WORKCOVER LEGISLATION, REVIEW

Motion

HON JOHN FISCHER (Mining and Pastoral) [2.00 pm]: I move without notice -

> That this House calls on the Government to undertake an early review of the WorkCover laws so that amending legislation may be introduced in this Parliament that will improve the current arrangements and be of benefit to both employers and employees.

In the past 10 years, Western Australia has seen the two most disastrous labour relations ministers, the first being Graham Kierath who destroyed the workers compensation system which worked well from 1981 to 1993, and the second being John Kobelke who has been the most inactive labour relations minister Western Australia has ever seen. He has done nothing to improve the crippling workers compensation system in this State and has turned a blind eye to the misery of injured workers, with his intended legislation in the October 2002 position paper doing absolutely nothing to improve their lot. Kierath assaulted injured workers by bringing forward the present legislation, and Kobelke is now further assaulting those injured workers by not introducing much-needed amendments to the workers compensation legislation. The Labor Party has abandoned the Labor heartland, which comprises the workers of this State. Since coming into government, the Gallop Government has done absolutely nothing for the injured workers of Western Australia. The tragedy is that everyone associated with workers compensation knows the legislation is inferior to legislation that could readily be achieved with only a modicum of further discussion. The minister and his advisers, most of the union membership, the legal profession, the employers and workers compensation professionals all know that a far better outcome could be achieved.

I will now say a few words about the history of workers compensation. Perhaps this Government does not like this topic very much; it would rather expunge large slabs of history because the historical element is inconvenient to its present policy and political stance. The Government has put a lot of effort into trying to convince the public that the so-called common law legal actions for workers compensation are some sort of time-hallowed civil right that was removed only by the act of a tyrannical and repressive coalition Government. By way of background, most honourable members would know that the common law in its pure sense is a system of legal judgments developed by the courts that attempt to interpret and expound on principles of law that were held in common throughout England dating back to Saxon times prior to the Norman conquest. By means of evolution, which legal scholars can readily expound on at great length, that body of law progresses at least notionally on the basis of courts expounding and declaring the existing law. In many respects, that is a worthy system, and legal scholars debate the relative merits of the United Kingdom-based common law system compared with the code-based, purely legislative system that applies throughout much of continental Europe. During the nineteenth century it became apparent that the system of common law did not deliver justice to injured workers. One of the consequences of following common law was that an injured worker could not recover damages against an employer for injuries due to the negligent acts of a fellow worker. Initially that was based on the judicial ruling of what is referred to as vicarious liability - that is, the responsibility of one person for the acts of another - but generally did not extend to the responsibility of a master for the wrongs or torts - to use the legal term - of the master's servants. Later, the doctrine of common employment was developed with a similar consequence based on the legal maxim of volenti non fit injuria - that is, to one who consents, an injury is not done. In other words, the worker was taken to have consented to the risk of being injured by a fellow worker during the course of employment. That caused significant injustice and required remedy by statute.

Further anomalies include the fact that if any degree of contributory negligence on the part of the worker could be identified, the worker's claim failed, which was the principle of the law of negligence generally, and this has also required change by statute. Further, if the worker died, the right to sue for negligence would end and his or her dependants would not recover. Legislation was again required to change that. What is now held as a hallowed civil right to be put on a pedestal alongside the Magna Carta is a recent hybrid of common law and statute. It cannot command allegiance based on its antiquity but must stand or fall on its merits.

In 1897, in the context of common law and statutory modifications, a scheme of workers compensation was introduced in Great Britain. That scheme provided a scale of statutory benefits to sit alongside the continuing common law right, whatever it happened to be worth to the employee concerned. Other parts of the world were going down different paths. Germany adopted a system of workers compensation before Great Britain, and, from January 1915, Canada introduced its own Workers Compensation Act. The Canadian system totally did away with common law and replaced it with statutes, which was the path followed by many states of the United States of America. In 1894, the Government of Western Australia introduced into Parliament an employers liability Bill, which was almost identical to the English Employers Liability Act of 1880. That Act was designed to remove some of the difficulties faced by a worker in pursuing a common law action against his or her employer. The Workers Compensation Act 1902 introduced a limited scheme, and liability was based upon the

occasioning of personal injury by accident arising out of and in the course of employment. Insurance was not compulsory and there was provision for employers to contract out by providing a scheme of compensation certified by the registrar of friendly societies to be not less favourable than the statutory provision.

Rather than try to follow the convoluted history of workers compensation legislation in Western Australia, I propose to move immediately to the law of workers compensation as it stands today. On 3 May 1982 the Workers' Compensation and Assistance Act 1981 came into force. This Act replaced all previous Acts and amendments and said in its preamble that its purpose was -

> . . . to amend and consolidate the law relating to compensation for and the rehabilitation of workers suffering disability by accident or disease in the course of their employment, to establish a Workers' Assistance Commission, to continue the Workers' Compensation Board, and for related purposes.

In 1991, amendments to the 1981 Act resulted in a change in the name of the Act to the Workers' Compensation and Rehabilitation Act 1981 as well as changes to the whole process of compensation and rehabilitation in Western Australia under the amending Act No 96 of 1990, which commenced on 18 March 1991. In 1992 the Workers' Compensation and Rehabilitation Amendment Act (No. 2) added a new purpose to the Act -

> to make provision for the hearing and determination by the Workers' Compensation Board of disputes between parties involved in workers' compensation matters in a manner that is fair, just, economical, informal and quick.

