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

Cognate Debate

Leave granted for the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023 to be considered cognately, and for the Workers Compensation and Injury Management Bill 2023 to be the principal bill.

Second Reading — Cognate Debate

Resumed from 22 February.

DR D.J. HONEY (Cottesloe) [3.06 pm]: I rise to make a contribution to this debate as the lead speaker for the opposition, and I indicate that the opposition supports the bills that the government has put forward. I wish to talk generally about workers compensation, initially, and then discuss some aspects of the bills.

Workers compensation is an interesting area. My father was what we would call a swinging voter and someone who liked to contemplate and think about issues. One of the comments he made when I was a boy was about the role that unions have played in our workplaces. As he said, people like to criticise unions, but if it were not for unions, kids would still be crawling on their knees in coal mines, and we would not have seen an improvement in a lot of workplaces. I think that is especially true in workers compensation. To the chagrin of some of my colleagues, I make positive comments about unions in this place from time to time; equally, I will criticise them when I think they are doing the wrong thing. In the areas of worker safety and workers compensation, the union movement has played a critical role.

I remember vividly when I was a boy that it was men who almost overwhelmingly worked in heavy industries and the more dangerous jobs, and it was not uncommon that by the time those men had reached the end of their working careers, or even before the end of their working careers, they were effectively crippled. They could not do anything. Of course, in many occupations, they had to leave their jobs before they reached the age of 65 years and were eligible to get the old age pension, and there was little compensation for them.

I grew up on a small farm in the south west, as I think a number of members know, and I remember that my dad had to work off the farm to get enough income to support his family. One of the jobs he worked in was as a contractor for a company called Hannaford grader, and it used a pickle for the grain that was called Ceresan. That pickle was an organo-mercury compound. Can you imagine that? Certainly, some members in this place have had industrial experience, but that was an organo-mercury compound. I remember as a little boy my father taking me to the main warehouse where that company operated from. A number of middle-aged men were in the office. My father explained to me that their nervous system damage was so bad that they had the shakes severely and they could not even hold a cup of tea with one hand. They had to use two hands or get someone else to give them a cup of tea. The company had given them light work in the office to compensate them.

Workers compensation is a very important issue. Historically, there has been an acceptance that workers might suffer damage in the workplace. I note that this is a topic the Deputy Speaker was familiar with in his previous life—workers compensation is not a substitute for proper workplace safety. Too many workplaces still take the attitude that some types of work break people and that it is part of the job and is why people are paid more money.

Members know that I have had a number of different roles in my working life. I started work for a mining company. People can work it out if they look at my CV. The first mining company I worked for had a target of no more than six deaths a year, and, by and large, it met its target; that is, by and large, no more than six people died. Sometimes people did die. It was semi-accepted in the industry that the company had a generous pension scheme so that if the worker died, their family would essentially be financially okay, but that it was part of the job. To the good credit of the managing director who came into the company about the time I joined, they sensibly said that an organisation could not have a target for a number of deaths and that it was unacceptable. That stuck with me throughout my working career in the industry.

Within about two years of the managing director saying that managers would be held accountable for workplace deaths, the figure went to almost zero. That was a powerful lesson for me. The Minister for Mines and Petroleum in recent legislative changes has made it very clear that managers are accountable for workplace safety outcomes in a range of areas. It was a profound lesson to me that simply the managing director saying that that was unacceptable and then holding managers to account in fact resulted in a dramatic reduction. I think of all those dear people, almost exclusively men, who were killed simply because there was an acceptance of poor work practice that killed people.

Less extreme, I think there is still an acceptance in workplaces that work practices injure people. There was a major issue with my immediate previous employer, particularly for metalworkers using rattle guns, which are

high-impact tools that destroy joints. Again, not to focus on the Deputy Speaker too much, but he knows that the Australian Workers' Union and the Australian Manufacturing Workers' Union in particular were very much at the forefront, and a couple of individuals really pushed that issue—that it was not acceptable for people to effectively lose the use of their hands, which was the case for a lot of people who used those tools. The company I worked for invested a lot of money in that area, but I still think that among the workforce and from the company there was too great a tolerance of people being injured—and if they were injured, there was always workers compensation to cope with that afterwards. I am certain that everyone in this chamber holds exactly the same view; that is, workers compensation is there for when all the other proper controls have failed. Obviously in the extreme case, it is misadventure by accident, but otherwise it should be a genuine surprise that someone needs workers compensation because workplaces should be safe and workers should be safe. They should be able to come to work and go home in the same physical condition. More importantly, at the end of their working career, barring the misfortune of poor health that is not related to a workplace, those people should be able to enjoy a productive, happy, healthy life in retirement, not reliant on compensation. That is important whether they are retiring or whether they are mid-career.

As my colleague Hon Dr Steve Thomas said when reviewing this bill, it has been on the table since 2009. Its gestation period has been 14 years, so it is good to see it come through. Clearly some areas needed to be dealt with. As members know, the bill covers a range of areas. I will not go through them all. I probably will not do the forensic detailed analysis that I would normally do on a bill. The index of this bill is longer than most bills I see in this chamber, and the 445-page bill is certainly daunting to look at. Nevertheless, we will go through some areas in detail. I will summarise a few areas in the same order as they appear in the minister's second reading speech.

Clearly, some election commitments were incorporated in the bill, such as increasing the cap on compensable, medical and health expenses. That seems like a reasonable and fair provision. Any of us who have had to have even moderate medical procedures know that the cost has increased quite dramatically. The increase to $146 395 seems a reasonable extension. As the minister pointed out, it will prevent the unnecessary process where for reasonable medical expenses, someone who is subject to workers compensation has to go back to get extra expenses covered. The other election commitment to extend the injury compensation coverage period from 13 to 26 weeks also seems prudent.

There is a step-down change to the minimum safety net, including overtime allowances. People might say that workers should not rely on their shift bonuses and the like. However, the human reality is that that is what people do. Too many people probably spend 105 per cent of their total pay, but many people end up spending all of their pay, one way or another. It is very difficult for families to cope if someone in the household has a sudden loss of income. That is a reasonable clause.

The bill also contains a provision for lifetime care and assistance following catastrophic workplace injuries. The no-fault clause is in line with traffic injuries, for example. Obviously employers are insured for that, and as the bill makes very clear, employers have to be insured for workers compensation. A safety net provision will take care of it if an employer has somehow or other not carried out its responsibility properly. Not so long ago, there was almost an acceptance that if someone was injured, it was bad luck, to a degree, and the worker and their family were the ones who carried that burden. Ensuring that lifetime care is available for injured workers is a reasonable provision in the bill.

I am interested in the cost impacts. I note in the bill that rehabilitation is now to be a cost to the employer and not the insurer. Obviously that will impose an additional expense on the employer, but would that have seen a reduction previously?

Other parts of this bill—for example, extending the step-down period and the like—could increase insurance costs. If the rehabilitation expenses will be the employer's and will no longer be paid by the insurer, should the premiums paid by employers have seen some reduction? I note some actuarial work was done on the estimate of the increased cost. The estimate was a 2.83 per cent increase in premium rates. That would make a relatively minor difference of about 0.5 per cent to an employee's total payroll costs for a company. That sounds very moderate, given the change in scope. I wonder who else got to see those actuarial assessments of costs. For example, did industry groups get to see those calculations and was there some broad agreement on those calculations in terms of their likely impact? Based on those impacts and the fact that our doors have not been knocked down by employers complaining about this, they may be satisfied with it. However, I am interested to know whether anyone outside of the department got to see those actuarial assessments of the likely costs.

When I was in industry, I was very conscious of the area of the coverage of workers and injuries. Employers were outsourcing risk to contractors. In industrial workplaces I saw that there was a tendency for companies to outsource work considered to be dangerous. They handed off the responsibility for something they knew was a dangerous activity. Again, the Minister for Mines and Petroleum has introduced some changes to make sure that responsibility

for injuries that occur in workplaces comes back to the primary operator of the workplace so that people cannot outsource the risk. However, as we know in our economy now, there has been quite a growth and generational change towards an entrepreneurial spirit in so called gen Y and gen Z. I think we are back to A again in the alphabet, as someone was telling me the other day. I am sure someone can enlighten me.

There are a lot of young people going out into that sort of gig economy —

Mr W.J. Johnston: Member, do you realise that gen X was, in fact, generation 10? It was never X as in the letter?

Dr D.J. HONEY: Yes. It sort of lost the meaning. Thank you minister, for pointing that out. It might be testing their knowledge of Roman numerals to go any further.

Mr W.J. Johnston: Indeed. It is the tenth generation since the United States War of Independence.

Dr D.J. HONEY: There you go! Fascinating. The minister often teaches me things. Sometimes I receive them very well and sometimes not so well. Thanks for letting me know that.

I think that there has been too much outsourcing of risk to contractors. I think this bill sets out to make it very clear who the employer is, especially for those in the gig economy. There are a lot of younger people now who might be working for four or five different companies. The truth is that they are doing regular consistent work and are, in effect, an employee of that organisation. In this case, those changes make sure those people do not fall between the cracks. Although we might think of an office environment as much more benign than the industrial environment that the Deputy Speaker and I both worked in, the reality is that those workers can be subject to a range of occupational illnesses that can significantly impact their ability to work.

We are now coming to the claims and provisions. The statutory limit on the time to process claims certainly makes sense in terms of the changes. Perhaps I might cover it later, but I note that people specifically suffered silicosis injuries and the like from working with stone. Sorry, I will talk about that later.

There will be a statutory limit on the time to process claims. I assume the intent of this, which I think is reasonable, is that the employer does not use obfuscation or time wasting to force an employee to accept a particular outcome and have it done.

I am interested to know what will happen. Certainly my experience in industry was that workers compensation claims were dealt with as a fairly routine matter. It was orderly and almost codified in terms of the nature of injuries considered. However, there are very complex matters that may require more time to decide. Will an avenue exist to extend the limit? There will obviously need to be strict controls to make sure that employers, particularly those with deep pockets, do not misuse that to extend claims to force claimants to accept an offer. However, I think overall the provision is a reasonable one, as is the area of settlements. The bill will enable settlements between employers and workers. Sensibly, in that provision there is no requirement for admission of fault on either side. That is something that can certainly facilitate a sensible settlement outcome with a given period. An injured person's circumstances may change in some way whereby rather than receiving a steady income, they are in a position in which that is no longer required. It may also be that they have an urgent need for a lump sum payment. In that case, they can come to a settlement. I note that there are safeguards in the bill. I am not sure if we will have time to go through those. I know the government is keen to get through this bill in this session. It is certainly not my intention whatsoever to frustrate the government in that. I also know there are a number of speakers. However, I would like to explore the safeguards in the bill that concern settlements. I am certain they are there to prevent coercion when one party has a lot of ability to force the other party to agree.

The provisions concerning injury management and return to work are critically important. This is an area I saw in play when people sat at home and focused on a misfortune. That can, in itself, be enormously destructive. In fact, employers making sensible arrangements to get employees back into appropriate work activity as quickly as possible was really critical, not just for the physical benefits, but also the social benefits and related psychological aspects. For many workers, the workplace forms a really crucial social support network. I know I am referring a lot to my previous employer, but I saw all of these issues on many occasions in my previous workplace. That workplace support was really important to many workers. Workers who got back in early and did appropriate rehab work would typically return to full work much sooner than workers who stayed away and did not return to work. My personal observation was that the mental health outcomes were far better when workers could get back to their normal routine, obviously making sure that the work they were returning to was appropriate and they were not doing anything that could aggravate the injury they already suffered.

