hopefully more quickly than what may happen if the matter is split between the conciliator and an arbitrator. If one considers the current scheme to the pre-2005 scheme, in the pre-2005 scheme, conciliation officers resolved between 75 and 85 per cent of matters. Resolutions under the current scheme are at least at 93 per cent. That may not seem to be a great difference, but one must take into consideration that often many of the disputes that came before the decision-makers in the pre-2005 scheme were not really major disputes, and they were settled quickly. If those simple matters were taken out of the equation, the difference between the pre-2005 settlement rates and rates in the current system in which arbitration and conciliation is done by one person, there is a greater difference. One could argue, at least from the statistics—we all know that statistics do not always tell the truth—that the current system has been pretty effective.

Mr T.R. Buswell: They do on the Minister for Police's graphs.

Dr A.D. BUTI: Yes. Unfortunately, I did not have time. I do not have the resources of government, unfortunately. The minister knows very well what it is like to be in opposition; we are very, very poor.

I just summarise my major concerns with regard to the proposed changes in the administrative or the dispute resolution structure. Firstly, I have a concern about the artificial time constraints, because sometimes it is not known until the matter is dealt with in some detail how long it will take to resolve. I also have some concerns about breaking away from over 100 years of tradition of separation of powers and the judicial independence of the workers' compensation system by allowing the CEO to be the determining head on the appointment and termination of conciliation officers.

MS A.R. MITCHELL (Kingsley) [5.07 pm]: I rise to support the Workers' Compensation and Injury Management Amendment Bill 2011 because I believe that this bill introduces some significant workers' compensation reforms that will have a positive and very beneficial effect for many workers. I specifically want to mention two aspects of the bill. One is very personal within my electorate, but one of them I will firstly talk about more broadly.

The first is the removal of the age limits on workers' compensation entitlements. As has been mentioned previously, this certainly improves the status for older workers within the state's workers' compensation scheme. The removal of aged-based limits on entitlements certainly will give these people the same entitlements as those available to every other worker. That is absolutely essential. This is also important because Western Australia has an ageing workforce. It is imperative that we are able to maintain that skilled and experienced workforce; therefore, it is essential that we treat these people the same. In fact, we need to encourage older workers to remain at work. Therefore, it is even more important that the state's workers' compensation scheme actually reflects this entitlement and the environment in which we are working. On its own, this will certainly not determine whether people continue to work, but it is a factor that should not discourage people from continuing to work. As a state, we have a very low unemployment figure, and there is a need for that increase in workforce. As I said, the removal of the discriminatory provisions from the bill will have a positive impact for many people who are considering what they should do with their future.

The aspect I really want to talk about is the common law safety net. I believe that the introduction of this section is absolutely vital. A constituent of mine has experienced a situation in which his employer was uninsured, and was injured on the job. What he and his family have been through is absolutely disgusting. Let me tell members about Bryan. Bryan was aged 18 years. He was a talented soccer player and was earmarked for a successful soccer career. He was fit, he was healthy, he was energetic and he was bright—he was a great young man. This young man secured his first apprenticeship as a boatbuilder in Balcatta. He completed all the documentation. He assumed that his employer had complied with all the requirements, and he began his apprenticeship.

One day in 2004 he suffered a horrific accident at work after the boss had left him unattended and unsupervised to complete some welding. There was a massive explosion that was heard right throughout the district; many

people in other businesses around the site were well aware that a major explosion had occurred. Of course, Bryan had been left on his own, but, fortunately, because the explosion was so loud, people came running. He suffered some fairly major injuries. He had head injuries—blood clots on the brain—he had many fractures, he needed a tracheotomy, he was in a coma for 19 days, part of his skull had to be removed —

Ms J.M. Freeman: How old was he?

Ms A.R. MITCHELL: He was 18 when this happened.

He had massive dental problems and the list goes on. Bryan survived. He slowly recovered due to strong family support and a great desire on his part. He has had operations, treatments, tests, medications—on and on it goes. During all this he learned that his employer did not have workers' compensation insurance. His family was furious. Bryan quickly used the funds that were available to him as an employee whose employer was uninsured, but Bryan's family paid the other bills. Let me tell members about Bryan today. He has epilepsy, short-term memory loss, headaches, neck problems, back problems, wrist problems, bowel problems, cognitive problems, body temperature–control problems and fatigue. He is sensitive to light and he has uncontrollable shakes. Bryan is not the man he was. He cannot play soccer; he cannot play sport. He is well behind what his mates have.

But I greatly admire Bryan because in 2008 he went back to work and got another apprenticeship—not in boatbuilding though! He took another apprenticeship as a plumber and gasfitter. In 2010 he finished his apprenticeship, and he now has a job. But he continues to have medical bills and tests from the accident he had during his first apprenticeship, and he pays for this because his employer was not insured. There was no common law safety net for Bryan. He will not benefit from this legislation, but he and his family vowed that no-one else should experience what they have and they took every avenue they could to highlight this problem. I am very pleased that the previous Minister for Commerce, Hon Troy Buswell, met with them and set out to correct the anomaly that existed. The family have achieved their aim and I thank them for their diligence and their commitment.

MR J.C. KOBELKE (Balcatta) [5.14 pm]: I rise to speak in support of this Workers' Compensation and Injury Management Amendment Bill 2011 and recognise the member for Nollamara's very extensive practical experience representing injured workers. She clearly has a much greater understanding than I do about some of the operational aspects of the system that will be affected by these amendments. I also recognise the member for Armadale's legal expertise in representing people in this area. I want to make a few general comments about the workers' compensation system and the amendments in this bill; touch on a few aspects of those amendments, particularly the removal of the age limit; and, spend some time on the issue of pleural plaques, which causes concern. The bill is overwhelmingly good, and makes a range of improvements that are most welcome. I would like to caution the Minister for Transport—I am sure that staff will also advise both him and the minister in the other place—of the difficulties one can encounter when making changes, for the better, to the very complex set of laws and procedures that is our workers' compensation system. The system is obviously way too complex for injured workers; even professionals in the field find it difficult. Sometimes the inter-relationship between the act and the practices, and the services provided to people, do not deliver the best outcomes for the injured workers. Clearly, we need the best outcomes; the whole system is established to look after injured workers and to do so with a light a touch as possible on the costs passed on to the employer. But the system is very dynamic and when a change is made to one little area, it has knock-on effects through the whole system. Therefore, a change made with a very clear intention of improving the system for injured workers may open up some unseen problems in some other areas. Even those small changes can have unforeseen circumstances; therefore, we need to assure ourselves of the implications of these very good changes to the workers' compensation system.