Members must take note of the last word in that quote. The amendments were in response to the Guthrie report into delays in the workers compensation dispute resolution system in Western Australia. On 20 December 1993 the Workers' Compensation and Rehabilitation Amendment Bill received royal assent. The aim of the 1993 amendment Act included -

(a) a restriction in workers access to a common law remedy so that the workers compensation system can deliver increased benefits to workers generally; and

(b) to increase benefits to workers under the workers compensation legislation

From a review of these procedures, it is apparent that full common law should be restored in Western Australia. It is proven that the system worked well prior to 1993. Barriers to common law only increase litigation and costs all round. For example, Queensland has full common law and has the lowest premiums in the country; they are approximately half the rate of those in Western Australia. England has full common law with stable, affordable premiums. Western Australia did have stable, affordable premiums until Graham Kierath and insurance companies told us that we could not afford them. However, official figures prove well and truly otherwise.

In the past 22 years, insurance companies have collected over $2 billion more in premiums than they have paid out to injured workers. They have achieved a surplus every year, even prior to 1993 when the full common law system was in place. We could afford it then and we can afford it now. We have been brainwashed by the insurance companies and the Government into believing that we cannot afford it. This process has caused untold misery to countless victims and has not reduced premiums by one cent; it has simply enhanced insurance companies' profits. There is no crisis and there never has been.

We must not forget that in the past 22 years Western Australian insurers have collected a hefty $2 billion more in workers compensation premiums than they have paid out, yet premiums have continued to soar over the past decade. Over 80 per cent of genuine victims have not been able to sue during that period. To illustrate this, I refer to a table prepared from information contained in pages 9 and 10 of WorkCover's 2002-03 annual report. I seek leave to table this document and have it incorporated in *Hansard*. The report clearly shows that in 1999-2000 the profits of insurance companies and self-insurers from the workers compensation scheme had increased by nearly 300 per cent between 1998-99. One must ask how poor these companies really are. In addition, the percentage of profit from payments received by the insurers increased from 12.35 per cent in 1998-99 to 28.78 per cent in 1999-2000. What is more illuminating is that insurers' profits have approximated 40 per cent for the past three years. Even more remarkable is that the amount of claims paid has been reduced from $475.5 million in 1999-2000 to $391.7 million in 2002-03. Admittedly, payments received by insurers have marginally reduced from $666.7 million in 1999-2000 to $651.7 million in 2001-03, but that is a minimal drop compared with the drop in the claims that have been paid. It is a drop of approximately $16.5 million compared with a reduction in claims paid from $475.5 million to $391.7 million.

I refer now to workers compensation profits made by the insurance industry and self-insurers as stated in the WorkCover annual report of 2002-03. The figures for the total profits are from 1980-81 to 2002-03. Over that time, the profits were $2.61 billion. In 2002-03 the total workers compensation payments received by self-insurers and the insurance industry were $651.7 million. The total compensation payments paid by self-insurers

and the insurance industry were $391.7 million. Therefore, the total profits made by self-insurers and the insurance industry in 2002-03 were $259.99 million.

I refer now to some figures for workers compensation profits made by the insurance industry and self-insurers from the WorkCover annual report from 1 July 2000 to 30 June 2001. From 1 July 2000 to 30 June 2001 the total workers compensation payments received by self-insurers and the insurance industry were $698.994 million. The total cost of workers compensation paid by self-insurers and the insurance industry was $400.373 million; therefore, the profit for the year ending 30 June 2001 was $298.621 million. A breakdown of the total cost of $400.373 million for the year paid by self-insurers out of the total received of $698.994 million includes weekly compensation payments of $123.691 million, or 30.9 per cent of the total breakdown costs, and redemptions of $34.237 million, or 8.6 per cent. One of the interesting figures is that the cost of reports by the medical practitioners and specialists employed by the insurance industry was $42.592 million, or 10.6 per cent of the scheme. That is not hospital expenses and other treatment costs; that is what was paid to medical practitioners and specialists for reports. Hospital expenses and all other treatment added up to roughly $34.5 million, or 8.7 per cent. Far more money was spent on the reports of medical practitioners than on hospital expenses and other treatment for claimants. The legal expenses - in other words, the cost of fighting claims - for that year were $33 137 409, or 8.3 per cent of the scheme total. Those figures are absolutely horrifying when they are equated to both the payments received and the compensation costs paid out. That leaves an absolutely colossal profit margin. We should keep in mind that over the past 20 years more than $2 billion in profit has gone to insurance companies and self-insurers under the present WorkCover system. I believe that those figures show that if insurers bleat a little, they will get rewards.

I repeat: in the past 10 years the State of Western Australia has seen the two most disastrous labour relations ministers in Kierath and Kobelke. With that history and the report released by the Government, we could hope that things will improve. Unfortunately, it looks like things will get worse for the poor unfortunate injured workers in this State. I hold the view that both this Labor Government and the unions have been bluffed on costings by the insurance companies, which obviously have received strong support from the sensationalising, headline-grabbing, rhetorical media. I digress by saying that. We often hear of cases in which outrageous payments have been made. Often those payments are readjusted, but we never hear anything about the readjustments; we hear about only the huge outlays. Of course, it gives insurance companies plenty of headlines about how they must increase their premiums. When a seemingly outrageous decision involving a maximum payout is made, the headlines generally shout it to the public and allow the insurance companies the opportunity to bleat once again about how disadvantaged the industry is so that they can guilelessly increase the premiums paid by an unsuspecting work force.

In the past 10 years numerous amendments have been made to the Workers' Compensation and Rehabilitation Act 1981, but none has given any relief to either injured workers or employers. Workers' entitlements have decreased continually and premiums have regularly increased. WorkCover has failed to deliver the very service it was constituted for; namely, the quick, inexpensive and easy resolution of workers compensation disputes between workers and employers in this State. In this respect, I draw the attention of members to WorkCover's 2002-03 performance indicators, detailed on pages 59 to 89 of its 2002-03 annual report, and, in particular, outcome 3 and output 4, which relate to dispute resolution.