One area I would like to explore a little bit is the issue around preventing employers and their agents from attending a medical consultation in which a worker is being physically or clinically examined by their treating practitioner. I want clarity around how far that could extend. I will again refer directly to my personal experience. In my previous employment, if a worker was injured, the supervisor was required to attend the medical service with the employee. They were not to be in the interview with the doctor, but to be there with the worker. There were a couple of reasons

for that. The principal reason was to ensure that the worker had support—you know, did they need a taxi home or another family member to come along? The union was always informed when a worker was injured, and maybe they would want the union to come along and attend or whatever. I know this could be an area of concern for some members. I fully appreciate that they do not want an employer to sit in on an appointment or a consultation between an employee and a doctor or specialist, but sometimes injuries can be acute. They might occur at night-time or the worker's family members might be tied up and so on. The role of the supervisor in attending with the employee was not to somehow try to subvert the process, but to genuinely make sure that the worker had all the support they needed. For example, we did not want a worker to be sitting in outpatients for three hours, waiting for a family member to come and pick them up. With the great majority of families now, both partners work or a partner might be at home looking after kids. This was to make sure that proper efforts were made to completely support the worker so that they were not left alone. I am interested in how far the ban will extend. I fully appreciate the consultation side of it—that it is not appropriate for the employer to be there—but an employer might attend the appointment for the purposes of providing support. Obviously, this would not be for every appointment. It would occur particularly when there is an acute injury, not a chronic injury that has occurred over time—that is, the worker was injured in the workplace and is attending a medical service. I am sure the minister will correct me if I am off the mark here, but maybe that would not be regarded as the workers compensation part of it. If that is the case, my concern will be greatly allayed.

I have mixed feelings about the area of pre-employment screening in relation to the bill. I think I understand the concern correctly as it is a fairly obvious, intuitive concern; that is, just because someone was injured in a workplace once, should they never get a job again and be discriminated against? I will take members to the other side of the coin by referring to someone who worked in my work area. That person worked in the workplace for two years as a contractor and was regarded as a good worker by fellow workers. They were then employed on a full-time permanent contract with the company. They worked for three months and then reported a significant chronic injury and said they could not work. They then went through the workers compensation process. The person who was dealing with that workers compensation process was very experienced and even tempered, but this person was so demanding and demanded compensation completely outside any normal range that they irritated and frustrated the human resources person who was dealing with it so much—as I said, they were a very even tempered person—that they contacted the person's previous employer and said, "Listen, we just want to find out a little bit about this employee." They explained the work history of this person in the company. The HR person from the previous employer said, "It's fascinating that you have told me about that employee, because in fact that employee was paid $600 000—this would be 15 years ago—for being totally and permanently disabled." That person had come to my employer and had not alerted them to any history, and then tried to go through the same process with this employer. That seems very unfair to an employer. I want to know whether, in that situation, an employer would have the right to contact a previous employer to find out whether someone was, for example, totally and permanently disabled from that previous workplace. As an aside, I was telling this story to the member for Mount Lawley earlier today. As many members would know, the great majority of workers want everyone to come in and work hard. The fellow workers of this chap were not very impressed by the way he had behaved because they thought it brought the union and them into disrepute. Anyway, they came up and showed me an advertisement in the Mandurah newspaper for a real estate company that said that this person had gone into selling real estate. They thought that was an appropriate vocation! Coming back to the serious and substantive point, these situations do occur. I know they are in the minority, but there are situations in which some individuals make serial workers comp claims. They rely on the system. I know it might be different for other employers, but my experience was that my employer erred on the side of generosity with workers compensation and not on the side of meanness. Essentially, that was around the process—that you go through it, take things at face value, deal with it and move on.

There was the issue of penalties, and then the minister talked about the obligation on employers to maintain insurance. There is a doubling of the fine. The minister pointed out that it had gone to that in only very rare cases. I guess that begs the question as to why we need to do this, but perhaps it is simply to make employers more aware of their obligations. Obviously, all responsible employers have workers compensation insurance. The premium-setting mechanism has been changed, but, again, I have heard no claims that that is a particular issue for any employers. There is the modernisation framework for WorkCover WA to licence and regulate insurers and self-insurers. Again, that makes sense. We want to make sure that anyone who works in this space has the capacity to fulfil their obligations. Again, that seems like a sensible and reasonable measure. Obviously, there is a continuation of dispute resolution procedures. As I am married to a lawyer and one of my children is a lawyer, one area did catch my interest, and that is the requirement to remove non–legally qualified independent self-employed agencies from this area. I would have thought that the majority of those people would be ex–union stewards and the like, who would have developed significant expertise over their working career in this area and might feel that they can offer a quality service to employees and perhaps have special knowledge or sympathy for the employee's cause, enabling them to do that job better.

Again, I have not heard anyone shouting from the rooftops. I think the Law Society would be pretty pleased. I think about one in five law graduates work as lawyers these days, so I am sure that the lawyers are happy, but I am interested to know why that was required. Was a particular problem identified? Were there some dodgy actors, if you like? Were people who had no particular knowledge in this purporting to be agents and simply fleecing injured workers and not providing the proper service that they should?

We will see the streamlining of provisions for dust disease claims. This area needs more focus by companies and I think, over time, even more focus by government. If I can see one hazard to which workers are constantly exposed, it is dust. All dust is bad. As we have seen with vaping, the aspiration of even aerosol water with chemicals in it into human lungs causes significant immediate and long-term harm, and I find it extremely distressing. Particularly in roadwork, but also in other work, we rarely see workers wearing eye protection or dust protection as they use cutting discs to cut through the road surface or concrete. Dust exposure is insidious. As I said, all dust exposure causes long-term effects; some of it can cause acute damage, but all dust exposure causes chronic diseases. The dust from grain, road surfaces and particularly cutting industrial materials causes very substantial harm. Of course, we have seen a dramatic rise in silicosis and other diseases with synthetic stone materials.

I think if we could encourage the government to do one thing, it would be to increase inspections by tenfold, because too many employers pay no heed whatsoever to the basic occupational hygiene protection measures of ensuring that they cut material in a way that does not generate dust. They should all have water suppression on their cutting devices, but the other thing is that absolutely no workers should be working without adequate dust mask protection. From what I have observed around the community, workers wearing adequate dust mask protection is the exception. I know some people in this place are familiar with occupational hygiene and will know this already, but those paper P2 masks are effectively useless for stopping particulate exposure. To prevent dust exposure, someone has to wear a full face mask with proper respirator cartridges on a clean face. A person with facial hair has to wear a powered air-purifying aspirator. I genuinely mean this. I think there could be much, much greater enforcement in this area. I am not blaming this government for it. Clearly, it was the case when our side was in government as well, but I think there needs to be a much more serious look. Obviously, the exposure to silica materials is acute. We see very early onset of illnesses but we need to see a much greater focus on preventing exposure to dust generally. In light of that, certainly the three-year limitation period for the commencement of common-law action once the 25 per cent impairment threshold is reached is a sensible measure in the legislation.

There will be no significant changes to overall governance and administration, so I think I have covered most of that.

I know the minister and members in this place will have been contacted by the United Firefighters Union of Australia, as the opposition has. For the sake of *Hansard,* I want to shine some light on the issues that it has asked the government about. I am interested in the government's response to this. As members all know, we have the firefighter presumptive legislation for cancer. Twelve types of cancers are presumed to have arisen in the course of firefighting and it has clearly been an issue for some time. People know that firefighters are exposed to it. I had a meeting with several members of the United Firefighters Union, including an expert in this area, and I must say my intuitive view was that that exposure would have been mostly through improper respiratory protection and people breathing in gases, but, in fact, I was told that there is significant evidence that it is through skin exposure, which I was genuinely surprised by. Typically, for cancer to arise from skin exposure, it has to be something that is extremely toxic; someone has to get very high concentrations before we see acute or even chronic health impacts.

I had no objection to the points that were put forward by the firefighters and, obviously, they are knowledgeable people in this area. They are saying that the list should be expanded to 19 to include thyroid, pancreatic, skin, cervical, ovarian, penile and lung cancer. The union also made very clear to me that whilst the epidemiological evidence has not accumulated yet, female firefighters are subject to particular diseases—in fact, to particular reproductive diseases. Again, the people in this place who are experienced in industry would know that typically the way problems are identified is that there are a lot of anecdotes; people observe trends in workplaces and then the science catches up with it afterwards. That is logical because if we are going to do something, normally it is beyond reasonable doubt and in this case we need sufficient statistics.

I am not trying to throw a spanner in the works, but that made me think about whether there is an issue if those things are prescribed in regulation rather than legislation. When I was thinking about that, I thought that perhaps if we prescribe it by regulation, it becomes too easy to change it and every government could be constantly bombarded with different work groups that want their particular concern inscribed in a regulation; having it in legislation creates a threshold that makes sure that only things that are reasonably certain are included and we do not put in things that are speculative or the opinion of someone who is very forceful or very influential but do not really have a scientific basis. I am interested in the minister's advice on whether there is a reason for legislating that inclusion versus regulating.

When I had the meeting with the United Firefighters Union representatives, they asked whether I support this legislation. I said that obviously I am very sympathetic. Very few people are not sympathetic to firefighters. These

people are on the front line saving our lives. They go into situations when most of us are driving as fast as we can in the other direction. But I said I would like to see the detail and the union undertook to provide that detail. I know that the government is likely doing this, but I encourage it to look into this and particularly the concern about the reproductive chronic illnesses that the firefighters believe are affecting workers.

I will end my contribution there. As members can see from my contribution, overwhelmingly there is good support for this bill. I will say, minister, when I was talking to one of the major stakeholders in this, they were effusive about the degree of consultation that occurred with the government. Sometimes we on this side are critical of the government for not consulting or being very selective in consultation. Obviously, in this area the risk, if you like, is that there is a lot of consultation with the union side and not a lot of consultation with employers. There is an absence of people knocking down our door about this, but I had direct feedback from one of the major industry groups in the state and it was very happy that the government had gone to such great efforts to consult with it on this matter. Therefore, I commend the bill to the house.

MS C.M. COLLINS (Hillarys) [3.49 pm]: I rise today to also speak on the Workers Compensation and Injury Management Bill 2023. This bill will implement the McGowan government's 2021 election commitment to modernise WA's work health and safety laws, specifically our commitment for workers compensation. The bill is part of a number of industrial reforms that this government has put forth. It shows that we will stand up for workers' rights. Specifically, this bill looks to rewrite our workers compensation legislation, which has been a long time in the making. We had over 86 submissions from a wide range of stakeholders, and it was great to hear the member for Cottesloe endorse the high level of consultation that occurred during this process. Under the modernised act, scheme participants will be provided with the clarity and certainty that they need to work out who is covered, whether insurance is required, how to claim, what compensation is available and how to resolve disputes. I will briefly outline some of the key changes that will occur and then go into a bit of greater depth on specific areas.

The new bill will double the medical and health expenses cap and extend weekly compensation payments to 26 weeks. This will be more in line with the time it can take to recover from, and receive medical assistance for, an injury that is sustained at work. The catastrophic injuries support scheme amendments will ensure that people who are injured on the job will receive the same level of care as someone injured in a motor vehicle accident. That will remove the current imbalance. We will also be able to implement the recommendations of WorkCover WA's 2014 report *Review of the Workers' Compensation and Injury Management Act 1981*. This review found that the legislation was overly complex and it created a somewhat confusing and frustrating experience for Western Australian workers who were injured on the job.