To illustrate that point, I go back to some of my fairly lengthy and in-depth experiences with the workers' compensation system. I have had experience with the system through the 1993 debates with Hon Graham Kierath on the legislative changes, which were vigorously opposed by the Labor Party; through the problems that arose from those changes; and, through an amending bill that I brought in as Minister for Consumer and Employment Protection in 2005 to try to improve the system and overcome some of those disastrous things that happened in 1993. In 1993, the then minister, Graham Kierath, was concerned because the average recommended insurance premium rate was about three per cent of the cost of wages and he wanted to get that down. Therefore, he reduced the benefits available to injured workers in a range of ways. He shut off access to common law—not totally but he reduced it quite substantially. He also removed journey cover insurance and shut down the use of redemptions. When a worker was injured and getting weekly payments, the actual administration of the case, with all the doctors' reports and the management of the worker's files, could cost more than the injured worker was getting. Therefore, a judgement would be made to just pay this person $10 000, $20 000 or $30 000, because it would cost less than continuing to have that person in the system, managing their case and paying for ongoing medical reports et cetera. Graham Kierath argued, and I accepted it, that workers were bought out of the system in a way that could be to their detriment, because if they stayed in the

system, they would get medical treatment if they needed it. But holding a carrot of $10 000, $20 000 or even more in front of someone may mean that they accepted the redemption, signed off, lost all their rights and were out of the system. I do not think I misrepresent Hon Graham Kierath when I say he used those sorts of arguments for the closing down of redemptions. However, insurers, who were no longer able to use redemptions in the way that they had previously, started to use consent common law as a way to get people out of the system. Therefore, people could be paid off; they would sign off all their rights to take matters further and insurers would use a form of common law to do it. That led to an explosion of costs in the system; at its height it went up to around 3.4 per cent of the average wages bill. The change that was argued for, and made, to benefit injured workers and to be good for the system, did not cause all the problems—that was the growth of common law—but was the catalyst that drove the system out of control. At the time, employers came knocking at my door saying that they could not employ people in Western Australia because the workers' compensation costs were so high that work would simply go to other states. This was particularly the case with sheep shearing out on the Nullarbor Plain. If a Western Australian shearing team was employed, workers' compensation premiums might have been to the order of 12 per cent of the cost of wages, whereas a South Australian team would attract a much lower workers' compensation premium. Therefore, big issues needed to be addressed, and at about that time the Pearson "Report of the Review of the Western Australian Workers' Compensation System" recommended that the best range for those average premium rates was around 2.4 to 2.7 per cent of the cost of wages. As the member for Nollamara has indicated, following the changes the Labor government made in 2005, premiums rates are now down to 1.5 per cent, which, I must acknowledge, I am rather ashamed of. With a premium rate of 1.5 per cent, we are not running a system that provides the level of benefits that I personally would like to see available to people who are injured in the course of their work. Clearly, we do not want a system that gets out of control—I am very much aware of the problems—but we want to ensure that injured workers get the maximum benefit and are not tied up in the system.

I asked for some figures from WorkCover, and the minister sent me some figures but they were not the detail that I wanted, so I will refer to the graph on page 10 of the 2009–10 WorkCover annual report. I make the caveat that these figures can cover a whole complex of issues—a cost that shows up in one year may be attributable to an accident in another year. All those problems make it difficult. The graph in the annual report shows that the actual costs have not gone up by too much between 2007–08 and 2008–09, but the total workers' compensation payments have gone up substantially more. I will refer to some percentages from those numbers. In 2007–08, 68 per cent of the total compensation premiums were made as payments to workers; in 2008–09, the percentage going to workers had gone up to 78 per cent; and in 2009–10, it went up to 82 per cent. If those figures are a fair reflection of what is happening—I qualify that because I am drawing those percentages just from these figures, not the base data that I asked for—the 2005 changes to ensure that workers got a bigger percentage have at least had some good effect, which was clearly the intent. The total has gone down. I would like to see the real numbers, because I suspect that, as a quantum, less money is being paid to injured workers, even though the percentage across the system has increased. Even the figures that I got from the minister indicated that.

With the 2005 amendments, we were trying to improve the fairness of the system and to ensure that there were greater efficiencies. I was also very conscious that, in doing that, we had to balance the political arguments that were going on. We ended up making the system more complex. Again, I was not happy with that at the time, and I am still not happy with it. But it was a balancing act to achieve those improvements because the Liberal Party opposed it; the conservatives voted against it. I would like to have done a number of things. I would like to have removed the age limit, which will be done with this bill, but I was told that it would cost more. I was told that all the things that I wanted to do, including the amendments to deal with the actuary reports, would cost more. We now see that it has cost less because the new system has given greater certainty, particularly in measuring and identifying the injury, and has reduced costs.

Mr T.R. Buswell: The advice I have is that, as a stand-alone change, the cost is marginal.

Mr J.C. KOBELKE: I am not talking about this government's change; I am talking about the 2005 change.

Mr T.R. Buswell: I am talking about removing the age limit of 65.

Mr J.C. KOBELKE: I accept that. If the minister had been in Parliament in 2005, I am sure that he would have led the charge in opposing those changes on the basis of the cost to the system and, therefore, the cost to employers. I had to walk that balancing act between keeping the increasing costs down and —

Mr T.R. Buswell: I heard that you had no ticker; that's what they told me!

Mr J.C. KOBELKE: I actually got it through.

Ms J.M. Freeman interjected.

Mr J.C. KOBELKE: I thank the member for Nollamara. In these times, we could go a lot further. The government has indicated that these reform amendments—I think they are good reforms—are only the first stage, and we look forward to seeing what will come afterwards. These are generally not contentious amendments and, as I have said, they are positive. Also at the forefront of my mind in 2005 was something that the member for Nollamara alluded to; that is, there were many cases of people who were injured at work and then suffered far more damage from being stuck in the workers' compensation system. I was very keen to have a system that had a review after four weeks, and the changes we made to the legal system helped to get people through the system as quickly as possible, particularly if they did not have the really horrendous injuries that some people had. To some extent, that is reflected in the lower premiums.

I now turn to some of the provisions in the bill. The first provision is the removal of the age-based limit. This is very much required, and, as I have said, it is certainly overdue. It is driven by the fact that people have an increasing life expectancy, which is causing a whole lot of social and economic changes. As the baby boomers move out of the workforce, the cohort that will have to work and pay taxes to support everyone is shrinking. There are real issues with meeting the costs of maintaining pensions and health services for the ageing population. I will use the figures that Bernard Salt from KPMG used in a speech he gave in Perth a few weeks ago. He pointed out that, in 1931, the life expectancy of the average Australian was 63 years. If people got to the end of their working life at the age of 60, they basically, as he put it, were stuffed, did not have a lot of years to look forward to and did not have the energy to enjoy life. Basically, people were expected to die in their mid-60s, so there was not an issue. By 1971, the life expectancy of Australians had gone up to 71 years. In 2011, it is up to 82 years, with a trajectory that the life expectancy of baby boomers will be 85 years. The commonwealth government has lifted the age at which people become eligible for the age pension. It has been moving to 65 years for both men and women for a number of years now, and the commonwealth government has indicated that the age at which the pension will become payable will rise above 65 years in the future. That means that there will be pressure on people to work beyond the age of 65. We have a workers' compensation system that should support all workers. Although it is clearly an injustice currently, the magnitude of that injustice will grow as more people work beyond the age of 65. This bill seeks to remove that age-based limit in the act. Currently, under the act, a worker's weekly payments for compensation are ceased at age 65 if the injury occurred before the age of 65, or one year after the injury if the worker was 64 years or more. The removal of the age-based limit will not operate retrospectively. The changes will take effect for injuries that occur, or for noise-induced hearing loss suffered, after the date of the proclamation of the relevant provisions. I understand that we need to look at some limits to control, and perhaps quantify, the costs. I am very concerned for those people who have some hearing loss that perhaps has been acquired over quite some time. The particular provisions relating to noise-induced hearing loss could be applied a little more fairly. We will have some questions for the minister during consideration in detail about whether some small changes would make that provision even fairer without imposing any considerable cost on the system.