Effectiveness indicators for outcome 3 indicate that, first, the percentage of workers compensation disputes resolved at conciliation has decreased from 83 per cent in 1999 to 75 per cent in 2003 and, secondly, the percentage of workers compensation scheme disputes resolved within 12 weeks of lodgment has decreased from 69 per cent in 1999 to 59 per cent in 2003. That is a very important figure. That length of delay - I will cite more figures on that shortly - for people who are adversely affected is morally corrupt and totally wrong. WorkCover has indicated that the reduction in disputes resolved at conciliation reflects a trend over the past three years for parties to request the more formal review process to resolve disputes. I happen to think that this explanation is very airy-fairy and I believe the reason is more likely to be the castration of the former equitable and workable workers compensation scheme. In respect of the reduction in the second indicator, WorkCover has not given a damn about the reduction since 1999 because, in its words, the level of resolution has remained fairly constant for the past three years.

The DEPUTY PRESIDENT (Hon Jon Ford): Order, members! Hon Frank Hough is not supposed to speak across the Bar.

Hon JOHN FISCHER: I believe that this lack of concern for the downturn is a good indication of how WorkCover approaches its responsibility. In other words, it appears to me to be taking the easy way out. It is also very disturbing that the annual report is amazingly silent on how long it takes to resolve the balance of the disputes. I will refer to that aspect again in a moment. In comparison, the key efficiency indicator for output 4 on page 65 of the report, which I have mentioned previously, indicates that the average cost of resolving each dispute has increased from $1 290 in 2000 to $1 777 in 2003. That equates to a 37.75 per cent increase over the

year. According to the annual report, the reason for the compounding increase was "primarily due to more matters being referred to the review stage in the dispute resolution process and a reduced number of applications received." Taken in isolation, the efficiency and effectiveness indicators do not say very much; however, when taken as a whole, it is clear that although the cost of WorkCover's dispute resolution service is increasing at a disproportionate rate, its effectiveness has declined significantly. This indicates that the dispute resolution service is not really working. It is cause for extreme concern and may be just the tip of the iceberg regarding WorkCover's activities. I am also advised that on occasions it takes between two and three years for the review officers to make a determination about form 22 referrals of those injured workers with not less than 30 per cent or 16 per cent disability. In many circumstances, cases are pending for 18 months, and this is calculated from the time of the review, not the time of the accident. I understand that one particular case was before a compensation magistrate for three years before it was finalised. That is not only immoral but also life destroying. These examples merely emphasise, in the most dramatic way, the necessity for immediate change. WorkCover is supposed to be an independent body, but I am led to understand that insurance company lawyers and executives, including claims officers, have regular meetings - virtually on a weekly basis - with WorkCover. If this is the case, are these people briefed by WorkCover about how to override claims? If these meetings are innocent, are workers' representatives and poor old unrepresented injured workers invited to attend?

In September 2003 I put on notice questions to the Leader of the House representing the Premier. Unfortunately, I received a response to these questions at only question time yesterday and have not had time to incorporate them in my speech. However, I raise one or two issues associated with those answers as they emphasise the situation to which I have been referring. Question on notice 1215 to the Leader of the House representing the Premier stated -

(1) Since December 13 1999 how many 'Referral of Question of Degree of Disability' -

That is, the green form which must be filled out under the Workers' Compensation and Rehabilitation Act and which is referred to as form 22 -

have been filed with the WorkCover for financial years ended -

(a) June 30 2000;

(b) June 30 2001;

(c) June 30 2002; and

(d) June 30 2003?

The answer was that for the financial year ending June 2000, 1 122 "referral of question of degree of disability" forms were filed with WorkCover. The second part of questions was -

(2) How many Form 22 'Referral of Question of Degree of Disability' have been decided by the Review Officers in each of the financial years ended -

(a) June 30 2000;

(b) June 30 2001;

(c) June 30 2002; and

(d) June 30 2003?

The answer stated that 24 referrals had been decided by 30 June 2000. I appreciate that that is not a true indication of the situation in that year alone. The answer also stated that 247 cases were decided by 30 June 2001, 342 by 30 June 2002 and 393 by 30 June 2003. Roughly 900 cases were decided in those four years; fewer than the number of claims filed in June 2000. I will not read out all the questions I put to the Leader of the House representing the Premier in this place. Another question asked about the length of time that form 22 referrals have been awaiting a decision by review officers. The answer was that 111 referrals have been pending more than three months; 118 for more than six months; 60 for more than 12 months; 22 for more than 18 months; and 98 for more than two years. That is indicative of the state of WorkCover at the moment. I asked many other questions, and the answers can be found in the questions on notice section of yesterday's *Hansard*. I do not think they reflect on the system particularly well.

We now know that review officers are taking 12 to 18 months following the initial review to deliver their decisions. This was not the case when the Workers' Compensation Board conducted the workers compensation system. The present minister has done nothing to achieve a speedier resolution of workers compensation claims between the workers and employers. Workers are not entitled to be represented by lawyers in proceedings in the WorkCover process. On the other hand, employers are represented by clever insurance company claims officers who know how to frustrate and delay claims by injured workers. It is a very unfair situation. There are no

guidelines for the time within which the proceedings must be completed and the decision handed down by the review officers. There is a definite outcry in the community about the workers compensation system. The minister has failed to act, and I can assume only that it is because he does not know what to do. It is time for the Premier to remove the minister and find a replacement who is willing to improve the workers compensation system. We do not need any more window dressing in the form of amendments to the legislation. We know that will produce the same outcome that has been produced over the past 10 years. We need to reconsider the philosophy behind the workers compensation system and introduce a system that is fairer to both workers and employers in this State. One thing that is abundantly clear in the history of the workers compensation legislation is that both major parties have acted to serve the interests of the insurance industry by constantly eroding the workers' entitlements and increasing insurance premiums for the employers. The proposed amendments to the workers compensation legislation on the basis of the July 2001 Guthrie report represent another window-dressing operation on an already failed workers compensation system.