When the legislation was first introduced in 1981, it was not complete and there was an understanding that additions and reforms would be made step by step along the way. This process of additions and amendments, unfortunately, only exacerbated the complexity of these important laws. It is no surprise, as we have heard already, in the era of apps for employers and the precarious gig economy, that more work has been necessary to define what it means to be a worker. Too many companies are attempting to sidestep their proper responsibilities to their workplace by messing with the employer–employee contract. These amendments will clearly clarify the status of the contractor and give much-needed flexibility to regulations to cover more workers so that they do not miss out on their earned entitlements. We need to make sure that the process for compensation claim payments is faster, fairer and offers support when it is most needed. WorkCover WA's review of the legislation found that the delay in unresolved pending claims was an ongoing concern. These reforms will increase the limit of medical and health expenses from 30 per cent to 60 per cent of the prescribed maximum limit. Also of concern was the low entitlements of dependants of a deceased worker, and the review found that the death entitlement lump sum should be increased to over twice the current rate.

I will focus more on an issue that we are hearing a lot about in the news—that is, silicosis. A recent study has pointed to one in four construction workers being exposed to silica dust from engineered stone and then getting silicosis. Workers who are exposed to unsafe levels of silica dust can get silicosis—a debilitating and sometimes fatal lung disease. Previously, a worker with silicosis did not receive the same rights as a worker with asbestosis. This is despite the fact that both conditions take many years before the frightening extent of damage to a worker's lungs and body is made clear. The legacy of asbestos dust risk is infamous in Australia. Although the risk was first identified by workers' advocates and the medical profession in the 1930s, it was not until 2003 that the material was banned in Australia. Today, the fight continues with irresponsible companies shifting the danger of asbestos to vulnerable communities in places like Cambodia, Indonesia, Laos and Vietnam.

As mentioned, silicosis is a long-term disease that is caused by the inhalation of unsafe levels of silica dust. If a person works with quartz, sand, stone, granite, brick, cement or any engineered stone products, they could be at risk. Silicosis cannot be reversed. In 2019, the rates of comparatively young Australian workers displaying symptoms from silica dust damage led to the creation of the National Dust Disease Taskforce. The task force handed down its final report in June 2021. The report lamented the re-emergence of an entirely preventable occupational respiratory

disease that had ravaged Australian workers between 1940 and 1960. In no uncertain terms, the report stated that if workplace safety measures recommended by the task force were not taken up, there would be no other choice than to immediately ban the product. Recommendations include employers measuring silica dust levels in the workplace and conducting regular health monitoring of workers exposed to the dust. Another notable recommendation to the federal Parliament was to ban the importation of some of these engineered stone products by July 2024. The union representing workers who often use this stone, the Construction, Forestry, Maritime, Mining and Energy Union in WA, is running a petition calling for a ban on deadly engineered stone as well as stronger protections for all workers who are exposed to silica dust. Workers have a right to feel safe and have a healthy workplace, free of potentially deadly silica dust. I urge people to sign this petition. A federal move to ban importation, I believe, would demonstrate the seriousness of the health threat involved with this material.

We will be doing our part by amending the Limitation Act 2005 to address the discrepancy between asbestosis and silicosis, restoring equity for Western Australian workers living with silicosis. The Limitation Act places time limits for commencing civil legal proceedings and arbitrations. It was not designed with slow-acting poisons such as silica dust in mind and, as such, must be adjusted. The test for rebutting the presumption that the disease is caused by the duties of the affected worker will require the employer to supply proof, including whether the required exposure to dust was trivial or minimal. This is a necessary addition to ensure that innocent employers will have a legal method to prove when they are not at fault.

The other area that I will touch on is the catastrophic injuries support scheme. The Insurance Commission of Western Australia provides the catastrophic injuries support scheme for Western Australians who have suffered immensely through a motor accident. This no-fault support scheme was implemented in WA in July 2016. We will provide for workers who have suffered a catastrophic injury in the workplace to receive similar support through the Insurance Commission. This will allow workers who are suffering catastrophic injuries to receive a lifetime of tailored care and support based on their specific needs. The right of an affected worker to seek common-law damages will be retained. This will involve adjusting the interaction with the Motor Vehicle (Catastrophic Injuries) Act 2016 to avoid double coverage and compensation.

The other issue that I will touch on is employers breaching medical privacy rights. I want to take a moment to speak on an issue that is concerning for me and for workers across Western Australia, particularly young workers and new migrant workers. It is the issue of employers attempting to direct their staff to certain doctors and for a staff member to be present during the medical consultation in an attempt to influence the treatment of injured or sick workers. I want to reiterate that working people in Western Australia should have rights when it comes to workers compensation, yet what we have seen over the years is quite the contrary. We should have the right to choose our own doctor. A worker's boss cannot make this choice for them. In some cases, a specialist medical consultation may be appropriate if a workers compensation claim has been launched; however, a worker should obviously seek legal advice if this occurs. Workers should also have the right to a private consultation. There is no reason for a worker to have their boss or another staff member there with them. I am aware that in some cases an employer has offered to pay for the medical consultation, but this does not give the employer the right to be in the room with their worker. A worker's right to privacy extends to their personal health information and they should never sign away their right to allow the employer access to all of their medical information. A number of unions raised this issue in their submissions. I want to quickly readily a note from the Shop, Distributive and Allied Employees Association of WA —

> … the current system of workers' compensation is inherently adversarial. The current system is not one founded upon a meeting of equals. It is not a system where the parties have shared interests. It is not the case that the parties are working towards the same goals. The reality is that the insurers/employers are seeking an avenue by which to deny liability for the claim, and they do not seek ways in which they can accept liability.

A number of issues were raised in various submissions including employers intimidating employees, employees being too scared to pursue compensation because they were afraid of being stigmatised and overreach from self-insured companies already requesting access to medical information.

The Workers Compensation and Injury Management Bill 2023 seeks to address many of these issues. I would like to thank the unions for their submissions. I would also like to recognise the good work of the Fair Work Ombudsman in issuing clear advice that this sort of behaviour is heavily frowned upon in Western Australia. I thank the minister for introducing this bill to the house. It is a key pillar of the government's reforms to modernise the industrial relations system and I commend the bill to the house.

MR D.J. KELLY (Bassendean) [4.02 pm]: Mr Deputy Speaker, thank you very much for giving me the call and an opportunity to speak on the Workers Compensation and Injury Management Bill 2023. People would know that prior to coming into this place, I spent 20 years working in the trade union movement. Although I never worked

specifically on workers compensation, it is an issue that is very close to the interests of the trade union movement and workers in particular. Can I say at the outset that prevention is better than cure. Although this bill is important, because people will inevitably be injured at work, the most important thing that we do is to ensure that our workplaces are, as best as possible, the safest they can be. I am not going to give members a technical outline of what makes a workplace safe other than to say that a union workplace is a safer workplace. All the research shows that when workers are represented by a union, their workplace is safer. I was in here earlier and heard the member for Cottesloe talk about some of his personal experiences. He gave quite a horrific example of the employer that he worked for in the mining industry that had a target of trying to keep workplace deaths below six a year. That is quite appalling. To the member for Cottesloe's credit, he said that was a terrible situation to be in. But what the member for Cottesloe never mentioned—I think people on the other side in the Liberal Party or the Nationals WA do not draw the dots—is that if an employer wants a workplace to be safe, they have to be prepared to allow workers to be represented by a union. Regardless of the rules put in place by an employer, it is often the case that workers do not feel confident enough to enforce those rules or their rights. They do not feel confident to do that if they act individually. Members opposite are ruthless in their pursuit of de-unionising the Australian workplace. By doing that, they are actually making workplaces less safe. Regardless of the rules in place, they are increasing the chances that workers will be injured at work. If an employer wants a safe workplace, they have to support workers being represented by their union. All the research shows that union workplaces are safer workplaces. As I said at the start, preventing injuries is a much better way to go than trying to fix the damage that has been done. Having said that, most employers try to do the right thing, but there are plenty of employers who, unfortunately, through cost pressures, thinking "She'll be right" or through just plain negligence, do the wrong thing.

I want to share one story from my time at the unions when I was quite a young industrial officer at the miscellaneous workers' union and we had cover at the Burswood Casino. This was before the Packers became the owners. We had a delegate out there who was a guy who had been reasonably active in the union. He was a cleaner who was working in the environmental services department. His knee gave way on him one day at work. He was going through rehabilitation and his doctors were saying that he was never going to go back to the quite physical work of being a cleaner. In the meantime, Burswood Casino had found him another role. Instead of being a cleaner, he was managing the equipment in the environmental services department—one could imagine how many vacuum cleaners it makes to clean the Burswood Casino. There was a job available in that area, the casino was happy for him to do it and he was enjoying it. He was perfectly capable of doing that job, notwithstanding his knee was not what it was before. This guy became more active in the union, raised a few issues with management and then, out of the blue, management told him that within a week he had to go back to his old job as a cleaner, and if he could not do that, they were going to terminate his employment. He sought advice from the union. We represented him and said that the medical advice was that he could not go back to work as a cleaner. The job that he was currently in was there, so there was no reason why he should not stay in that role. After the week, Burswood dismissed him. He had been at the Burswood Casino for over a decade and he was a loyal employee, but they sacked him. We took him through the unfair dismissal process. The commission found that he had in fact been unfairly dismissed and it issued a return-to-work order.

Believe it or not, this is when the story really gets interesting. I was the industrial officer and told him that he should go back to work the next day in the position that he had left because he had a return-to-work order. About seven o'clock the next morning, I got a phone call from him. He had showed up for work and was at the employee podium where staff pass through to enter the rest of the casino. He said that he had showed up for work and the security guards had told him that he was not to enter the premises. I asked if he had told them that he had a return-to-work order. He said that he had explained all that but they would not let him in. I told him to get them to contact human resources because there had obviously been some misunderstanding. He said that they could not do that because HR does not show up until nine o'clock and it was only seven o'clock. I said, "Fine; just go into the staff canteen and sit down, and when HR shows up at nine o'clock, I will sort it out." He proceeded past the security podium and went to sit in the staff canteen. I got a phone call from the employee about 15 minutes later. When I asked him what had happened, he said, "I'd gone to sit in the staff canteen, and two security guards walked into the room and told me to leave, and when I refused to leave they physically picked me up and carried me 30 metres down the staff corridor and past the security podium and dumped me in the car park outside the Burswood." I kid you not; I could not believe it. That is what the Burswood Casino security had been told to do with this guy who had a bad knee and a return-to-work order from the Industrial Relations Commission. I must admit I was a bit shocked about that. I had never encountered that before. I told him that we would get some legal advice, and he then went home. I forget which law firm we were using at the time. It might have been what was then Gibson and Gibson. They said that we should issue a writ in the Supreme Court for—I have forgotten the term now; it was for some form of assault. Some of the lawyers here might be able to tell me.

Mr D.A.E. Scaife interjected.

Mr D.J. KELLY: It is something like that, member for Cockburn. There was probably a variety of things they could have done. They basically lodged a writ in the Supreme Court that afternoon, and Burswood Casino ended up having to pay that employee a considerable amount of money in settlement for what had been done to him. That is a pretty extreme case, but it shows what can happen to a worker who has done everything that has been asked of him but is faced with a particularly belligerent employer. This particular employee would have had nowhere to turn had he not been represented by a union. Thankfully, the owners of Burswood Casino sold it to the Packer family, and the rest is history. As members would know, the Packers have since sold the casino having been caught out for a bunch of other misdemeanours. That is a good example of some of the things that happen to people injured at work. That reinforces why we need union representation and a robust regulatory framework.

This bill will make some very good changes to the workers compensation legislation. The doubling of the cap for medical bills from 30 per cent to 60 per cent will mean that the amount that people will be able to claim for medical expenses will increase from $73 000 to $146 000. Nothing puts more pressure on people who have been injured at work and are doing the best they can, who are participating in rehabilitation and desperately want to get back to work and secure their income, than the idea that the amount of money they can claim for medical experiences is running out. The effective doubling of that amount is a positive part of this bill.