Another amendment in the bill provides a common law safety net. The bill provides a requirement for all employers to hold a policy of insurance covering statutory and common law liabilities arising from injuries for which compensation is payable under the act. This issue was of concern to me about 10 years ago, because there was a bit of talk around that some insurers were offering a policy whereby they would cover the statutory costs involved if a worker was injured, but they were finding a way to opt out of covering common law liabilities. When I questioned the insurance industry, I was told that that did not happen. But there was scuttlebutt around that that sort of thing was happening. I was advised when I was the responsible minister that, no, that was not the case and that the insurance required to be taken out by employers covered both the liability for statutory benefits and the liability at common law. It is interesting that this bill will put the bolts and braces on that to ensure that it will happen. Perhaps we can have from the minister some technical explanation about what is happening in that area, because we obviously fully support the move.

The bill also provides that payment will be made from the WorkCover WA general account to workers when common law damages are awarded and the employer is uninsured. That is a very good move. Again, the advice received from the officers is that this is an extremely rare occurrence, and perhaps there has only ever been one case. If a worker is injured, the employer is held liable. But, of course, if the employer has gone bankrupt or has simply absconded and there is no-one to pick up the bills, and that employer had not taken out the workers' compensation or employer indemnity insurance as required, there is no insurer to take responsibility for the liability for payments to that worker for common law claims. If such a case arises—I note again that it is extremely rare—WorkCover would use its general account to step in.

[Member's time extended.]

Mr J.C. KOBELKE: WorkCover would seek to recoup funds if possible, but the injured worker would not miss out.

The member for Nollamara covered the changes in the dispute resolution framework. She has far more expertise in that area than I have, so I will not go into those matters.

I turn to the inclusion of "pleural plaques" under schedule 3, which is supposed to be consistent with a number of other industrial diseases. Schedule 3 and sections 33 through to section 44—a number of sections relate to it—shift the responsibility if there is a dispute over whether a person has the disease and the disease was work-caused. If a disease is listed in schedule 3, under section 44, "Diseases in Sch. 3 deemed due to employment in process in Sch. 3", the employer must prove that the claim is not genuine, or the claim stands. In workers' compensation generally, the employee who has been injured must show that the injury has affected their ability to work and that there has been a loss of income due to the injuries or disease resulting from their work. Diseases caused by asbestos have very long latency periods. Therefore, when a person has been exposed to asbestos years ago and has had three or four different employers since, the issue arises of who is liable. The situation then puts the liability back on the employer the person now works for. There are some protections for how liability is determined; if the person has been out of the country or changed employers, perhaps some other employer can be found to be liable. However, assuming the person clearly has an asbestos-caused disease that means it is impossible for them to work or earn their full wage, their employer is held liable through their insurer unless the employer can prove to the contrary.

Putting "pleural plaques" in schedule 3 changes the ability of an injured worker to make a claim. It is still open to the worker to prove who was responsible, but the difficulties of the evidence and the case they would have to put makes it very difficult for workers to go down that road successfully. For good reason, if an injured worker has a particular disease from the limited number given in schedule 3, including lung cancer and asbestosis, they can be compensated through their employer's insurer. The undertaking was made to include "pleural plaques" in schedule 3. However, the difficulty is that when the regulations were put in place over a year ago, schedule 3 instead included "pleural plaques (diffuse pleural fibrosis)". The member for Nollamara was quite conversant with this because she chaired the medical committee that made the initial recommendation. Back in October 2009, WorkCover WA announced that pleural plaques is considered a specified occupational disease under schedule 3. That was over a year and a half ago.

On 4 March 2010, the Asbestos Diseases Society wrote to the chief executive officer of WorkCover, Michelle Reynolds, advising her of the requirement to include "pleural plaques" in sections 32 and 33 of the Workers' Compensation and Injury Management Act. Further, in April 2010, Hon Troy Buswell—who was then the actual minister rather than the minister assisting as he is tonight—delivered the workers' compensation legislation changes at a WorkCover breakfast meeting and mentioned the inclusion of "pleural plaques". Members might be starting to get the message that through all this no mention was made of including "pleural plaques (diffuse pleural fibrosis)"; it was all about "pleural plaques".

In April 2010 the chief executive officer of WorkCover replied to the Asbestos Diseases Society correspondence of 4 March and stated that section 33 of the Workers' Compensation and Injury Management Act 1981 will be amended to include pleural plaques. All this talk was about pleural plaques, but when it was put into the regulations to go into schedule 3 it was "pleural plaques (diffuse pleural fibrosis)". Bill Musk wrote a letter, from which the member for Alfred Cove quoted, in which he points out about pleural plaques and diffuse pleural fibrosis that —

> The processes are radiologically and pathologically distinct. They have different effects on the function of the lungs.

I am not a doctor and I have great difficulty understanding all these medical terms and knowing the full implications of them, so I chased up Professor Bill Musk. For the record, I point out that he is a respiratory physician in the department of respiratory medicine at Sir Charles Gairdner Hospital and a clinical professor of health and population health at the University of Western Australia. Professor Musk is an internationally recognised expert on asbestos diseases. I asked him: if we had this term "pleural plaques (diffuse pleural fibrosis)" in the schedule, would he and other medical practitioners know what it is? He said no, there is no such disease. We have put into the schedule "pleural plaques (diffuse pleural fibrosis)", which an eminent expert such as Dr Musk has said is not a disease. We have pushed two together; pleural plaques is one disease and diffuse pleural fibrosis is another disease. Both are put in that category of pleural diseases that are caused by asbestos; they are asbestos-caused diseases. The question is: why do we have this concocted terminology rather than having one or the other, or both? I think we should have both. Again, I acknowledge my lack of expertise in this area. I put this to Professor Musk, but it is my interpretation and I might have misinterpreted because he uses all these technical terms. Professor Musk suggested that pleural plaques generally do not lead to a disability. There is not a high percentage of people with only pleural plaques who cannot still perform their duties and earn income. Pleural plaques may lead to other diseases, such as asbestosis. Once someone has asbestosis or lung

cancer, they are claiming compensation on that. The fact that they also have pleural plaques does not increase their ability to claim on the workers' compensation system. Once someone has a recognised disease that is work related and an injury, disease or disability that makes them unable to work or requires medical treatment, or both, that person is eligible to receive funding through the workers' compensation system. When we put in "pleural plaques", the additional cost appears quite minimal because someone might have pleural plaques with other diseases that already get them benefits under workers' compensation. Alternatively, for many patients if pleural plaques is the only disease they have, it may not be so disruptive to their normal functioning that they would be able to make a claim. I am advised that a greater percentage of people with the quite separate disease of diffuse pleural fibrosis suffer disabling affects. It is also my understanding that "pleural plaques" was included in the act without any costing, because it was assumed that costs would be quite minimal and that in the context of a budget of $700 million to $800 million a year—which is what employers pay in premiums—the costs were really going to be so small that the system could absorb them. The minister can correct me if I am wrong on that, but that is my understanding.