Amendments to the Workers' Compensation and Rehabilitation Act 1981 have been made based upon recommendations by Robert Guthrie. They have shown themselves to be totally ineffective; they have not worked at all. The proposed changes will make workers' common law rights more difficult because the assessment will be based on the American Medical Association's "Guides to the Evaluation of Permanent Impairment". I will refer to it in future as the US guide. The use of the US guide for the assessment of workers' permanent impairment is simply to deny workers their common law rights. The US guide is not formulated for its intended use by the Western Australian Government for workers compensation assessment of impairment. Many states in the United States do not have a common law workers compensation system. Therefore, they are able to have the medical profession apply the legislative guidelines in an unbiased and consistent way without hindrance from insurance companies, employers or public servants. Put another way, the US guide was developed for an entirely different set of circumstances. I could use the analogy that we cannot apply the building standards for the construction of an igloo in Iceland to the construction of a factory in Darwin. However, we are being asked to believe that the proponents of amendments to workers compensation legislation have supposedly overcome the deficiencies in the US guide with the throwaway comment that the guide has been modified for our circumstances. I suggest that the only modifications that will be made will enable the insurance companies and employers to further tighten the noose around injured workers' throats.

The proposal to apply the US guide is false security and, quite frankly, after studying it, I believe it clearly cannot work. There is no doubt that the application of the US guide is deliberately designed to decrease the level of compensation made available to injured workers in Western Australia. Accordingly, a great many of those injured workers who are currently receiving compensation would not have come anywhere near qualifying for compensation if the US guide had applied to them. It is as clear as it possibly can be that, while continuing to receive the same level of premiums, the benefits from the application of the US guide can flow only to the insurance companies. The poor old injured workers - the ones this Government is supposed to champion - will be left hanging out on the line. Coupled with this is a proposal for a change in the level of permanent impairment that will allow an injured person to pursue a common law action before the courts. Currently, the level of this criterion is 16 per cent. I am advised that that level is very difficult to achieve. Even if that level is achieved, the benefit provided is more often than not, as shown by the WorkCover figures and costs I cited, of no great consequence. It is now proposed that the lower level - in other words, the 16 per cent - will be increased to 20 per cent. People in the industry I have consulted have told me that this proposal is unrealistic and that it further erodes the already stretched fabric of the workers compensation scheme.

Hon Nick Griffiths: Whom have you consulted with?

Hon JOHN FISCHER: Various people within the industry.

Hon Nick Griffiths: Are you able to say who they are? If not, why not? The member is purporting to speak with authority and I find his observations very interesting but he is relying on what other people have told him.

Hon JOHN FISCHER: I have relied on people who are involved in the industry. I have spoken to people from the Australian Plaintiff Lawyers Association, but I do not particularly want to name them at the moment. I have drawn my conclusions from the discussions I have had with them. I have spent a considerable amount of time trying to get to the bottom of this. It is an issue that is particularly close to my heart, as I am sure it is to the minister.

Hon Nick Griffiths: The member has answered my question. He has had discussions with the Australian Plaintiff Lawyers Association. That is fair enough. The member's point of view is as a result of that.

Hon JOHN FISCHER: I reiterate that the lower level will be increased from 16 to 20 per cent. I have come to the conclusion that the proposal is designed to further restrict the capacity for injured workers to seek adequate compensation so that insurance companies can further increase their profits, especially with the lack of common law access.

In October 2002 the minister, Hon John Kobelke, released a workers compensation reform position paper. In my view it shows that the proposed amendments are doomed to fail because they do not achieve relief for either workers or employers.

Hon Nick Griffiths: That is an interesting comment. If the Government were to bring in a Bill putting forward the matters contained in the position paper, would One Nation vote against it?

Hon JOHN FISCHER: As I have said, there are some disastrous moves in the paper. I will say what I believe should be done.

Hon Nick Griffiths: I am very interested in One Nation's view about which aspects it disagrees with in the position paper.

Hon JOHN FISCHER: I will outline shortly some of the methods I believe should be implemented. To be quite honest -

Hon Nick Griffiths: I am interested in that as well.

Hon JOHN FISCHER: I will certainly go through that with the minister at any stage he likes. I have spent quite a bit of time looking at it. If the minister wants my general comments, I think we should start again. I will expand further on that.