Another part of this bill that has been absolutely well received is the lengthening of the step-down period from 13 weeks to 26 weeks. A lot of people think that if they are injured at work, they will be guaranteed their existing pay for the duration of their injury. The current legislation does not provide for that. It provides for a step down in payments of 15 per cent. That causes a lot of pressure for people. Employers like it because they think it will pressure people into going back to work earlier. All the research shows that that financial pressure does not send people back to work; it is just a punitive measure in the legislation. The fact that this bill will delay the introduction of the step down until 26 weeks has been well received. Some people would like the step-down provision to be removed altogether. There are some valid reasons for that. However, that is not part of this bill.

The bill deals also with the timely management of workers compensation claims. It is very frustrating for workers to put in a workers compensation application and not hear back from their employer about whether their claim has been accepted. That is because there is currently no requirement for the employer to respond within a certain time period. This bill will require employers to respond in a timely fashion. The problem with the current legislation is that people would say that they put in their application but they have not heard from their employer, and we would contact the employer and they would say that they are still looking at it, and it might be weeks if not months before the worker would get confirmation about whether their claim has been accepted. This bill will go part of the way towards remedying that deficiency in the current legislation, and that is a positive step forward.

This bill will also prevent employers from asking questions, as part of their pre-employment screening, about whether the prospective employee has previously put in a workers compensation claim. Many prospective employees fear that their prospective employer will mark them down if they have a history of putting in workers compensation claims. Far be it from me to say that employers would look at the pile of applicants and say, "This person would obviously be willing to put in a workers compensation claim against me, so I'll put them at the bottom of the pile and choose a person who has never put in a workers compensation claim." However, clearly that does happen. This bill will mean that those sorts of pre-employment questions cannot be asked. That is absolutely a great step forward.

The member for Hillarys in her contribution touched on the fact that this bill will prevent employers from requiring employees to allow an employer representative to accompany them to a medical appointment. Most people would find that absolutely shocking. Imagine the indignity of an employer saying to an employee that someone from HR is going to attend their medical appointment with them. That is the absurd indignity that some employers are able to put injured workers through under the current legislation. It is mind boggling. It is saying that some employers distrust not only the injured worker but also the medical profession. They think that doctors hand out injury notices left, right and centre. I am pleased that this legislation will prohibit employers from insisting that an employer representative accompanies the injured worker to a medical appointment. That will be outlawed.

Another provision in this bill that has been well received is that the regulations will provide flexibility in the coverage of workers under this scheme. Currently, the scheme applies to contractors, but this bill will allow other groups of persons to be covered. As we know, there is a gig economy, and companies are always coming up with new ways to engage people to do work for them without calling them "employees" in the traditional sense. The use of contractors is very common. It is very wise that, as organisations come up with new and creative ways to engage labour, this bill will provide the flexibility through the regulations to cover new groups of what I would say are workers as workplaces change in the future.

This bill has lots that is really positive, but I suppose I will finish where I started. Governments can put in place whatever good laws and rights that we like for injured workers, but if workers do not have someone to represent them in their workplace, it is very difficult for workers to enforce their rights on their own. Union workplaces are

safer workplaces. I know that we understand that on this side of the chamber. Unfortunately, during my time in the labour movement and in this house, members opposite have constantly tried to de-unionise Western Australian workplaces, and that inevitably leads to more workplace injuries and, sadly, more workplace deaths.

MS K.E. GIDDENS (Bateman) [4.21 pm]: I am pleased to rise tonight for the opportunity to give my contribution to the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023. In doing a little bit of research for my contribution, I found it interesting that Western Australia has a very long history of workers compensation. In fact, we were the second state to introduce a Workers' Compensation Act in 1912, compared with New South Wales in 1910, Victoria in 1914, the Northern Territory in 1920 and the commonwealth also in 1920. Of course, the Labor Party, the labour movement and the trade union movement, as has been noted by some of my colleagues on this side, have also a very strong interest and record for our contributions to the safety of workers. Worker safety is a basic and fundamental right—to be able to go to work, perform your job, earn a good wage under good conditions, and return home safely and uninjured to your family has to be a fundamental tenet of any workplace.

These laws will modernise Western Australia's existing legislation, but I thought it worth reflecting for a moment on how many people seek support through the workers compensation system that exists in Western Australia. In the 2020–21 financial year, 26 785 claims were lodged in the WA workers compensation scheme, which, interestingly, was down five per cent. Hopefully, some of the good work that unions are doing every day to improve worker safety is reflected in the trend. Of those claims, 25 405 were for work-related injury and disease claims, 58 were for asbestos-related disease claims, and 1 322 claims were disallowed. I pulled out my trusty calculator because it is not a sum I could do in my head, but the percentage of disallowed claims is 0.05 per cent, which is extremely low. The idea that may exist in some parts of the community that people rort the workers compensation scheme or make unfair claims is just not backed up by the data. Overwhelmingly, people absolutely try to do the right thing in their workplaces. We heard from the member for Bassendean before about the types of pressure that people might feel to return to work when they are not ready. I would argue that, at least anecdotally, people return to work sooner than they perhaps otherwise might. The total number of lost-time claims per million hours worked in Western Australia is 7.4. Only 39 per cent of claims had no lost time associated with them. In total, we are talking about one billion dollars of claims in the 2020–21 financial year. This is overwhelmingly made up of direct compensation, at over $700 million, and the rest, 32 per cent, is made up of service payments. Service payments are medical and hospital fees, allied health and workplace rehabilitation, and legal and miscellaneous fees. That is the system that currently exists in Western Australia and the type of support it provides.

This bill seeks to modernise the existing legislation, and it will do that in several ways. It will replace existing legislation with a plain language alternative. This will make it easier for employers to know what their obligations are, and it will also make it easier for employees to be able to access the services and understand their rights under the legislation.

Doubling the medical cap was part of the McGowan Labor government's 2021 election commitment, and this will see the compensation limit for medical and health expenses increase from 30 per cent to 60 per cent. In number terms, that is an increase from $73 000 to $146 000, which will be indexed annually. It will allow for support to be given to the more complex cases that might require ongoing care, surgery and follow-up surgery. Certainly, $73 000 would not go particularly far in very complex cases.

Another part of the McGowan Labor government's election commitment was extending the step-down point from 13 weeks to 26 weeks. As has been noted, this provision will help to reduce the financial burden on people going through the claim system and perhaps being placed under pressure—not only the mental, emotional and financial stress of having reduced income during a claim period, but also perhaps the stress resulting from not reaching an early claim or from returning to work sooner than they might have otherwise. That is a very important provision for the protection of workers going through the claim system.

The other provision included in the McGowan government's commitment in 2021 was prohibiting employer attendance at medical appointments. It would be a hard case to argue that there is anything reasonable about an employer's representative being in a medical examination with a worker. Of course, employers have the right to access information that supports, for example, a return-to-work plan, and to know what the return-to-work limitations and capabilities of the employee are, but it is totally unnecessary to be in the examination room whilst the worker is disclosing personal information. I am very pleased to see that provision will be removed in this new legislation.

Another provision that I am really pleased to see removed in this legislation is pre-employment screening and the right of potential employers to ask whether a worker has had previous claims. This is something that I have had to answer when going for jobs. The member for Bassendean gave an example of an experience a worker had at Burswood. I was also going to share my own example from when I worked at Burswood. Members in this place might not know that one of my former jobs was working security on the doors at Burswood Casino before it

was Crown casino. No-one messed with me on the doors, just like they do not mess with me when I am in the Speaker's chair! I was injured one night when somebody tried their luck. It was a very minor injury, not serious at all. I just twinged my lower back, and it required some light physio. I think I may have missed one or two shifts—nothing significant—and, after some treatment, I returned to work in full capacity. But every time I went for a job, I had to answer that question. It should not matter whether a person has previously made a large or small workers compensation claim. Every time I ticked that box, I was left in doubt about whether that would jeopardise my employment opportunities. Blatantly, that is an extremely unfair question, and I commend the minister for ensuring that this bill provides that that cannot happen.

The cost of the changes will be very minimal; we are talking about an estimated 2.83 per cent in premiums, which is certainly affordable and nowhere near the current rate of inflation. Of course, a sustainable workers compensation system is an important part of the system going forward. I am certainly pleased that we can meet the needs of workers and provide a fair system and do those things in a financially sustainable way.

I mentioned that part of the history of the Labor Party and trade unions is fighting for the rights of workers and improving worker safety, which, as I said, is a fundamental right in a workplace. I want to go a little bit to the work of the Minister for Industrial Relations. He has very tough portfolios, and, according to some, it is an easy gig to have a go at some of the challenges in those portfolios, but he has achieved an extraordinary amount in the industrial relations space. He will leave a legacy for the McGowan government of which we on this side of the house will be very proud. One of those legacy pieces is the inclusion of industrial manslaughter provisions in the Work Health and Safety Act 2020, which passed recently. Quite clearly, there were some significant gaps in the penalties that could be applied for really serious breaches of safety that resulted in tragic consequences for workers and their families who have to deal with the aftermath. The new laws are something that I think the minister, the Premier and cabinet should be very proud of. Of course, before coming into this place, the Minister for Industrial Relations had a strong history of standing up for the rights of workers during his time as an official with the Shop, Distributive and Allied Employees Association and as state secretary of WA Labor. He has had many, many years walking the talk and understanding the kind of challenges that exist in creating safer workplaces.

Having been on the committee that handed down the report into sexual harassment in the mining industry, I know that the work that the McGowan government is doing has been strong and unprecedented in its investment and focus on this very important area to ensure that workers of all types—of any gender and of any persuasion—in any workforce are safe from sexual harassment. One of the things that the committee looked at in its report was determining that sexual harassment is a workplace safety issue.

Another piece of work that has been going on, as referenced by the member for Hillarys, is the growing awareness of the silicosis risk associated with engineered stone. This is potentially the next wave of asbestos-style disease. Workers sit with the shadow of fear that might emerge as silicosis years after they have left their workplace. Home renovation shows display a beautiful range of products, and I know that Australians are a little obsessed with the renovations and improvements they can do. There are some beautiful products out there, but those products are fundamentally risking the health, wellbeing and, ultimately, the lives of those who work with them. The work that is being done by this government in that space includes better scanning for scoliosis; indeed, we cannot respond to what we cannot measure, and if we ask the question in the wrong way, we will not get the right answer. Under Minister Johnston, the McGowan Labor government has changed the way that people are screened for silicosis from X-rays to CT scans. The member for Riverton, Dr Jags, is looking at me; I am sure he could explain it in better detail than I have just done! The screening of workers via a CT scan will enable the signs of scoliosis to be picked up much earlier. In fact, X-rays completely miss the signs of silicosis in a person's body. That is an incredibly important provision.

With that said, I certainly thank the Minister for Industrial Relations, as part of the McGowan Labor government, for his contribution to this bill and, more broadly, to workers' rights and safety. I commend the bill to the house.

MS H.M. BEAZLEY (Victoria Park — Parliamentary Secretary) [4.35 pm]: Firstly, I sincerely congratulate and thank the Minister for Industrial Relations, Minister Bill Johnston, for continuing to strengthen and improve our state's industrial relations laws, most recently with the Workers Compensation and Injury Management Bill 2023, which I am pleased to speak about today, along with the Workers Compensation and Injury Management Amendment Bill 2023.

As everyone has mentioned, the Workers Compensation and Injury Management Bill 2023 will modernise Western Australia's workers compensation laws with a complete rewrite that uses a logical structure and plain language, making them easier to read and improving a user's understanding of the key elements of the workers compensation scheme. So much of a person's access to law is about knowledge, and increasing accessibility to law in such an incredibly essential field as workers compensation is very welcome.