We have a situation in which asbestos causes lung diseases, and the advice I have from the Asbestos Diseases Society is that there are basically four of them. They might all be grouped under pleural diseases, so if we actually change the legislation to cover pleural diseases, we might be casting the net somewhat wider without having the medical evidence and the costings that might be obtained, which might open us up to a whole lot of costs. Although I would like to support the Asbestos Diseases Society and say, "Let's make it pleural diseases", I am seeking to work with the government to say, "Okay. Let's actually clear up this inconsistency and conundrum that's been created by putting into the bill something that is not a single disease; they are two different diseases pushed together." I do not know how medical practitioners are going to interpret that. Will they interpret it to mean that the person has to have both of them together? That could be possible. Are they going to interpret it to mean that the person can have one or the other? We are actually creating uncertainty through the way in which pleural plaques has been included in the legislation.

It would clear up the uncertainty and clarify the issue if we were to make a simple amendment to have either pleural plaques or diffuse pleural fibrosis. The minister might need to get some advice about what extra costs might be involved. The Asbestos Diseases Society and other parties that I have spoken to do not anticipate that the costs will be great. People who have lung cancer, mesothelioma or asbestosis may also have pleural plaques or diffuse pleural fibrosis, but they are eligible for compensation for lung cancer, so it is not relevant. We are talking about those people only who have diffuse pleural fibrosis to the extent that there is a disability from that disease and therefore they are eligible to claim. The fact that they have pleural plaques does not get them into the workers' compensation system; it is through pleural plaques plus the disability. Again, it is only the part of the legislation that relates to schedule 3, because when it goes in there, it means that the person can make the claim and the employer will have to prove that it is not relevant. The claimant may have worked overseas for 10 years and contracted the disease there, in which case the employer may make a successful case through its insurer and not cover them. But if they have worked somewhere in Australia where they have inhaled asbestos and it has caused a disease, I think we should look after them. This is a situation in which a good amendment could be made to one little issue that is causing concern, and I hope the government will take it on board and make sure we have coverage for people with pleural plaques and diffuse pleural fibrosis.

DR G.G. JACOBS (Eyre) [5.40 pm]: I am not being condescending when I say that the member for Balcatta made a pretty good fist of explaining the quite complex area of pleural asbestos-related disease. The Workers' Compensation and Injury Management Amendment Bill 2011 is essentially a very good bill that covers, as many members have already mentioned, age eligibility, the common law safety net and dispute resolution, and I think there is great support for this true reform. I am advised that this is a work in progress; some of these changes are very positive.

Like the member for Balcatta, I think it is important that we talk about some of the concerns around pleural disease and compensable conditions caused by exposure to asbestos. This is, in fact, a very complex area. I have had discussions with respiratory physicians, the very good people from WorkCover, and, indeed, the minister and his adviser about this complex condition. To define what we are dealing with here might help us come to a decision that will be helpful to a small but deserving group of people who have a work-related medical condition as a result of exposure to asbestos.

Short of asbestosis and mesothelioma—which is a cancer related to asbestos exposure—there are four conditions which are benign, if you like, and which may be on a continuum towards asbestosis, but which in fact are not by definition asbestosis, lung cancer or mesothelioma as such. However, they are related to asbestos exposure. There is one qualification that has been somewhat confusing because of some of the rulings in the United Kingdom and the Victorian legislation, but generally, pleural plaques is a recognised benign pleural disease.

Generally, the accepted definition of "benign" is that it does not kill one; but in fact, a benign disease may be on a continuum towards further disease that may be more serious.

Pleural plaques are whitish, plate-like tissue that affect the lining of the lung rather than the body of the lung. There are two linings of the lung: there is a lining inside the chest wall and the ribs, and there is a lining that sits very close to the lung tissue itself. There are two membranes, if you like—one on the inside of the chest wall, and one on the lung tissue. God has created them, and these are fine membranes that rub and are lubricated; they go across each other and move, allowing inflation and deflation of the lung.

The plaques we are talking about are generally parietal plaques—they are inside the chest wall. There is recognition that they are due to exposure to asbestos at some time in the patient's life. However, there is a complication in that it is not recognised in Victoria, and there are some issues about the causal relationship between asbestos exposure and a parietal pleural plaque. In the UK there was a ruling that discounted that causal relationship. If one speaks to people like Bill Musk and Gary Lee, they will say that there is an accepted causal relationship in Western Australia. In fact, in respect of benign asbestos-related pleural diseases, the so-called "Greenberg Bible", *Pathology of Asbestos–Associated Diseases*, refers to benign asbestos-related pleural disease as being one the most common pathological and clinical abnormalities related to asbestos exposure, and one of those is pleural plaques.

There are three other benign conditions related to asbestos exposure. One is diffuse pleural fibrosis; this affects the lining sitting close to the lung tissue. In that situation, the lining becomes inflamed, tightens up and becomes fibrosed. When it does that, it creates pressure and shrinks the lung tissue. It is probably considered by most to be a more sinister and more severe and serious condition that leads to decreased lung function and disability. There are a couple of other benign conditions. I say this only to show that it is quite a difficult situation if we are to recognise some benign conditions and perhaps not others, understanding that this is a work in progress and we can do that. The minister indicated to me today that work can continue to perhaps recognise these other conditions.

Benign asbestos effusion is when people get fluid on the lung. The fluid on the lung is an inflammatory response to asbestos exposure at some time in a person's life, and it is recognised as a benign asbestos-related pleural disease. Then there is rounded atelectasis, which is a medical way of describing the collapse of little air sacks in the lung tissue. We could draw a diagram of those four and have them overlapping with the asbestos disease in the centre. Then we could go on to a further disease such as mesothelioma. There is overlap of the four specific disorders, and, in fact, the bill recognises two of them.