The proposed amendments serve only the interests of the insurance companies; I do not believe there can be any other realistic interpretation. Speaking of insurance companies, I am sure most members will have heard the continual bleating from them over the past 10 years about the effects on their profits of various things, in particular, workers compensation claim payments. As I mentioned before, when announcements are made through the sensationalist headline-grabbing media, they have a negative effect on share prices. That has been shown over the past five years. That is clearly indexed by looking at the Stock Exchange. However, we should be honest. I wonder how many members in this House have heard an insurance company say that it will not provide workers compensation insurance because the costs are too great. I do not think anyone could honestly say that he has ever heard an insurance company say that it would voluntarily withdraw from providing workers compensation insurance. The Government needs to appoint a royal commission to carry out a public inquiry and to receive submissions from workers and their representatives, employers, the insurance industry and other interested groups to make recommendations to create a fairer workers compensation system. I ask for the appointment of a royal commission because the vast majority of workers and families in this State will be affected by the proposed workers compensation legislation. It affects the economy, the productivity and eventually the prosperity of the people of this State. The workers compensation system should be implemented as a service industry rather than a profit-making insurance industry. We all know that insurance companies cry poor to get regular increases in insurance premiums, which results in a reduction in workers' rights, and they are not accountable to the Government in any way. The Government should take immediate steps to remedy this outrageous situation. First, it should close down WorkCover WA and remove Ross Monger and Harry Neesham who are responsible for the present outcry in the workers compensation system and the failure of WorkCover to deliver the intended services to the community. Secondly, the Government should reintroduce the old workers compensation board with a judge as its chief judicial officer. Legally qualified judicial officers should be appointed so that the board runs like any other court in this State. Thirdly, it should constitute an insurance office along the lines of the Insurance Commission of Western Australia, the body responsible for motor vehicle third party insurance, to ensure workers compensation and public liability for this State in both the public and private sector. Given the figures that have been cited, I cannot see an economic disadvantage in that. Fourthly, the constituted insurance office should be accountable to the Government and should be subject to regular audits so that it becomes a service provider rather than a profit-making organisation. Fifthly, the objective of the constituted insurance office should be to provide a fair, easy and quick resolution to workers compensation public libel claims on the basis of the established legal principles, rather than imposing draconian executive decisions, which is what WorkCover does now. Sixthly, the premiums paid by employers are more than enough to run a fair workers compensation system in this State if the profit-making insurance companies are excluded. I have previously spoken about one of the other social disasters propagated by the insurance industry; namely, the public liability insurance scam. Here again we have seen the private profit motivated insurance companies create a crisis in our society and that is eating at the heart of community events and at the heart of the community spirit. Their methods of operation are the same. They seek out and give massive publicity to outlandish judgments and there is no doubt that some judges give crazy decisions, but these are often overturned by higher courts or full benches.

Hon Jim Scott interjected.

Hon JOHN FISCHER: I know.

When these crazy judgments are overturned, far less publicity is attached to them than is attached to the original decision. I know of small businesses and community events that have never been subject to a public liability claim, yet their premiums have gone through the roof. In many cases, they have been inflicted with increases of 100 per cent. Many have been forced to insure with companies registered in obscure foreign countries. I have a strong feeling that if a large claim were made, those insurance companies would simply not be there. However, without that form of cover they are not legally entitled to operate even though in the long run it will probably prove to be totally worthless. For this reason, I strongly believe that all public liability insurance should be taken over by a government agency. At the same time, we should attempt to make people responsible for their own actions. This type of insurance should be seen as a service industry. It should be thought of as grease for the smooth running of society.

In an earlier speech I outlined how workers compensation and public liability could be designed by actuarial calculations to be revenue neutral. One of the present-day problems in our society is that no political party other than One Nation still believes in the advantages and benefits of a mixed economy, which was held almost sacred by Curtin, Chifley and Robert Menzies and yet it has been totally abandoned. Paul Keating was the manifest disaster who started the insane rush towards privatisation and that born-again socialist Carmen Lawrence sold the State Government Insurance Office and the R & I Bank. The passage of time has shown those decisions to be massively against the public's interests. Carmen is, of course, lucky because her selective Alzheimer's disease will enable her to forget and the short memory span of today's journalist will unfortunately ensure that nobody is reminded about that incident. However, as for the new constituency of pseudo-left middle-class trendies, they live on an emotional mindset and have never been interested in facts.

In conclusion, it is clear that the workers compensation system used to work with equity for all. It ceased to work only when the present and previous Governments set out to improve it. The present Government has brought in amendments that have not fixed the system so it has gone back to the same guru that it and the previous Government used to get more advice. No doubt that advice will be as good as the previous advice. This is no doubt a very important issue and we as a society cannot afford to let this intolerable situation continue and fester. Now is not the time for more tinkering of this legislation. Now is the time for radical surgery. The present mess should be swept up and a new initiative along the lines that I have enunciated should be set up forthwith. There is absolutely no reason public liability should not be handled by the same body to provide affordable and equitable cover for workers, employers and the general public alike. If this were achieved, it would probably be the greatest advancement that this Government could make during its term in office.

HON NICK GRIFFITHS (East Metropolitan - Minister for Housing and Works) [2.58 pm]: I know that Hon Jim Scott wants to speak and I am very interested in the views of the Greens (WA) on this issue. I am also very interested in the views of the Opposition. Therefore, I intend to speak directly to the motion rather than go over many of the points that Hon John Fischer raised. In making that observation, I do not in any way demean Hon John Fischer's contribution. What he had to say was of interest. I do not agree with all the facts that he put forward. His observations about public liability insurance are very interesting and they add flavour to the point he was seeking to make. Having said that, I do not want to go into that area because it does not directly relate to WorkCover laws. Hon John Fischer has moved a motion that calls on the Government to undertake an early review of the WorkCover laws. The Government has carried out a review of WorkCover laws and I will come back to that shortly.

The purpose of the review called by Hon John Fischer is to introduce amending legislation into Parliament, not radical surgery or a repeal with something new. The purpose of that legislation in the terms of the motion is to improve the current arrangements to the benefit of both employers and employees.

On that last point, I say to Hon John Fischer and the House that the Government wants to be in a position to introduce into the Parliament legislation that will become law, so that the current arrangements can be improved to the benefit of both employers and employees. That is the Government's intent.