The bill will provide scheme participants with the clarity and certainty they need to work out who is covered, whether insurance is required, how to claim, what compensation is available and how to resolve disputes. Under this bill, the fundamental aspects of the state's workers compensation scheme will be preserved, while also instigating important improvements, including doubling the medical and health expenses cap. The bill increases the limit for compensable medical and health expenses from 30 per cent to 60 per cent of the prescribed maximum limit. This will result in an increase in the capped amount from $73 000 to $146 000, all of which will be indexed annually.

The bill will double the step-down point from 13 to 26 weeks and provide lifetime care and assistance for catastrophic workplace injuries because it will put workers who are catastrophically injured in workplace accidents under the same catastrophic injury support scheme as those who are injured as such in motor vehicle accidents. The bill will require an insurer or self-insurer to respond to a worker's claim for compensation in a timely manner, with new obligations for insurers to make provisional payments if liability decisions are not made within prescribed time frames. Given the experience of the people I know who have had to claim workers compensation, this is an incredibly important amendment. It will mean that workers will receive financial support a lot earlier than they do under the current legislation when claims are investigated for lengthy periods. This will also incentivise faster liability decision-making by insurers.

The bill will prohibit an employer or their agent from attending a medical consultation when a worker is being physically or clinically examined by their treating medical practitioner, an issue that has been spoken about a lot today. It is an issue that gained national prominence in 2017 when Perth supermarket worker Nyrie Stringer spoke of her humiliation in having a male manager in his 60s sit in on an appointment with a company doctor that her employer insisted she attend. Her story prompted hundreds of others to share similar experiences on social media and also prompted WorkCover WA to issue a clarifying statement that employees are not obligated to have their manager present during a doctor's appointment or to have a company doctor rather than their own. This bill codifies the fundamental right to privacy and choice in law.

Finally, the bill will prevent discriminatory practices. When enacted, this bill will mean that no employer or recruitment agency can ask a potential worker whether they have made any claims for compensation. The bill will also prevent any person from disclosing information about a compensation claim previously made by a worker for the purposes of pre-employment screening. That basically means, for example, that if an employer contacts a potential employee's referees, they will not be able to ask about the employee's workers compensation history and the referee will not be able to disclose any workers compensation history to the potential employer. They will not be able to ask the potential employee, they will not be able to ask the referees and it will not be able to be given as information.

As mentioned, this bill will increase the limit from 30 to 60 per cent. This will result in the capped amount increasing from $73 000 to $146 000. I make this point: a lot of people who have either never needed to make a claim or never been part of managing a claim believe the myth that successful workers compensation claimants are paid hundreds of thousands of dollars each and every time. That is simply not the case. WorkCover WA's *Industry benchmark report: 2018/19 to 2020/21* shows that across all industries, the three-year average claim cost for workers compensation was $63 046. The highest industry sector–based average claim amount over that period sat against the electricity, gas, water and waste services industry, and was $97 961. When looking at some industry-specific reports for 2020–21 by WorkCover WA on this very issue, I took particular note of industries that have some of our largest workforces—construction and mining. I will provide a bit of a snapshot of each.

The construction industry has 100 202 employees, who contributed 198 million working hours. Construction accounted for 11 per cent of total claims lodged in 2020–21 in the WA workers compensation scheme, with 2 811 workers compensation claims lodged. Payments for claims in the construction industry in that year totalled $131 million, accounting for 13 per cent of total scheme payments, on par with how many claims were made. Traumatic joint ligament and muscle tendon injury was the most common injury, coming in at just over 50 per cent. Technicians and trades workers in the construction industry made up 57 per cent of claims—managers, just two per cent. The mining industry has 116 114 employees, who worked 250 million hours. They again made up 11 per cent of total claims lodged in WA's workers compensation scheme, with 2 686 workers compensation claims lodged. Payments for claims in the mining industry totalled $152 million, accounting for 15 per cent of total scheme payments. Again, traumatic joint ligament and muscle tendon injury was the most common injury, coming in at over 60 per cent. Machinery operators and drivers in the mining industry made up 54 per cent of claims—managers, less than one per cent.

Together, these two industries alone are providing 457 million hours of working—457 million productive hours—keeping our economy strong. It is the workers engaged in manual labour, transport, machinery operation and the like who are carrying the burden of not just our economy, but also personal injury for the sake of their job, our economy and our society. As a community, we have a collective responsibility to injured workers. These workers

need appropriate compensation when injured. They are already suffering; they do not need to suffer anymore due to a lack of funds to cover health and medical costs or to put food on the table.

A subject I would like to touch on is labour hire employers. I have significant issues with the practices of many labour hire employers and how their host companies use them. When we talk about collective responsibility, I struggle with many of the practices inherent in labour hire practices. In the context of this bill, a growing body of research highlights the occupational health and safety risks associated with precarious workplace arrangements, including labour hire. Studies have shown that labour hire workers face greater health and safety risks than other workers who undertake equivalent work. Significantly, to quote from Underhill's response to the *Workplace relations framework: Productivity Commission draft report* of 2015 —

> **<u>All studies</u> of labour hire workers and occupational health and safety in Australia and overseas have found that labour hire employees are more likely to be injured at work, compared to direct hire workers in like occupations** …

The increased vulnerability of labour hire workers to occupational injury, accident and poor health is due to a range of interrelated factors affecting contingent workers, including contested or disjointed responsibility for health and safety management between host companies and labour hire agencies; and labour hire workers receiving poor induction and training, and/or having reduced familiarity with the rules governing OHS on each job site, compared with direct hire workers. Labour hire workers are often reluctant or unable to raise OHS issues due to their vulnerability to termination. There are also additional complexities for the implementation of effective occupational health and safety management systems due to temporary and precarious forms of employment and many others. Pleasingly, this bill will maintain the obligation on labour hire employers to cover workers who are hired to host organisations, and includes a new obligation for host organisations to cooperate with labour hire employers and assist them to comply with their injury management obligations if a labour hire worker is incapacitated for work. If a worker has an incapacity for work as a result of an injury from employment for work done for the host, the host will be required to cooperate with the labour hirer to enable it to comply with its obligation to establish and implement a return-to-work program in the pre-injury position or a suitable position. Under this bill, there will be a possibility that a host will be liable to pay compensation to a worker, as principal, if the specific circumstances set out in clause 215 apply.

This bill is a key pillar of our government's reforms to modernise the industrial relations system and follows the successful implementation of reforms for work health and safety, and industrial relations, in 2022. Modernising WA's workers compensation laws is a major undertaking, and I thank the minister, stakeholders and the Western Australian public for contributing to the legislative review, making submissions and ensuring the bill will serve the community well for decades to come. It gives me great pleasure to commend this bill to the house.

DR J. KRISHNAN (Riverton — Parliamentary Secretary) [4.46 pm]: I rise today to support the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023, which will modernise WA's workers compensation laws. First of all, I thank the Minister for Industrial Relations for bringing these bills to the house, which are very important to protect workers. For a start, using plain English and making the bills simple and clear for people to understand is very important.

I would like to share my personal experience of handling a workers compensation claim in the past. It was not here, but in India. I was a medical officer in a remote community, caring for workers and their dependants in a tea plantation. Being a medical officer, I was in charge of the welfare of the residents—the workers and their dependants. I was in charge of the entire spectrum of welfare, which meant that I was responsible for providing them with everything from potable water to child care and schools. Workers compensation also came under me. At one point, every time pending files came to my table, the person who was assisting me—the superintendent—always took one file and kept it aside, saying, "This is something that has been pending for 15 years, sir; you don't need to worry about it." I got very curious and wanted to get to the bottom of it. What had actually happened was that a worker, who was supposed to commence work at six o'clock in the factory, had stepped outside his house at a quarter to six and, due to a personal family fight, was murdered. He was no more. His family then claimed workers compensation on the grounds that he was outside his house at a quarter to six because he intended to go to work; otherwise, he would have been asleep in bed. The organisation took offence to that, saying that as he had never reported to work, how could the family claim for workers compensation. An effect of this was that the entire family was victimised. The kids had to discontinue school because there was no earning member in the family. They ended up working when they were 15 and 16 years old, but not within the organisation because the management was against it; they had to walk a distance to secure work to put food on the table.

When I requested further information and a meeting with the insurance provider and the lawyers, they came to the conclusion that there were grounds for a claim and there should be compensation paid to the family, which they thoroughly deserved. The case was resolved. Such understanding can be complex. Members can imagine how

many workers struggle to understand the complexity of the law. This reform will simplify that for workers in Western Australia and allow them to access their rights at the right time and get the benefits they deserve. The McGowan Labor government is about protecting workers, bringing about reforms to make things better for them and always standing by their side.

The financial impact on a worker is often underestimated by people dealing with their case. What is taken into consideration in workers compensation claims? Is it just the direct wages being paid? A lot can be happening beyond just a loss of wages. If a person whose back was injured at work is just paid his wages and medical bills, he then has to pay someone else to mow the lawn instead of him doing it on a regular basis. Such things are often missed and not taken into consideration. It makes complete sense for a proposal to double the medical cap from $73 000 to $146 000, which will definitely serve the purposes of an injured worker going through a workers compensation claim.

I have seen what often happens with patients on workers compensation claims. As far as the organisation, employer or insurer is concerned, it is exclusively about the physical injury or impact that is taken into consideration and given priority, completely ignoring the mental impact on the patient. One can only imagine how a young father would feel if he were unable to play with his kids because he sustained an injury at work or how a young mother would feel about herself if she was not able to stand long enough to cook her kids their favourite meal because of a work injury. These impacts are often ignored. Doubling the medical cap is completely justified so that people can access necessary funds to cope with the struggle they are going through because of the injury they sustained at work.

Extending the step-down point is a very critical move. It will be moved from 13 weeks to 26 weeks. Often because there is a time line ahead of them, people are rushed into making a decision. That can sometimes result in making the initial injury worse because they are not given enough time for complete recovery and are rushed back into getting things done before it is their time to return to work. This extension will give sufficient time for a complete recovery, which brings about better outcomes in the long run rather than rushing in a hurry and making things worse in trying to get back to work as a result of pressure from the employer or family. I have seen many instances in which things have U-turned and become worse than where they started because people were in a rush.

The next reform is for lifetime care and assistance for catastrophic workplace injuries. Again, that needs clarity. What happens when a person is travelling? Are they covered only when driving a work car or are they covered when driving their own car for a work purpose? If the intention of driving was to complete a task for work, they should be given cover. Often we see debilitating injuries and patients who suffer permanent disabilities. Many workers may not have their own personal total permanent disability insurance cover for them to survive when such things happen. It is important that the workers compensation reforms are made to give them the protection that they need in the event of a disaster happening.

The next reform will require provisional compensation payments for pending claims. What does this mean? Often when a workers compensation is raised, there is an incident report. That incident report may not be acceptable for the insurer or the assessor. When the assessor is not sure whether to accept the claim, they want to consult experts to make a decision on whether the claim is genuine or not. I am not blaming the assessor or insurer here. However, we fail to take into consideration here that the injured worker already has a compromise on his life, and now he must pay his bills because the insurance company is yet to accept the claim. Many practices, be it general, specialist or radiology, that people access with workers compensation claims often realise that there is a huge delay in incoming payments, particularly in pending claims. They are not certain whether they will be paid or not. With that in mind, they literally force the worker to pay up-front. Imagine someone having to come up with thousands of dollars for medical treatment while an assessment of their claim has been made before a decision. Imagine how difficult that is for the worker involved. This particular reform will require that provisional compensation payments be made while the claim is pending. That means that a decision for a claim outcome can be made afterwards, but the individual will still continue to be paid their wages and for medical purposes.