I might say that my journey in this started not only because I was a medical practitioner, but also because, in relatively recent times, two of my constituents—Peter in Esperance and Alberto in Boulder—came to me. Peter has been recently diagnosed with pleural plaques. At this stage he has not been diagnosed with asbestosis or, thankfully, mesothelioma. Unlike some cases, Peter has some symptoms. It is very early in his phase of symptoms—about six months—for pleuritis. If plaques are inside the lung tissue, inside the chest wall, as the lung tissue comes up inside the chest wall, it can cause a pleuritic pain. Anyone who has had pleuritic pain will understand how painful it is—a sharp, grabbing pain as one inspires. Peter cannot work and has significant pain, suffering and disability and is on pain relievers. It is possible that Peter can get some compensation relative to his disability, his inability to work and his pain and suffering.

With this bill we have at least tried to prescribe some of the benign pleural-related diseases. Prescribing them gives people a walk-up start, if we like, to the compensation process. In the past, people have had to fight for recognition of the condition and spend half the time arguing about the causation of their condition. If it is prescribed in the bill, I describe that as a walk-up start to there being no doubt about not having to argue the point of whether it is a work-caused or an asbestos-caused condition and, therefore, we attend to what should be attended to; namely, the appropriate compensation for the disability. There are some obvious positives to prescribing a couple of these pleural-related diseases. Section 32 refers to "one year previous to the date of being so rendered" and, if we include recognition of a benign pleural-related disease in section 33, it refers to "The disease is, or was, due to the nature of any employment in which the worker was employed at any time previous". There are some positives in including those couple of pleural diseases. I understand, member for Balcatta, that there is some difficulty with how we get those two conditions to sit together. As the member for Balcatta rightly said, the medical advice is that they are two different benign pleural conditions, albeit asbestos related. If we ask, "Why are they qualified?", why do we not just take out the bracket and maybe even say, "Let's get pleural plaques up and remove diffuse pleural fibrosis." I have to say that that was my view last week. But when we think about it, diffuse pleural fibrosis is potentially a more serious condition than pleural plaques. We talked about the pleura shrinking and fibrosing and constricting the lung. It can be asymptomatic in early phases, but is more likely to be symptomatic and cause significant reduction in lung function and disability, so why would we leave that out? Why would we include pleural plaques before that? Should we include just diffuse

pleural fibrosis, or should we leave them both there and remove the brackets or put a comma or an "or" in between them? However, the advice is that, because of some of the concerns in other jurisdictions that pleural plaques, as an asbestos-related disease, has tended to cloud the issue, more work probably needs to be done. If we ask a specialist how many people in Western Australia have pleural plaques, stand alone, for instance, they would say, "Well, we're not sure; it might be 1 000, it might be 100 or it might be 10." Then we might say, "Okay, but if we prescribe them, how many are definitely related to asbestos exposure?" In Western Australia, generally the answer is that they are directly related, but, of course, there are other jurisdictions in Victoria and in the United Kingdom that cast some doubt on that relationship. Okay; in Western Australia, how many people with diffuse pleural fibrosis, stand alone, would be eligible—not necessarily compensated—and at least would be recognised and prescribed? Maybe six is the answer.

Mr J.C. Kobelke: You are aware of one case—I don't know the detail—that has been referred to me as the only one that the Asbestos Diseases Society is aware of currently.

Dr G.G. JACOBS: Yes. It is a relatively small number. We could couple pleural plaques. I thought initially that the words inside the brackets were to define the word "before", but that cannot be the case. If we tried to isolate each of these in any amendment, there would be some concern about the relationship between pleural plaques and asbestosis, but in most cases it is associated. In diffuse pleural fibrosis, the quantum of people we are looking at appears to be lacking.

Ms J.M. Freeman: In schedule 3, under "Specified industrial diseases", column 1 is headed "Description of Disease", and column 2 is headed "Description of Process". For something like hepatitis B, the description in column 2 reads —

> Employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank.

Lung cancer in column 1 is described as follows —

> Any process entailing heavy exposure to asbestos dust.

I have had the opportunity to look at the minutes of the meeting I chaired that looked at this area. I understand, from looking at the minutes, that pleural plaques would go under "Description of Disease", and in column 2, under "Description of Process", it was supposed to be diffuse pleural fibrosis, which is like saying that is the process. Does that make any better sense of what might have been going on in the minds of people and the reason we ended up with pleural plaques and diffuse pleural fibrosis put together?

Dr G.G. JACOBS: Yes, it does, although, again, those two conditions are quite separate.

Sitting suspended from 6.00 to 7.00 pm

[Member's time extended.]

Dr G.G. JACOBS: Before dinner, I spoke about benign pleural disease and I tried to relate it to asbestos exposure, although I probably did not make as good a fist of it as did the member for Balcatta. However, there is some recognition of four conditions which are related to and considered to be benign pleural conditions but which may go on in a continuum to more severe diseases.

Before the weekend I tried to come to terms with two different pleural diseases that are coupled together in the amendment bill. Advice from the medical profession and specialists such as Dr Bill Musk is that these two conditions do not fit together. I therefore believe that the best way to resolve this problem is to put a line through the phrase "(diffuse pleural fibrosis)" and leave the phrase "pleural plaques" to stand alone. But there is a problem with that. As we have prescribed in regulations, and as Bill Musk and Dr Lee recognise, the other benign pleural condition called "diffuse pleural fibrosis" is potentially the more severe condition. On my copy of the bill, therefore, I have rubbed out "(diffuse pleural fibrosis)"and left "pleural plaques". However, the more severe condition is not recognised, and perhaps we should prescribe that condition in the regulations. We would then dissociate ourselves from these confusing conditions because they are two different entities, put a line through "pleural plaques" and let "diffuse pleural fibrosis" stand, as that is the more significant condition. There is one problem with that: the two men who present to me as constituents, Peter and Alberto, have pleural plaques without fibrosis and others have diffuse pleural fibrosis without plaques. Therein lies the dilemma. Of course, the added dilemma to that is, if we prescribe pleural plaques and diffuse pleural fibrosis, what about benign effusion and round atelectasis?

Ms J.M. Freeman: But, minister, are you saying —

Dr G.G. JACOBS: I am not a minister.

Ms J.M. Freeman: I am sorry; member.

Dr G.G. JACOBS: There is the minister!

Ms J.M. Freeman: Are you saying that if we leave them both together, though, no-one can get them? So, it is a pyrrhic victory, if nothing, isn't it?

Dr G.G. JACOBS: My interpretation is a difficult one, as the member for Balcatta and the member for Nollamara have described them to me. If we put them together, what exactly does that mean?

Ms J.M. Freeman: The member for Balcatta says you can't.

Dr G.G. JACOBS: Does that mean that the interpretation must have both? We are trying to deal with the more severe condition—perhaps the more deserving condition—as it is a fibrosing condition and can potentially lead to serious, reduced lung function. If we recognise that condition, it is important to then consider some of the other conditions.

Ms J.M. Freeman: But the member for Balcatta has said that, on the advice he has received, no condition has the two together.

Dr G.G. JACOBS: No.

Ms J.M. Freeman: My question to you as a doctor is: can you have both diffuse fibrosis and pleural plaques together? Can you suffer from both those as a benign aspect of asbestosis?