I return to the first part of the motion dealing with an early review of the WorkCover laws. The early review has taken place. I note that Hon John Fischer referred to the review. The fact of the matter is that the review took place, and the document was tabled in the Legislative Assembly on 18 September 2001. The document is entitled "Report on the Implementation of the Labor Party Direction Statement in Relation to Workers' Compensation: Report to the Workers' Compensation and Rehabilitation Commission: For the Hon Minister for Consumer and Employment Protection". It was presented by Mr Robert Guthrie, a gentleman to whom Hon John Fischer referred on a number of occasions in the course of his contribution. This document comprises hundreds of pages. I inquired whether the document had been tabled in the Legislative Council. My understanding is that it has not been. Therefore, I seek leave to table the document so that interested members can have access to it here, rather than wandering down, if I may say, to the lower part of Parliament House.

Leave granted. [See paper No 1515.]

Hon NICK GRIFFITHS: Following the tabling of that document, I am advised that the consultative process commenced in October 2001. That involved the release of that document for public comment. Some 35 submissions were received from interested parties. Those submissions were considered. Following consideration being completed, a position paper was prepared. Again, that document was referred to by Hon John Fischer in the course of his contribution. That position paper is entitled "Workers' Compensation Reform: Position Paper: Minister for Consumer and Employment Protection", and is dated October 2002. Again, for the purpose of seeking to continue the debate no doubt at a later stage, I seek the leave of the House to table the position paper.

Leave granted. [See paper No 1516.]

Hon NICK GRIFFITHS: Following the release of the position paper in October 2002, further consultation took place, and consideration was given to the views of stakeholders, if I can use that word, and interested parties. The matter has been considered by Cabinet, and Cabinet has agreed to drafting instructions for a Bill. That process of drafting is continuing.

This is a very complex area. Many of us have spoken about it on many occasions. Hon Jim Scott referred to it when he entered the House in 1993. Over the past 10 years, a large number of us have participated in many of the debates on the issues to do with workers compensation. It is the Government's view that the events that took place during the period of its predecessor were not appropriate, and in many instances were ill thought out. We do not want to go down that path. Therefore, the processes to which I have just referred have been undertaken. I say again that the Government's position is that it wishes to introduce a Bill into this Parliament to improve the current arrangements to benefit both employers and employees. We have put out for comment areas of suggested improvement. The Government is very interested in hearing the views of the Greens (WA) and the Opposition on the matters contained in the position paper, because the Government is not interested in wasting the time of the Parliament if it will not get anywhere in improving the law. The Government is keen to improve the law and it wants to do so. However, if everybody is going to vote against us, they should tell us now so that we will not be wasting time.

I note that Hon John Fischer, on behalf of One Nation, said that One Nation would vote against a Bill that sought to act on the matters contained in the position paper.

Hon John Fischer: On the basis of that, yes; and I reiterate that.

Hon NICK GRIFFITHS: What I am interested in - I think the community will also be interested - is hearing from the Greens (WA) and the Opposition where they stand on the matters raised in the position paper.

HON JIM SCOTT (South Metropolitan) [3.07 pm]: I certainly have considerable concerns about the operation of WorkCover. In fact, I have significant problems with not only WorkCover, but also a whole range of issues to do with workers compensation. Many people have come to me with complaints about WorkCover. I have never met a person who has said that he or she has been treated well by WorkCover - not one. However, I have met many people who have had complaint after complaint about WorkCover. The general consensus of those people with whom I have met and from whom I have had letters and phone calls is that WorkCover is an organisation set up for insurance companies, and it exists to make it harder for people to access fair compensation.

I have with me a letter. Unless people get me to reveal the author, at this stage I will not say the name. This sets out a person's experience with WorkCover. The letter states -

> I lodged my claim in May 1999, and since then I have been subjected to:
>
> - Termination of my rehabilitation, and proposed work trials, 3 weeks after all parties agreed to them.
> - Denied payment of medical treatment, prescribed medication, and chiropractic treatment.
> - Excessive litigation and threatening letters from Homeswest lawyers . . . demanding that I drop the case, and to cause me financial hardship and stress.
> - Conciliation Officer (CO) Nigel Steele, writing biased, incorrect and misleading official notes. He also breached sections 145A, 84R, 84P (2) and (3) by failing to provide reasons to refer me to a Medical Assessment Panel (MAP), and then asked the MAP questions that restricted their answers. The questions appear to have been set after discussion with Riskcover. Mr Steele also provided information to Homeswest lawyers, Srdarov, Richards, Burton, (SRB) outside of official communications, which was used in formulating legal strategies/tactics.
> - Scheduled Review Officer Pontifex, disqualifying herself 3 days before my Review hearing, after Mr Steele provided SRB with information about her, which lead to them sending her a copy of a privileged document, saying she is unsuitable to hear my case because she had lost to my lawyer in

a previous case. The document was supposedly sent to her in error, but it was actually cc'd to her to make sure she received a copy.

. . .

- Bias shown by Director of Workcover, Ross Monger, in appointing Dr Frank Webb as Chairman of the Medical Assessment Panel (MAP). Dr Webb is a well-known insurance doctor, showing prejudice to injured workers.

This is an area that I hear over and again - complaints about a handful of doctors on the panel who are largely tied up in this business; it is their major business. The letter continues -

- Lies by Riskcover to Centrelink to stop them providing me with financial assistance after Riskcover cut off my wages illegally.
- Lies by insurance doctors in reports and aggressive behaviour towards me.
- Collusion between Review Officer Bullen and lawyers (SRB) to force me to sign documents against my will, under the threat of forfeiting my worker's compensation claim if I didn't.
- Riskcover lawyers (SRB) forcing me to attend another appointment with Dr Lawrence Terace (insurance psychiatrist), after he became hostile and threatened to strike me at the previous appointment and wrote lies about me and my support person to cover his bad behaviour.
- Refusal by Ross Monger, Director of Workcover, to submit my new evidence to the Medical Assessment Panel under section 145F of the Act, making a determination based on incorrect information that he knew had already been overturned by the Supreme Court in a previous case of his (Rock Engineering vs Monger). He further refused to reconsider the matter after SRB lawyers instructed him not to, quoting he was not allowed to revisit his decision.
- Review Officer Bullen in breach of the act by referring "new and leading questions" to the Medical Assessment Panel (MAP) when he had no authority to do so. Mr Bullen agreed at review to ask the MAP to clarify the answers in the report, as they could not be understood, and left them open for interpretation by both sides. However, Mr Bullen did not do this, and instead, breached sections 145A and 145E, 3 (d) and 84ZA (2). of the Act by sending new leading questions to Dr Webb for the purpose of helping the insurer.