The next reform will be to prohibit employer attendance at medical appointments. I can understand that every employer has targets to achieve and key performance indicators to meet. But they are trying to get that done at the expense of workers struggling with something quite challenging. What happens in those situations? The employers employ rehabilitation providers to act as representatives of the employer. I have seen them accompanying my patients. I took an approach whereby I would always make one-on-one time for my patient to discuss their concerns before the employer's representative accompanied them.

I am not sure whether every clinician would have done that, but by law this reform will prohibit the employer or the employer's representative from accompanying the patient when they go for an appointment, which means that the patient will have no disturbance or distraction; they will not be forced to stick to the recommendations of the representative. They will be able to freely discuss the treatment options, which will eventually bring about better health outcomes. The thing I like about this is that rather than the employer or the employer's representative being

involved, the power will be given to the medical practitioner, who will make the decision about the right time for the employee to go back to work; it will be a clinical decision and not a financial decision.

The next reform will prevent discrimination in pre-employment screening. Often, if a particular employee has had a workers compensation claim, some employers consider it high risk to employ them again. When they are forced to reveal such information in the questionnaire that they fill in during a pre-employment medical, the clinician who is conducting the pre-employment medical may presume that the employee had an injury that lasted six months or is recurring so this person may have a problem. This reform will prevent discrimination against someone who has had a previous workers compensation claim during a pre-employment medical so that they get a fair go. A past claim is a past claim. Their current fitness is their current fitness and that is what needs to be considered—not what happened to impact their fitness in a previous claim—to prove their capability to work in the job they are seeking. This is an excellent reform that will allow people to restart their life and not have to go into their past. They will get a fresh start with whatever job for which they are trying to pass the pre-employment medical.

I refer to the cost impacts of all these reforms. PricewaterhouseCoopers estimated that insurance premiums will go up by 2.83 per cent. To me, a 2.83 per cent rise in premiums to cover all these costs seems very, very reasonable. It will give comfort to employees that their workers compensation claims will be dealt with in a timely and an efficient manner to bring about better productivity, healthier employees and a better Western Australia.

I once again thank the Minister for Industrial Relations for bringing such a bold, essential and required reform in workers compensation to Western Australia. I commend the bill to the house.

MR D.A.E. SCAIFE (Cockburn) [5.03 pm]: It is a pleasure to rise today to speak on the Workers Compensation Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023, which are being debated cognately. I, too, would like to congratulate the Minister for Industrial Relations on this bringing these bills to the chamber. The reforms in these bills have been a long time coming. They are the product of more than a decade of consultation and drafting. This was all kicked off in around 2009, which then led, under the previous Barnett government, to a review that was published in 2014 and further rounds of consultation and drafting, until we finally arrived at 2023, this year, and the bills that are presently before the chamber. I did not personally work as a workers compensation lawyer, but I worked alongside workers compensation lawyers and trade unions, and I know that the modernisation of our workers compensation legislation has been called for for a very long time. I think it is a credit to this minister that this fundamental reform, which has been so long in the making, has finally arrived here in this chamber, so I add my congratulations to that of the members who have gone before me.

I will speak on a few things that members have already touched on, but I want to do so by highlighting some stories that I came across in my career as an industrial relations lawyer. As I said, I was never a workers compensation lawyer. I never handled a workers compensation file, but I obviously had a lot of exposure to issues of health and safety in my capacity as an industrial relations lawyer and working alongside personal injury lawyers. One area in which there was particular overlap was around this question of attendance at medical appointments by the employer. Several members before me have spoken on this, but the way I want to approach this issue is to make the point that employers attempting to attend medical appointments with employees is not an insignificant risk. It happens out there in the community. It is wrong. It is wrong that an employer tries to insert themselves into that direct conversation between a medical practitioner and their patient, but it does, unfortunately, happen and it is a good thing that this bill will outlaw it.

I want to give an example that I came across. It was not in a workers compensation scenario, but a scenario involving health and safety in the workplace. I represented a young woman and union member who worked in a laboratory for a soil and sample testing company. In that world she was exposed to various fumes and chemicals. She became pregnant. That was great news. She was very excited, but, understandably, wanting to be cautious, she went to her GP and she told the GP she was pregnant and the type of work that she did. She said that she could be surrounded by solvents and fumes and various chemicals over the course of the day. She asked whether that was a health risk for her and her unborn child. Her GP said that yes, it was a health risk for the worker, so they gave her a medical certificate that said it was unsafe work for her to do, and the employer needed to find her alternative duties.

The Fair Work Act requires women who are pregnant to be given alternative duties if the duties that they are doing are found not to be safe for them during pregnancy. This client went to her employer with her medical certificate and she said, "Here's the medical certificate. I'm really keen to remain at work. Is there anything else that I can do?" Through gritted teeth the employer eventually agreed to put her on alternative duties, but they took the view that those alternative duties were not sufficient to take up her full-time hours, so they were quite reluctant and unhappy about giving her those alternative duties and paying her the same salary. She did those duties for a number of weeks without any complaint from her or any real complaint from her employer. Then one day she turned up at work and her supervisor said to her, "All right. Come on and get in my car with me. We're going down to see the doctor." She was basically taken to her supervisor's car, put in the car, driven down to a doctor of the employer's choosing and escorted into an appointment with this doctor. The supervisor sat in the appointment and had the doctor do a separate

and new assessment, of which she had no notice, of whether her workplace was a safe place for her to be working in as a pregnant woman. The twist to this story is that that doctor agreed that it was not safe for this client to be working in the job and doing the duties that she had previously been doing.

The employer, then, was in a pickle. They were clearly not happy with having to pay her for these alternative duties, but they had failed in their attempt to get an alternative opinion from a doctor. The employer then made some sort of an excuse and basically put her back on those alternative duties, but about a week or maybe even a few days later, the employer presented her with a new medical report. The new report had been undertaken by a doctor based in Brisbane who had assessed that it was safe for this worker to work in her previous duties. This doctor had never interviewed my client and had never even toured the workplace. They were based in Brisbane and it was a Perth workplace, yet the employer had gone and found this doctor on the east coast who provided a report stating that it was safe for this woman to work in her previous duties.

I was flabbergasted when this case came to me. Fortunately, the worker was a union member and went to her union. Her union took up the case for her and took it to the Fair Work Commission, but still the employer insisted that they had done nothing wrong. The employer said that because she was refusing to do her previous job, even though the employer now had medical evidence that said it was safe for her, she could be put on unpaid leave, so the employer put the worker on unpaid leave. The employer also had a particular problem in that the HR manager was a couple of units away from finishing a law degree and considered himself to be the expert on all things to do with industrial relations, which could not have been further from the truth. The worker spent a period without pay, being essentially locked out from her workplace. We had to go all the way down to the Industrial Magistrates Court of Western Australia and lodge a claim. First, we went to another doctor and got another medical certificate, which agreed with the first two medical certificates that said that her previous duties were unsafe for her. Once we had that medical certificate, the employer still would not put her back to work. We then went to the Industrial Magistrates Court to prosecute the company for breaching the Fair Work Act and the National Employment Standards.

It was an appalling case, but I will say—I used to say and I still say—that I cut my teeth as a junior lawyer defending the Construction, Forestry, Maritime, Mining and Energy Union against the Australian Building and Construction Commission and I have always been pleased with that training because it taught me how to litigate pretty hard. One of the things that the ABCC taught me is that there are access or liability provisions in the Fair Work Act and there are now as well in the Industrial Relations Act. Those provisions provide that if a person has been knowingly concerned in a contravention of the Fair Work Act by an employer, that person can be personally liable for that contravention as well, so we joined our HR manager friend as a second respondent to the claim because he was knee deep in it. I have to say that nothing quite motivates an HR manager to resolve an issue than realising that their personal circumstances are on the line. It is all well and good to stand behind the corporate veil and say that this will all land on the head of the company, but, suddenly, when the HR manager had to deal with actually thinking about the consequences of his actions, not for anyone else but for himself, finally the penny dropped. Not long after lodging that claim, to no surprise of mine, my client was returned to work to her alternative duties, which she had been successfully performing before. I am pleased to say that we also secured an undisclosed amount to set up the baby's trust fund, and that the worker went on to be a delegate for the union.

In many ways it was one of my proudest cases that I got to run, but it is also one of those cases that I wish I had not had to run because it should not be necessary to get even the union involved and it certainly should not be necessary to get lawyers involved in those sorts of disputes. But the reality is that this type of poor behaviour goes on, and the only way that we can ensure that it is nipped in the bud when it happens is to, first of all, have strong laws. That is what we are doing here with an express prohibition on employers attending medical interviews for employees. Also, we have to have strong unions that are able to take enforcement action and represent their members to stand up for their rights and make sure that the right thing is being done by them. Therefore, I want to acknowledge those provisions and say that they are provisions that I really welcome. They are provisions that, unfortunately, are needed. They are needed based on my experience of what happens in some workplaces. I accept that it is a minority of workplaces, but, nonetheless, it is out there, so I welcome this reform.

The second reform that I want to touch on is the accrual of leave entitlements while a person is on workers compensation payments. Section 130 of the Fair Work Act provides that a person can accrue annual or sick leave entitlements while they are receiving workers compensation payments but only if the accrual of those entitlements is permitted by a state workers compensation law. Therefore, the starting position under the Fair Work Act is that a person does not accrue entitlements while they are on workers compensation payments, but they are entitled to if it is permitted by the state-based workers compensation legislation.

I came across this issue while I was working alongside workers compensation lawyers. Some of my colleagues and some of our union clients came to me and asked whether WA's workers compensation act is an act under which employees are permitted to accrue leave entitlements while they are receiving workers compensation payments.

I was able to answer that question surprisingly decisively. Everyone knows that lawyers—it is no secret that this is partly why we become politicians—like to give half answers and qualified answers.

Ms M.M. Quirk: What makes you say that?

Mr D.A.E. SCAIFE: That is right, member for Landsdale.

Normally, we give advice that says that it depends or there are these risks or this is likely or unlikely, but in this case when this question was brought to me, I was able to find the 2015 case of Anglican Care v New South Wales Nurses and Midwives' Association [2015] FCAFC 81. That was a decision of the full court of the Federal Court of Australia in which the full court found that the New South Wales workers compensation legislation permitted workers to accrue their leave entitlements while they were receiving workers compensation payments. Normally, that would not be determinative of the issue because it was a decision that concerned New South Wales legislation, but two things were peculiar about that decision. The first thing is that the provision in the WA act is basically identical to the provision in the New South Wales act. The second thing is that that had been acknowledged by the full court. The full court said in its decision about the New South Wales act that it considered the New South Wales provision, which was section 49 of the New South Wales Workers Compensation Act, to be identical to section 81(1) of the WA Workers' Compensation and Injury Management Act. The court said that they were in identical terms. Again, that does not necessarily determine the issue because it is a decision about the New South Wales act, not a decision about the WA workers compensation act, but it is pretty persuasive. It is highly persuasive that the full court of the Federal Court has found that basically an identical provision in the New South Wales act permitted employees to accrue annual and sick leave entitlements.

What was bizarre to me was that despite that full court decision having been handed down and despite it having been drawn to the attention of numerous employers and insurers and their lawyers, some employers in Western Australia persistently refused to accrue leave entitlements to their employees who were receiving compensation payments. I thought that was astounding because although it may not be a direct precedent, it was a highly persuasive precedent. There was no good reason to think that it would not be followed in Western Australia, but despite being aware of that precedent, employers were not applying it. The Workers Compensation and Injury Management Bill 2023 makes it clear that employees are entitled to accrue entitlements while they are receiving compensation payments in WA. I welcome that being made clear in this legislation. But it is also worth noting that it is not a change of situation. My former law firm Eureka Lawyers ran a case in New South Wales in the full Federal Court of Australia on behalf of a bloke named Gerald Touhey. The case is known as Touhey v Salini Australia Pty Ltd [2022] FCA 55.