Dr G.G. JACOBS: The short answer is yes. The member for Nollamara is asking whether in a cohort of people a patient can have both conditions.

Ms J.M. Freeman: Yes.

Dr G.G. JACOBS: That is even more limiting in its effectiveness if we are trying to look at caring reform in truly deserving people who have a compensable condition. There are good things, of course. We are overcoming the caveat about a worker being employed at any time within one year. That is a good thing. There is a dilemma. I suppose we can blame the member for Nollamara for all of this, because on 23 April 2007 she chaired a medical committee that resolved the dilemma of "pleural plaques" and "(diffuse pleural fibrosis)".

Ms J.M. Freeman: No, that is not my recollection. My recollection is that it was "pleural plaques", and I'm sticking by that!

Dr G.G. JACOBS: That is the reason we are debating this here today.

Ms J.M. Freeman: I've looked at those minutes. It says "pleural plaques" in those minutes.

Dr G.G. JACOBS: That is the dilemma. I do not want to hold back this very good legislation. There are some very good things in it and I do not want to hold it up because of this issue, but I do believe that somehow we need to resolve it. Perhaps it could be to put the word "or" between the two phrases, but, of course, the issue then is the magnitude of pleural plaques and how many people we are talking about; that is, the percentage of that cohort that goes on to have symptoms and becomes deservedly compensable. There is a bit of work to be done on that. I have spoken to the minister and I thank him and his advisers on this matter. This debate just shows members the complexity of the situation. Both sides of the house are trying to resolve this matter. It is not about politics; it is about trying to deliver good legislation for these people, albeit a small number of people, who have a condition for which they deserve some compensation. I hope that over the next little while we can amend the legislation to clear up that dilemma, so that we can deliver good legislation for deserving people in Western Australia.

MR P. ABETZ (Southern River) [7.09 pm]: I will make a very short contribution to this debate on the Workers' Compensation and Injury Management Amendment Bill 2011. A gentleman came into my office on 20 May and alerted me to the difficulties with the pleural plaques (diffuse pleural fibrosis) issue, which the members for Alfred Cove and Eyre have eloquently spoken about.

Ms J.M. Freeman: And the member for Balcatta.

Mr P. ABETZ: And the members for Balcatta and Nollamara. I add my support to the idea that we should rectify this particular difficulty in the legislation. The gentleman who came to see me is an older gentleman who has been exposed to asbestos but is in perfect health, and he is involved with people who are not as fortunate as he is. He was very concerned that by saying that a person must have "pleural plaques (diffuse pleural fibrosis)" was like saying that a person must have a "broken leg (broken ankle)"; in other words, he must have both to qualify, which is really far too narrow.

Mr T.R. Buswell: I think some may argue that it is more "broken toe (broken leg)".

Mr P. ABETZ: That is probably a better analogy, because pleural plaques is not necessarily a debilitating disorder. If we could rectify that, I would be more than happy to support that.

MR T.R. BUSWELL (Vasse — Minister for Transport) [7.11 pm] — in reply: I will make some broad comments about the bill and canvass some of the issues raised by members opposite, noting, of course, that this matter will go to consideration in detail because we have a couple of pretty minor amendments that deal with some wording. In relation to diffuse pleural fibrosis and the discussions around that —

Ms J.M. Freeman: "Pleural plaques (diffuse pleural fibrosis)".

Mr T.R. BUSWELL: That is the one. I think we need to be a tad careful about how we deal with that issue in this place. One thing I have learnt in my brief time in Parliament is that it is easy to think that we are doing the right thing, but in the cool light of day we discover that we are not necessarily achieving the goals we had set. I remind members that this legislation is the result of a pretty rapid but thorough review process. There are differing points of view about "pleural plaques (diffuse pleural fibrosis)". I will shortly read into *Hansard* some alternative advice from Dr Tandon, who I understand was involved in the original deliberations of the WorkCover WA Medical Committee back in the halcyon days when it was chaired by the now member for Nollamara. We also need to bear in mind that the bill is much broader than this one issue. I do not intend that statement to diminish the significance of the challenge faced by people in this awful circumstance. The government has clearly committed to a second phase of reform in and around this issue. I do not want to hold up this bill in the Parliament while we try to deal with this matter in a way that will provide an adequate remedy, given the divergent views. What I can say on behalf of the government is that as we work through the second stage of the reform, which is ostensibly around fixing up the legislation—as the member for Nollamara pointed out it is a very difficult piece of legislation, notwithstanding the fact that these changes make it easier—that is a matter we could work through as part of that process. This is not closing the door on it. I have probably said the wrong thing as the Minister for Commerce is now leaving the Speaker's gallery. It is all right; I assume it is the right thing. We are certainly not closing the door on trying to come up with better outcomes, but there is probably a better process to deal with that than by us trying to solve the issue in an hour or two during consideration in detail tomorrow. It is too important to get it wrong. Once something is in legislation, it becomes increasingly difficult to undo.

I will step back if I can and reflect on the intent of the bill. It has been widely canvassed and I have appreciated the comments and feedback from all members. The bill has broad support. I approach workers' compensation perhaps a little differently from other members, and on a personal level. The member for Nollamara was a representative of the miscellaneous workers' union, which has now been disgracefully renamed United Voice. What the heck does that mean? We will have a march down St Georges Terrace for United Voice!

Mr F.A. Alban: A church group.

Mr T.R. BUSWELL: It could be. Some may think it is a religious crusade.

Mr F.A. Alban: Divine intervention, minister.

Mr T.R. BUSWELL: Divine intervention! Others may think it is a rock band.

Mr M.W. Sutherland: I think it is a rock band.

Mr T.R. BUSWELL: Its music could be played on 92.9, which I listen to with my sons. That is the sort of thing one hears on that radio station—*Welcome to the House* by United Voice. No wonder Dave Kelly is looking a bit confused lately. That is an argument for another day!

I have a different perspective on workers' compensation as I was a small business employer. I thought it was a very important part of my obligation to the people who gave up their time to work for my business—to work for my customers really—to make sure that they were adequately insured from a workers' compensation point of view. I had a few cases of people being injured in the workplace. It was always of great comfort to me that we had a system in place that, by and large, adequately protected those people. I acknowledge that there were some difficulties, not generated by us but inevitably by the insurer or others involved in the process. One example was a cleaner who injured her knee when she slipped in a shower. She was able to be properly rehabilitated over an extended period and then she re-entered the workforce. That is very important. I will talk about the contribution from the member for Kingsley shortly, but one reason I get cross with people is that it is a complete abrogation of responsibility not only as an employer but also really as a decent, fair citizen to not pay workers' compensation. Every now and then there are accidents in the workplace. People owe it to their employees to make sure that they can be rehabilitated or, in instances when they cannot be rehabilitated, that they receive adequate compensation.