. . .

My husband . . . recently requested information from Workcover, asking the Freedom of Information officer, on how many complaints had been lodged with WorkCover against Conciliation Officers, Review Officers and Director over the past 2 years. The reply was 29 complaints. When . . . asked for the details about these complaints, the F.O.I. officer had no problem about supplying them, but Harry Neesham, Executive Director of Workcover, intercepted them and instead wrote to my husband explaining that he would not release the documents to him, until after my case was finalised, as the information might prejudice my case and prevent me from getting a fair hearing. How can complaints about Workcover prejudice my case?

If that was just one case I would not be concerned because this is clearly an emotional issue and people want to establish that they are sufficiently injured or whatever to receive payments or get some form of compensation. However, I hear stories like this one over and over again. What annoys me most of all is that most people who go to WorkCover end up in the position described in the dot point referring to a doctor becoming hostile and threatening to strike the person. For all the people I have spoken to, there were always meetings at which there was an attempt to get them to lose their cool. Once they had lost their cool, they were put down as being hostile. It goes on and on. I hear this so many times. It stuns me that these people are not treated with some level of compassion and fairness by an organisation like that.

This situation is summed up in a quote from a workers compensation case for which I had a full transcript, but I was unable to locate the exact quote quickly enough, because there was a lot of paper. The case was heard in the District Court, and the judge in the case made the statement - these are not his precise words, but the meaning is there - that the 1998 Act did not facilitate people getting workers compensation but rather worked to prevent them from getting workers compensation. Having sat through the debate on that legislation, I never heard that position put once. Even though restrictions were put in place, it was not an Act to prevent people getting workers compensation. However, that seems to be the attitude of WorkCover. It seems to think that it is there to weed people out for the insurance companies. There have been complaints about the fact that many of the people in WorkCover come from that very industry and have too close relationships with it. The investigator in the inquiry into the finance brokers, Mr Temby, said that what he called agency capture had occurred, where

people in the industries that are supposed to be regulated make up the regulating agency. He was talking about not only the finance brokers, but also a number of departments. Agency capture happens when people have got too close to the people they are regulating, and therefore cannot seem to make strong judgments against them when that is required.

I did not know this debate was coming up, otherwise I would have had a lot more information to hand. This letter is just some information I happened to have out here amongst the reams of material I have. From my memory, I can tell about cases that have gone before WorkCover, in which lies have been told by the people representing the employer. The injured person proved by way of documents that a lie had been told and asked for action to be taken about that prejudicial information, only to be told by Mr Monger that he had no power to take any action. How can proper decisions be reached when people are allowed to tell lies? I also know of another case in which a fellow was in desperate straits trying to get his case reviewed. His employer had told WorkCover that he had spoken to this employee's doctor, who had told him there was nothing wrong with the employee. That information was accepted by WorkCover, without checking the facts. Subsequent to that hearing I was shown a letter by the doctor indicating that that was not true. Any ordinary person knows that doctors are not at liberty to discuss their patients with people over the telephone, so why is it acceptable for WorkCover to act in a prejudicial way? If I were dealing with WorkCover, I would get rid of it and start again; it is an appalling mess in which injured workers have no trust. I have not heard one injured person who has been through that process say a good thing about it. I will leave my remarks at that, because I do not have all my data with me. I was not aware this motion would be moved today.

Hon Nick Griffiths: What is the position of Greens (WA) on the matters contained in the position paper?

Hon JIM SCOTT: Off hand, I do not have that in front of me. I got caught by surprise with this motion. I might get it wrong; I would need to check that. I am happy subsequently to let the minister know.

Hon Nick Griffiths: But you have a very good memory and you are well aware of the issues. Do you see the proposed changes in a favourable light or in an adverse way?

Hon JIM SCOTT: I think we would like stronger action.

Hon Nick Griffiths: Notwithstanding that, do you see these as steps in the right direction?

Hon JIM SCOTT: I think I spelt out what I think by saying that the whole place needs cleaning up. The organisation's ethos is entirely wrong. We need a truly independent body that is not directly funded in this way. A government service should be adjudicating on these matters, not an organisation that is set up by the insurers and employers for the insurers and employers.

Hon Nick Griffiths: I note your point of view, but I am interested in hearing your response. I know you are not in a position to do that now, but I am interested in hearing your party's position.

Hon JIM SCOTT: I will certainly do that at a future stage. I do not want to make a wrong statement. As Hon John Fischer said, the whole area of workers compensation in Australia - probably on the planet - should be looked at again. Like members opposite, I keep wondering why we do not look at systems that work, such as those in Queensland and the United Kingdom. Most of all, I want to see fewer inquiries into these trivial issues and an inquiry into why there have been such huge rises in the cost of administration of insurance companies. The majority of the increased money that is flowing into insurance is a result of the inefficiency of insurance companies. It is time we looked at how to reduce the costs. We could then solve a lot of problems that arise further down the track in places such as WorkCover.