[Member's time extended.]

Mr D.A.E. SCAIFE: In the case of Touhey v Salini, before Justice Banks-Smith of the Federal Court, my former law firm litigated this precise question on whether the Western Australian Workers' Compensation and Injury Management Act permitted employees to accrue leave entitlements while receiving workers compensation payments. The employer's position was so weak on that matter that all it did was to file a submitting notice. A submitting notice is filed in a court when an employer wants to tell the court that they are not going to actively litigate the matter but submit to any order that the court makes, usually save as to an order in relation to costs. The employer's position was so weak that it did not even litigate the matter. Despite its case being that weak, it had not been voluntarily accruing the entitlements prior to the litigation having been brought. Despite the litigation having been started, it paid the entitlements to Mr Touhey that he should have accrued but on the basis of without admission of liability. It is a curious legal strategy to do that without admission of liability and to file a submitting notice at the same time. It turns out that Salini Australia's strategy was not particularly strong because within that decision Justice Banks-Smith found that the relief sought by Mr Touhey, which were declarations that he was entitled to accrue his leave entitlements and that Salini Australia had contravened the Fair Work Act in failing to accrue those entitlements, were proper declarations to make. One reason Justice Banks-Smith said that was the case was that Salini had expressly made its payment to Mr Touhey on a without-admission-of-liability basis. Her Honour said that there was utility in making a declaration because Salini had not admitted liability in making the payments to Mr Touhey.

Federal Court precedent currently applies to the Western Australian workers compensation legislation. I do not take much credit for it. I give that credit to my colleague Dustin Rafferty who took over from me as the industrial relations lawyer at Eureka Lawyers. But I will take a tiny bit of credit because I was involved in the conversations over the years about this issue and provided advice on it. It was really pleasing to me to see the sensible position reflected in the Touhey v Salini Australia decision, but it is even more gratifying to see that this bill expressly embraces that position and puts it beyond a shadow of a doubt that an employee in Western Australia who is receiving workers compensation payments under the Workers' Compensation and Injury Management Act is entitled to accrue annual leave and sick leave while receiving those payments. I commend the minister for making that clear. I also make the point that it is not a change in the law; it just injects greater certainty into something that the courts have already adjudicated on.

The last thing I want to touch on is something that other speakers have also covered, but it focuses on improvements to the process of submitting a workers compensation claim and having it adjudicated and a decision made. As an industrial relations lawyer, I saw the incredible stress that can be put on people when they are stuck in disputation or litigation and do not have an outcome or do not know when they are going to have an outcome. It puts incredible stress on people. I saw a few cases of employees who were not on workers compensation but were subject to disciplinary proceedings that had dragged on for months on end. Although these people were being paid, they were suspended from work and had hanging over them the threat of the outcome of the disciplinary proceedings. In a lot of those cases, the relationship between the employer and employee actually broke down not because of any misconduct that the employee had engaged in, but because, frankly, they went a little bit mad from having to wait around for months and months, and in some cases up to a year, before they could get an outcome. They were trapped at home with nothing to do. They could not go to their workplace. Yes, they were suspended with pay, but they felt like they were in this state of suspended animation. It is a terrible way to treat workers. It leaves people in this state of uncertainty and anxiety and it feeds into a feeling that they are being persecuted or wronged. I want to make the point that speeding up the processing of claims, whether that be court proceedings or workers compensation claims, is always important because it not only provides access to justice—the saying goes that justice delayed is justice denied—but also relieves people of the anxiety and emotional pressure that comes from being in a long-running dispute.

The reforms in this bill are designed to make sure that people are not left in these situations of uncertainty as much as possible and that we speed up the claims process. This bill will achieve that in a few ways. It will motivate employees and employers to make quick decisions under the workers compensation claim process. One way it will do that is by requiring the employer to give notice to an employee of the ability to make a workers compensation claim. This is a great reform. I certainly came across cases in my previous life in which employers who did not want their employee to make a workers compensation claim would either hide that that was an option for them or discourage them from taking that option. They might say something like, "I will pay you $20 000 towards your medical bills and let's not put a claim in." That can lead to problems down the track. That might be all well and good to cover the initial treatment, but if somebody has a back injury that is aggravated or degenerative in some way, the full effects of that injury do not become clear until months or even years down the track. If that person has not lodged a workers compensation claim and received proper treatment for it, they might very well be locked out of receiving proper treatment and compensation to go towards their treatment and any loss of earnings.

Requiring employers to give notice to an employee within 14 days of an incident of their right to make a workers compensation claim is really important. The second requirement is on insurers and self-insurers to respond to any workers compensation claim within 14 days. That is important because it sets out an expectation about how quickly we want the system to move. We do not want people to be stuck in this state of limbo. Importantly, the bill also provides for consequences if an employer does not meet those time lines. That will be a real motivation for insurers to make a quick decision, because if they do not respond within 14 days, the consequence is that they will be deemed to have accepted liability.

The bill will also limit the ability of insurers or self-insurers to defer a decision about liability. I saw a lot of cases in which a worker's claim had been "pended"; that is, the insurer wanted to do further investigations and its decision on liability was pending. It is all well and good for an insurer to want a bit more time if it needs to undertake investigations, but those investigations should be done as expeditiously as possible. This bill will place a limit on how long a final decision on liability can be pended or deferred. I understand that the limit will be prescribed under the regulations and is likely to be within 26 days. That is another part of the legislation that will encourage employees, and employers and insurers in particular, to deal with workers compensation claims as expeditiously as possible.

Another way in which this bill will advantage both employees and employers is that the length of time for which provisional payments must be made to an injured employee will be extended from 13 weeks to 26 weeks. The payment will then be stepped down to 85 per cent of the employee's normal rate. That will not only give employers greater breathing room while they are going through the process of trying to resolve claims or rehabilitating workers to get them back to the workplace as expeditiously as possible, but also give employees the security of knowing that they will be able to receive their provisional payments for longer. I am also pleased about the reform in this bill that the 85 per cent step-down rate will be covered by the Minimum Conditions of Employment Act. This will provide a safety net to ensure that a person who is already being paid the minimum wage will continue to be paid no less than the minimum wage.

This is a great bill. It is a Labor bill. It is a bill that will further the interests of workers in a sensible way. It is another reform that the Minister for Industrial Relations has brought to this chamber, and I look forward to its speedy passage through Parliament.

MR P.C. TINLEY (Willagee) [5.33 pm]: As a local member, I spend a lot of time, particularly in sitting weeks on the compressed days of Friday and sometimes Monday, stacking as many constituents into my office as possible—

some would describe it as a doctor's surgery—in an attempt to keep up with their issues and do something about them. However, there are two areas that as a local member I find far and away the most difficult and confronting. The first is child protection issues in all their forms. Child protection is such an opaque part of public administration and departmental control that it is often very difficult as a local member to advocate on behalf of our constituents. The other is what we are dealing with here—namely, workers compensation. We often intercept these constituents at various points in the process. In many cases, we are talking about some of the most under-resourced people in our community, typically manual weekly wage earners who have injured themselves at work or believe they have injured themselves at work and do not know what to do next. The Workers' Compensation and Injury Management Act 1981, which is administered by WorkCover, is arcane in both its written form and intent. Any attempt by a guy who left school aged 15 years to understand the legalise and the complexity of language in the bill will be a big ask. We are fortunate that many of the members around us, such as the member for Cockburn, and the member for Cannington and Minister for Industrial Relations, have great experience in this area.

One of the first things I ask these people when they come into my office is whether they are a union member, because as the member for Bassendean rightly highlighted, the collective action and muscle of a union is a great compensation and salve for people going through this difficult process. Several such cases have come into my office, ironically, just in the last couple of weeks. One was a teacher at a public school. I will refer back to that in a moment. One of the key features of the act is that it is founded on a no-fault system. That allows for a meaningful adjustment and attendance to the injured worker to ensure that their compensation will be just and fair. That has been carried through to the modernisation that we are dealing with in this bill.

It is compulsory that employers have workers compensation insurance. I understand, having been an employer, that that is an expense of doing business. The premium is about 1.86 per cent of the total wages bill. I note from looking at the statistics that there has been a slight increase in the past four years. The premium has varied from 1.68 per cent to 1.82 per cent in 2022–23. In fact, in 2020–21, the premium went backwards by 0.04 per cent. It would be interesting to know whether that was COVID related. It is certainly not a great expense for a business. It was explained to us in the briefing that this bill will result in a premium increase in the order of 2.83 per cent. I think that is a fair price to pay to ensure that we modernise the opportunity for people to get workers compensation.

One of the best things about the modernisation of this bill, having read through the black print, if you like, is that it has been written in plain English. That will enable people to read and understand it in a transparent and clear way. It is very important that we use plain language in our bills whenever possible. Workers compensation coverage will obviously still be compulsory. This bill will provide the benefits that have been identified by other members, such as weekly payments for lost wages, medical and rehabilitation expenses, lump sum compensation for permanent impairment and also, of course, death benefits and payment of funeral expenses.

The main criticism of the system that I have found in my lived experience as a local member is the level of complexity. The ability to navigate an individual through the workers compensation system without the collective support of a union will always be difficult and will invariably involve expensive lawyers. Many people who come through my office have neither the resources in their own lived experience nor the economic resources to enable them to get into the system too deeply. It is often a very frustrating and significantly debilitating experience, particularly if they are up against a vexatious or difficult employer.

This bill will also address the inadequate benefits that are often paid to a worker relative to the wages that they earned during their employment. I note the increase from 30 per cent to 60 per cent in the amount that can be claimed for medical expenses, which will take that into the realm of about $146 000 and will be indexed. The people I see have ongoing and significant referred injuries. If someone does a shoulder, hip or leg, it will eventually have an impact on other parts of their body—their gait or sleeping arrangements will change, or there might be any number of neural problems as a result. We need to make sure that we have an adequate medical cap to undertake the sorts of treatments that are required and are appropriate. That, in fact, was one of this government's 2021 election commitments and it was well received.

There have been criticisms about inconsistencies in the approach to compensation, particularly around determinations and permanent impairment assessments. People with a catastrophic injury, if you like, may go to an assessor who might evaluate the same injury on different terms and with different assumptions. There is also an issue about the varying compensation amounts that will be paid. The other great criticism is about the challenges in returning to work. Employers may not always provide appropriate support and suitable duties for injured workers as they recover. That really makes it difficult for employees to return to work. I find that in those circumstances there is, over time, an increase in mental stress and a decline in people's self-confidence and desire to improve their lot.

A constituent of mine drove a truck, delivering dairy products to various outlets across the city. He injured his back on the truck lift and went through enormous challenges to prove his injury. Back injuries are some of the most difficult to assess, particularly with regard to pain, to understand the limitations of the employee. That constituent's employer was particularly good in making sure that the driver's alternative duties were suitable and fitted the

nature of his injury, but it took nearly 13 months to come to a conclusion with his workers compensation. That puts as much stress on small employers as it does on employees. For some, returning to work is a good experience when they have compassionate and capable employers, but if they do not, it can be fraught with all sorts of challenges.

Other issues with the current system include delays in claim processing and inadequate support for mental health injuries. That is probably more a comment around the architecture of mental health services in Australia and other developed countries, where access to mental health practitioners and experts is particularly difficult, and even more difficult when people have children. Compelling employers to act in good faith and apply all the tenets of the current legislation was always a challenge. The government has its work cut out for it, but I am very proud to be part of a government that has taken on this very difficult area. I note that there were 171 recommendations in the final report of the injury management review, and most of them are reflected in the modernisation of this legislation.