When we first raised this matter the member for Nollamara questioned the intent of the government, and rightly so. I think she will agree that the nature of this bill and the bipartisan support it has by and large enjoyed in this house indicate that the intent was nothing other than proper and that the bill will deliver a better workers' compensation system. Obviously, the removal of age-based discrimination is important. We all traipse on a day at a time until one day we are over the age of 65. In contemporary Australian society it is ridiculous that we would discriminate against people by arbitrarily determining that post-65 a person's contribution and value to our society and economy is less than that of younger people. I think this is a great initiative and a great policy position. I am really proud of the fact that it is a Liberal government that has delivered this. I acknowledge the comments of the member for Balcatta that previous changes meant that this is easier to deliver now, because there is less cost-side pressure on workers' compensation. It is a really terrific initiative. The member for Nollamara was right. If I remember rightly, the review committee came to me at the time—not that I oft reflect on my time as Minister for Commerce—and said that there were a couple of options and we could really choose whichever we wanted. I made it very clear that I thought the view of the government, supported by the Premier and my colleagues in cabinet, would be that this is an initiative on which we should move forward. There was some minor consternation at the time about the impact on cost. Because of other factors that were driving premiums down, that has never eventuated as an issue. I think this will be one of the great legacies of this Parliament, although it has not received a lot of fanfare. I have not seen it on the front page of *The West Australian* or often reported, but this is one of those great public policy reforms.

I turn to the other initiative relating to the common law safety net. I noted the obvious emotion in the voice of the member for Kingsley when she gave her speech on the second reading. One of the privileges of life as a member of Parliament is that every now and then, and all too often in situations of adversity, we are invited into the lives of our constituents. We get to walk a mile in their shoes, we get to feel their pain and we get to endure their suffering. Sometimes that can be difficult. I have always thought that one of the true privileges of giving our time and service to the communities that we represent is that when the chips are down and when things are a bit tough, every now and then we can put our shoulder to the wheel and help people. At the very least, we can empathise with people. The member for Kingsley has certainly done that with the Hedges family. She has been a fantastic advocate for that family. I wish to put on the public record that if it had not been for her insistence that we tackle this issue of the common law safety net, this initiative would never have come about. I believe that absolutely.

The CEO of WorkCover WA, Michelle Reynolds, and I visited the Hedges family. It was a great visit. The Hedges have two very friendly dogs. Their names escape me but they are not small. Michelle has a fear of dogs of that size. They spent the whole time sensing her love for them, jumping all over her. Like the true professional she is, she soldiered on. We got a first-hand insight into the significant impact that the accident that Bryan endured as an apprentice while welding in that aluminium boat had on his whole life. In the flash of an explosion, in a fuel vapour–filled closed space, the direction of his life was changed forever. He can never go back to being the Bryan that he was, a young man who had a life in front of him playing soccer and enjoying a happy and contented life. I am not saying that his life will not be happy and content but there is no way in a pink fit that it will be the same. The member for Kingsley has walked a difficult road with that family. We have tried to assist them within the framework that we have available to us. This law will not deliver one red cent into the pockets of the Hedges family but it will give them a lot of satisfaction that their plight has not gone unlistened to either by the government or by the Parliament.

I take my hat off to the Hedges family and also to the member for Kingsley for the very passionate and proper representations that we made on their behalf. At the end of the day, the next time a young apprentice, a young worker, an old worker or any worker is in the employ of anyone who despicably and inexplicably chooses not to insure their workers, and an accident happens, not only will they have access to the normal statutory benefit system but also when that employer is found to have acted negligently in the workplace, they will have access to the common law provision. It is important to understand what happens now. Bryan was with XYZ welding company. The boat he was working on exploded and he was faced with a horrendous road back to recovery. He could take action against XYZ welding company, but it is a $2 company with no assets, not a zack in the bank and a director who has cleverly managed to limit its exposure and liability through the way its private affairs are structured. That director is a despicable individual. I do not know the company's name; I wish I did; I would put it on the public record. Even if the court had awarded Bryan common law damages, he would have received only 50 cents or a couple of bucks, which would not have even covered the cost of the first stamp charged by the lawyer he would have sought advice from. This legislation will deal with that matter. The good work of WorkCover and the actuarial support indicates that the impact of this provision on premiums will be negligible. It is a great step forward for WA. It is a great outcome, albeit it will not have a direct benefit for Bryan and his family. I acknowledge and applaud them.

In relation to the dispute resolution framework, like a lot of members in this house, constituents who were at their wits' end have come to see me because of complexities, dead ends and frustrations that they encountered with certain aspects of the old dispute resolution procedure. It would be fair to say that it was complicated. It is overly legalistic. I think the member for Nollamara made a good point; perhaps it was a case of the empire striking back! It can happen. During her time in politics, she will come to this side of the house. When she is here, I hope she gets to enjoy being a minister for a while. She will find out that they can strike back.

Notwithstanding her best efforts, not in relation to WorkCover, occasionally it is difficult to progress reform. The reforms around the dispute resolution framework are timely and sensible. I am happy to discuss aspects of that during consideration in detail. More importantly, the intent is to deliver a better outcome for everybody involved in the system. I note the issue that the member for Nollamara raised about people making these matters longer than they perhaps need to be, to the detriment of employees. That is not the intent of the government. I would be happy to canvass that with the member further. Our intent is to have a simpler, fairer system that is less confronting for the individuals who work through it.

Finally, there are a range of general amendments. One of those relates to the issue of the phrase "pleural plaques (diffuse pleural fibrosis)". I will make a few comments about that in a second.

I thought it would be appropriate to respond to a couple of issues raised by members during this debate, in particular, to some comments raised by the member for Cockburn, which have been echoed either directly or indirectly in passing by some other members. The member for Cockburn asked for some clarification on compensation for noise-induced hearing loss. Again, I do not pretend to be able to offer a definitive response now. I am happy to deal with that in consideration in detail. My recollection is that the member for Cockburn questioned whether amendments to sections 24A and 31E of the act limit the ability of workers aged 65 or more to make claims for compensation for noise-induced hearing loss. The advice I have received from the department is that the bill does not affect the current ability of workers to lodge claims for compensation related to noise-induced hearing loss if they are aged more than 65.

Ms J.M. Freeman: What if they get noise-induced hearing loss after the age of 65?

Mr T.R. BUSWELL: I will have to get more advice on that for the member. That is the reason I am keen to go into consideration in detail. I will not be obstructionist. I am happy to provide that information. I can say that workers aged less than 65 at the time of the commencement of the amendments will not have any age-based limit on the compensation they can receive for noise-induced hearing loss. Workers aged 65 or more at the commencement of the amendments will only be entitled to compensation for NIHL incurred prior to age 65.

Ms J.M. Freeman: I think the point made by the member for Cockburn was that given that noise-induced hearing loss is something that you start getting measured way before you're aged 65, so you get your threshold measurements and then the measurements further on, actually having the date of proclamation only beginning after 65 is unfair, but he can go through that.

Mr T.R. BUSWELL: What was that? I am only joking! We will go through that at the appropriate time.

The member for Cockburn made a couple of comments about dispute resolution, which I am sure we will deal with in due course.