HON RAY HALLIGAN (North Metropolitan) [3.24 pm]: The motion moved by Hon John Fischer refers to "an early review of the WorkCover laws so that amending legislation may be introduced", rather than the WorkCover operations. I understand what Hon Jim Scott and Hon John Fischer have said in that regard.

Hon John Fischer: I appreciate what you are saying. It was probably a mistake to use the word "amending".

Hon RAY HALLIGAN: I accept that. Hon John Fischer made mention of some of the history of the workers compensation laws and how they came about. As with other laws, there have been many changes over the years for a variety of reasons to meet current or future circumstances. This legislation is no different. When Hon Cheryl Edwardes was minister she issued a number of media statements. I refer firstly to a review in 1999 by the Auditor General, Des Pearson, who is very independent of all political parties. Hon Cheryl Edwardes' media statement reads -

> The Pearson review identified escalating treatment costs for services provided to workers who sustain a work-related injury as a major issue for the system. The subsequent reviews identified that nine per cent of claims account for 61 per cent of costs and raised options for addressing this and other facts including insurance arrangements.

> Mr Pearson's insurance review highlighted many problems experienced by employers seeking workers' compensation insurance in the private market.

The then minister went on to establish two task forces, one termed the insurance task force and the other the medical task force. The statement continued -

> "The medical review found evidence that some workers' compensation claims are receiving excessive medical, pharmaceutical, physiotherapy and other services, which are of questionable medical benefit to an injured worker.

The then minister went on to say -

> . . . the Government was committed to providing workers with fair benefits and employers with the most economic costs.

I do not think anyone would disagree with that statement, or with the conclusion of Hon John Fischer's motion that we need to "improve the current arrangements and be of benefit to both employers and employees". That should be the genesis of anything that we do when dealing with this type of legislation.

Hon John Fischer: And we should also base it on respect.

Hon RAY HALLIGAN: I am not denying that, but that comes back to the operation. In this place we enact laws. If something is not being done as it should be done and is beyond the scope or capability of the minister, it may be necessary to enact legislation in this place to overcome that problem. The then minister, Hon Cheryl Edwardes, issued another press release, which stated -

> Changes to the insurance component of the workers' compensation system will include more effective regulation of insurers by the accountable regulatory authority, improved data, claims and performance management, more competition, greater transparency and justification of premiums.

The majority of the members would agree that that is a laudable statement. However, it is one that we may find we have some difficulty achieving. In this regard, I agree with the minister who said it is a complex issue. I only wish that during the period the then minister was making those statements, the Labor Party felt that way. I have the distinct impression it was a little bit like the health system. The Labor Party said that if the people elected it into government, it would fix it, yet two years later we still have no legislation before this place.

When in Opposition, Hon Cheryl Edwardes also said that the previous coalition Government carried out the State's most comprehensive review of workers compensation and initiated a variety of actions to restore balance to the system. Balance, to my mind, is the equity and fairness. A media release by the Leader of the Opposition states -

> "All these improvements, from dispute resolution to injury management and a review of cost components, were based on the guiding principals of fairness and equity to injured employees and employers," she said.
>
> "As a result of the actions of the previous Government, workers' compensation premiums fell 13.9 per cent in successive years.
>
> "The Gallop Government's so-called reforms will destroy these gains."
>
> Mrs Edwardes said the Opposition would continue to support the principles of fairness and equity and she called on the Government to do the same.

Members will see that Her Majesty's Opposition has on many occasions made public that it is looking for fairness and equity. We are also looking for - this term is used often by the current Government and I think it can be used correctly in this context - something that is sustainable. The workers compensation system must be sustainable so that everyone can benefit from it. If it is not sustainable, all concerned, including workers, employers and insurance companies, will have problems. It must be made sustainable. Whatever system is agreed upon must be, it must be seen in the eyes of as many people as possible to be a sustainable system. If the three elements - the insurer, the employee and employer - are not involved in something that is sustainable, the system will not provide the benefits for which we are looking.

Hon Jim Scott interjected.

Hon RAY HALLIGAN: If the system is sustainable, it will take that into consideration. I know what Hon Jim Scott is alluding to. They are part of the system, whether it be the lawyers, the medical profession and all those aspects of it that are providing the services to the injured worker. They also must recognise that they will have considerable input into the system and, by their actions, they will often decide whether the system will be sustainable. They must be mindful and they must be consulted. They must be part of the solution rather than

part of the problem. Currently, far too many aspects of the system seem to show different individuals and purposes as being part of the problem. When we use the usual bandaid trick to try to fix the problem, we find that something else has gone wrong. It would be an ideal situation if we could stop the clock, look at the total situation and then consult with people over a reasonable period. I am not suggesting that two years is a reasonable period. We could then come up with a system that we are convinced is likely to be sustainable and which would provide fairness and equity to all concerned rather than just one group.

Hon John Fischer interjected.

Hon RAY HALLIGAN: If we could stop the clock, it would be all well and good. However, I am not sure that we can. It may require the wisdom of Solomon to provide the necessary solutions.

Hon John Fischer: As I said, the Queensland situation is a lot better than ours.

Hon RAY HALLIGAN: It may well be but that requires analysis. In my past life as a public servant I saw organisations try to transplant certain programs elsewhere. However, they worked well in one place but not in another.

Hon John Fischer interjected.

Hon RAY HALLIGAN: I am sure the minister will ask me what the Liberal Party thinks of the position paper. The position paper probably includes that. I will be concerned about the legislation when it is presented to this place. I would feel far more comfortable commenting on the legislation than on something that may or may not come to fruition.

We have been told, and now we know because the paper has been tabled, that the Government has undertaken its review. It is now time for it to move forward and to bring to Parliament the amending legislation that will provide fairness and equity to all concerned.

Motion lapsed, pursuant to standing orders.