I will spend a little time talking about asbestos-related pleural plaques. This is a complicated issue. I do not profess to have any degree of medical knowledge on this issue other than to say that I have read Dr Bill Musk's advice. I have a lot of respect for Bill Musk. He is heavily involved with the Busselton health study, started by Dr Kevin Cullen, who is world-renowned for his longitudinal studies of the population. I have been getting poked and prodded and have had all sorts of things done to me since I was about eight years old. I am proud to have been a part of that and Bill is a big part of that team. However, every now and then we receive conflicting advice from people involved in the medical profession. I am not sure about the advice from Dr Tandon, which I am about to read into *Hansard.* As I understand from the member for Nollamara's earlier comments, Dr Tandon was involved.

Perhaps to reflect again on the extent to which advice can be conflicting, I interjected on, I think, the member for Cockburn, during his second reading contribution. When I had the privilege of being the Minister for Science and Innovation, Dr Musk and Dr Digby Cullen—who looks after other parts of the body; I am not sure of the technical term and I do not think that I even want to try to attempt to say it—were talking to me about a health study. They had come to lobby the government for a contribution of, I think, $1 million for a health study, which the government has now agreed to pay. Of course, Digby is from the famous Cullen vineyard in Margaret River. I threw into the conversation, simply to understand whether there was a consistency of view, a comment about the health benefits of red wine. In the hour they spent with me, they spent about 50 minutes debating the health

benefits of red wine. Bill Musk said that the benefits were negligible and that one's intake should be minimal. Digby had, I think, a far more sensible proposition, based on maintaining consumption.

Dr G.G. Jacobs: Taking over the family winery, was he?

Mr T.R. BUSWELL: I am not saying that he was taking it over; his sister Vanya runs it and runs it very well. However, he indicated, on his readings of my approximate consumption over the past five years, that I should live to about 150! However, they had differing opinions. In a letter to the CEO of WorkCover dated 15 May, Dr Tandon writes —

> Dear Michelle
>
> With reference to our discussion regarding the acceptance of pleural plaques as being compensable disease, I would like to repeat that when I made this submission for acceptance of pleural plaques —

I am assuming that was back in 2008 or maybe 2007.

> — it was agreed that only diffused pleural disease with pleural fibrosis should be an acceptable condition. No doubt the pleural plaques are due to the asbestos exposure but presence of a pleural plaque does not necessarily imply that the worker is disabled to any extent. Only diffused pleural pathology causing impairment of the lung function, that is the reduced vital capacity causing pain and or shortness of breath, should be accepted as a compensable pathology.
>
> Hence in my opinion only if there are presence of diffused pleural plaques or fibrosis together with restrictive ventilatory pattern that is reduced vital capacity reduced total lung capacity is present, then and only then the disease is compensable coupled with the presence of history of shortness of breath and or chest pain. Simple presence of a pleural plaque which nearly everybody who has had any significant exposure will have some pleural plaques but does not necessarily imply that the person has a compensable disease.
>
> I hope this report will help you settle this matter.

Ms J.M. Freeman: Minister, can you just say if Dr Tandon —

Mr P. Abetz interjected.

Mr T.R. BUSWELL: No, that is not my reading of this.

Mr P. Abetz: Yes; it is.

Mr T.R. BUSWELL: How do you know what my reading of it is?

Mr P. Abetz interjected.

Mr T.R. BUSWELL: I know that you are very wise, member for Southern River. I am happy to table it.

Ms J.M. Freeman: Minister, can you just put for the record what his position is.

The ACTING SPEAKER (Mr P.B. Watson): Excuse me, members. Minister —

Mr T.R. BUSWELL: His position is that he hopes this report will settle the matter.

Dr J.M. Woollard: If you will take an interjection, we'd be happy for you to table that document.

Mr T.R. BUSWELL: It is not a secret document.

Ms J.M. Freeman: But isn't he the chair of the industrial —

The ACTING SPEAKER: Excuse me, minister, do you want to table the document?

Mr T.R. BUSWELL: I am happy to, Mr Acting Speaker. I am happy to.

[See paper 3497.]

Mr T.R. BUSWELL: The only reason I read the document into *Hansard* was to highlight the fact that this is a complicated area. People have alternative views on the intent of what I have just read into *Hansard*. I acknowledge that it was not the easiest letter to read. Notwithstanding, I can say on behalf of the government—I will of course check this with the minister—that in relation to the broader issue of pleural plaques, the changes recommended here are undoubtedly a step forward. There is no doubt that the changes in this amendment deliver better outcomes. Now there is a broader issue. I am happy to canvas it during consideration in detail. There is no doubt that there is a broader issue. Bill Musk has a view. Other members have views. I think that is widely acknowledged. However, I am saying that we have a second part to the reform of this legislation. I think we

should explore it and I am not saying this to delay things, but simply because it is a complicated area of medicine that has me completely bamboozled, which is not necessarily hard to do.

Dr G.G. Jacobs interjected.

Mr T.R. BUSWELL: It is not necessarily hard to do, member for Eyre. However —

Dr J.M. Woollard: So why doesn't the legislation stay on the table until we —

Mr T.R. BUSWELL: No, we need to deal with the legislation; it has been around for too long.

Ms J.M. Freeman: Yes.

Mr T.R. BUSWELL: The government has committed, and I am happy to commit again on behalf of the government, that there will be another raft of workers' comp reform in the not-too-distant future based on, if I can use the term, simplifying the legislation so people can understand the legislation. I am happy to commit the government—unless the minister tells me not to, but I do not think that will be a problem—to specifically target this issue as part of that process. This is, clearly, a significant issue. There are, clearly, some alternative points of view in and around that. I do not think that we would be doing the issue justice nor the potential sufferers any favours by trying to rush an answer on the floor of this chamber in the absence of base facts. When I say "sufferers", I mean people who have this or associated conditions and who may or may not have access to the worker's comp system. The government will commit to doing that. I do not think that it will be a long process, but the government is happy to commit to it and that may provide a way forward to deal with this issue. I have read the correspondence from the diseases society —

Mr J.C. Kobelke: From Mr Robert Vojakovic.

Mr T.R. BUSWELL: He obviously has a strong view about it. There is no intent to deny people; the intent is to try to come up with a better outcome. If we can come up with an even better outcome, I would be happy to have a look at that.

Members, before I close, I will once again thank everyone who has participated in this debate. We have here an excellent example of the legislative review process working well. The review was initiated in late 2008 or early 2009 and we are now in the house debating the outcomes of that process, acknowledging that there may be some further points that we need to look at. Late last week, we passed through this house reforms to the retail tenancy legislation, which were generated from a review initiated in 2004. I think that puts into context what we have been able to achieve in a relatively short period.

Mr Acting Speaker, I will close by once again acknowledging the excellent job of work done by those at WorkCover and the excellent job of work done by all those who contributed to the review process and to the subsequent drafting of the legislation, which has led to us being able to consider this bill tonight.

Question put and passed.

Bill read a second time.