Another challenge worth noting is that of the government insurer, the Insurance Commission of Western Australia, which is known as the insurer of last resort. As an insurer of last resort, it has the capacity to take on non-government customers. Normally it is the insurer of government agencies, businesses and workers—some 130 000-odd public sector workers across Western Australia. ICWA is the underwriter of their claims. There was a situation in which a constituent of mine, a teacher, had hurt herself during work hours. This is a disparity that will not necessarily be covered by this bill. ICWA, as the insurer of the Department of Education, accepted the liability, the injury and all the reports, but the Department of Education, as the employer, had to interpret for its own benefit the nature of the compensation. She had in writing the Insurance Commission of Western Australia's acceptance of liability and the compensation amounts incorporated in its judgement, but the Department of Education disputed the nature and quantum of that compensation. The government as an institution and an employer therefore has a little more work to do, I think, to understand the relationship between our insurer, employing agencies and workers. That case is still on foot and my constituent is hoping for a resolution in the near future.

Another key feature is the extension of the step-down point from 13 to 26 weeks. That is particularly important in circumstances in which lifetime care and assistance are required for catastrophic workplace injuries. The member for Cockburn talked about provisional compensation payments for appended claims. It is important that we acknowledge that; it will give people some solace as they undertake their own rehabilitation when they are not in employment.

We have heard many, many stories about employers attending medical appointments and coercing behaviours around the use of medical experts. This bill attends to that situation and will prevent those employers or their agents from attending medical consultations. I think it is a fundamental right for people to have their own medical needs met privately and confidentially with their medical practitioner and no-one else. That is always going to be a balancing act, but the balance has been struck here. The bill will not prevent communication between the treating medical practitioner and the employer about return-to-work options. I think that will probably strike the right balance and, hopefully, that is what we will see in practice.

Another key issue will occur more and more as technology comes to the fore, and that is discrimination in pre-employment screening. This is not unavoidable. If someone has a physical challenge and wants to do a physical job like joining the police force or similar, their medical history is going to be part of the recruitment process.

The cost impacts of the legislation are marginal. We will see an increase in impost estimated at around 2.83 per cent, according to PricewaterhouseCoopers. I think that is a modest increase to achieve the sorts of outcomes that a progressive government wants to achieve.

I turn now to the increase in stress-related workers compensation claims. Stress, unlike physical injury, is far more difficult to diagnose and far more difficult to rehabilitate. Stress and the mental health issues that may result from stress-related injuries are issues that will have to be grappled with by future governments. We will need to understand how important treatments are—not necessarily compensation—in respect of returning to work. Right now it is not a really big issue. Total lost-time claims for 2019–20 were around 14 132; some of this info is a bit old. Of that, there were only 427 stress-related claims, which is about three per cent. That equates to about $50 million in claims. However, the average number of days lost was 105, but stress-related claims accounted for 206 days lost. As we can see, those claims might be smaller in number but are deeper in effect and they keep people out of the workforce for longer. The challenge is that the longer someone is out of the workforce, the more psychologically difficult it becomes for them to return. To be a productive human is to be one who contributes to the community. I think it is very important that that is the case.

I reserve the last few minutes of my contribution to acknowledge the minister. The minister has, by anybody's measure, had to accept a high degree of pressure and challenges across all his portfolios, being the Minister for Mines and Petroleum; Corrective Services; Industrial Relations. It is almost like, "If you've got a tough gig, give it to Bill; he'll take the heat", so much so that he had to alter his personal holiday to attend to issues. That is the way the man approaches his duties. We are very privileged to have him in the roles that he has, and we are very privileged to have him in caucus as a significant contributor and a lifetime contributor to the Labor movement. This sort of

bill is exactly the type of thing that a Labor man like Bill would be seeking to implement because it is progressive, equitable and just, and it is what he stands for. Although I am using my time very carefully to not pump up his head too much, I asked his office, "What has Bill Johnston ever done for Western Australia?" In response, I got seven pages—that one is a bit blank—of Bill's greatest hits, and they are fantastic reading. Quite frankly, the member for Cannington should be very proud. He should include these sort of things in a scrapbook; I will sign them for him later. He is the second-best mines and petroleum minister we have had in the McGowan government. He is the worst Minister for Housing we have had; he was minister for four days!

Mr W.J. Johnston: Nothing went wrong when I was there!

Mr P.C. TINLEY: Yes.

I want to refer to some of the things he has done around a particularly significant issue in our community.

[Member's time extended.]

Mr P.C. TINLEY: I want to go on.

Mr W.J. Johnston: Give him another 20 minutes!

The ACTING SPEAKER (Ms A.E. Kent): You would love that, wouldn't you!

Mr P.C. TINLEY: I could turn this into a roast if members want me to!

One of the biggest issues confronting the community in Western Australia is energy—our transition to a renewable energy future. This minister and this government have taken that up front-on. There is nothing bolder than the decision to end coal power generation in Western Australia by 2030; the significant impact of that cannot be understated. If we do not get there—if we cannot replace the near 30 per cent of power generation by coal in that time frame, which is a short period—people in Western Australia will be left wanting and the south west interconnected system will be a significant loser. But if we get it right—it is the bold ambition of any government to reach those big targets—we will be the proud owners of around a 40 per cent reduction in carbon emissions right across the state, which would be a significant national contribution. But the biggest challenge is getting the infrastructure right.

The cost to connect solar prospective areas and wind prospective areas is insanely big; it will require as much as 5 000 kilometres of high voltage to get those solar prospective and wind prospective areas linked up and into the network. The cost of that is in the multiples of billions. This minister has taken things on with the planned $20 million electric vehicle highway project, which involves 98 charges across 49 locations, and the implementation of the emergency solar management rules. That might not sound too sexy, but the reality is that the rampant uptake of photovoltaic installations in Western Australia—it is more than any other jurisdiction in the world—has destabilised the system. Again, he has taken that on and ensured that we have the regulatory arrangements to bring rooftop solar into the system and to make it not as destabilising as it would be had it remained unfettered. The minister is responsible for the utility-scale Big Battery project in Kwinana, which will power more than 160 000 homes. We typically do not read about these things in *The West Australian* or mainstream media, but this minister is doing the hard work, day in, day out, to ensure that long after he his gone, he delivers for future generations of Western Australians, who would expect the sort of duty that he performs.

The ACTING SPEAKER: Is the member for Willagee finished?

Mr W.J. Johnston: I was going to draw your attention to standing order 102.

The ACTING SPEAKER: We were going there—trust me!

MS M.J. HAMMAT (Mirrabooka — Parliamentary Secretary) [5.54 pm]: I am also very delighted to rise and make a contribution on this very important piece of legislation, the Workers Compensation and Injury Management Bill 2023. I was also going to start by congratulating the minister for his work, but having heard the previous speaker give such effusive praise, I am not sure that I will be able to do so in such an articulate manner as we just witnessed.

I wanted to start by acknowledging the work of not only this minister, but also his staff and advisers, as well as the public sector workers who have worked on this bill. There is a long history to this piece of legislative reform now before the house. I acknowledge that it has been the diligence and determination of the Minister for Industrial Relations that has meant that this bill is here before us. I also acknowledge the work of Owen Whittle, the secretary of UnionsWA.

Mr W.J. Johnston: And the previous secretary.

Ms M.J. HAMMAT: I am not sure she was much chop to be honest!

Even in his role as assistant secretary, Owen Whittle played a lead and important role in these reforms, as did all the affiliated unions in Western Australia. This matter has been on their mind for many years, at least prior to the 2017 election, but, of course, for many years prior to that, and that is because workers compensation is such an important part of a suite of protections for working people. It has always been a part of the suite of issues that unions

are expected to stand up for on behalf of their members. It is also worth recalling that in the days of Court government, when Graham Kierath was the responsible minister, this was one of the areas that the then Liberal–National government took a knife to. It did a slash-and-burn job on workers' entitlements in respect of workers compensation. People who have been workers for a period and who have relied on the system and people who work in the realms of supporting people going through the workers compensation system understand how important this legislative framework is in ensuring that people get a fair go at the point at which they are injured at work. It is absolutely so important for people who have suffered some kind of injury and are seeking to get back into the workforce to have a fair framework as far as possible. I want to congratulate the minister again. This bill is such an important piece of legislation.

Many of us will go through our working life without experiencing an injury at work that requires compensation. I hope that increasingly this is the case for working people everywhere. But what I have observed in my time representing working people is that when it happens, they are profoundly affected by that injury or illness. It has consequences on their ability to go to work and earn a living—it has consequences for their economic wellbeing—but it also impacts their mental health wellbeing because for many people, work is not just an economic activity; going to work is what people do for a social outlet and it provides them with a role and a sense of status in society. Many workers suffer a great deal from not being able to go to work and that has many consequences for people's family members. Hopefully, many people will never have to experience the workers compensation system, but it is so important for those who are affected, and it is absolutely vital that we get the balance right to ensure that working people are protected and that they have a reasonable prospect of being treated fairly and with dignity if they are required to engage in the workers compensation structure.

By way of introduction, I also want members to understand that the bills before the house are part of a suite of improvements that this government is making to try to ensure that we have a fair and balanced system for employees in this state. Many of the reforms have been introduced by the Minister for Industrial Relations. This reform follows on from the reforms passed in this Parliament to the Western Australian Industrial Relations Act and the work of the former Parliament on the Work Health and Safety Bill—again, a really significant piece of legislation to ensure that workers can, hopefully, be safe at work and return home at the end of the day. This is part of a whole body of work this government has been doing, underlining our commitment to ensuring that Western Australian workplaces are fair and Western Australian workers have access to appropriate and balanced protections. I again commend the minister for his work in this area. The member for Bassendean made the point very well that prevention is better than a cure in this area in particular. Having strong work health and safety laws is absolutely critical, in the first instance, to ensure that the risk of injury to workers is minimised. Strong workers compensation legislation is the next most important thing for people who are injured and required to engage in the system.

I said at the outset that there has been quite a long history to these reforms. It is really important to note that like many legislative reforms, these have gone through some fairly extensive review and discussion. Back in 2009, WorkCover WA put in place a two-stage review of the legislation. Some work was done and a bill was passed in 2011 that made some amendments to the Workers' Compensation and Injury Management Act. The second stage was to develop a new workers compensation statute. That was identified as early as 2009—many, many years ago. In October 2013, WorkCover WA released a discussion paper outlining a series of proposals to redraft the act. That draft was put out as a way of engaging with stakeholders, seeking feedback and starting a discussion about what a rewritten act would look like. In June 2014, the final report was released, based on the consultation that had happened. That was all pulled together into the *Review of the Workers' Compensation and Injury Management Act 1981: Final report* that contained 171 recommendations for what needed to be included in the new workers compensation statute. That review identified a number of areas in which the legislative framework applying to workers compensation was in need of amendment and reform. That report was tabled in the Legislative Council in June 2014, but then the Liberal–National government did nothing, which was in keeping with its lack of interest in ensuring that workers have a fair system. It took the election of a Labor government in 2017 for this issue to receive the attention it really required and deserved.

The report was tabled in 2014, but it was only after the 2017 election that our current minister announced that the government had approved the drafting of a bill to modernise workers compensation laws, and the drafting of the bill commenced and progressed. It is a very detailed piece of legislation. I know that it has taken some time to get it together. In 2021, a consultation draft bill was released, again to ensure that people had the opportunity to provide comment on this really important piece of legislation. I believe that over 80 written submissions were received when that draft bill was put out for public consultation. It was a very comprehensive document and there has been exhaustive consultation on it with a range of stakeholders, including employers and employees. A lot of law firms work in this space and many of them also put in submissions about what would be an appropriate legislative framework.

I want to come back to the fact that this demonstrates the stark difference between what Labor governments and Liberal–National governments do when they are in power. Whilst we get on with the job of legislating in a range

of ways to improve the circumstances of working people, what we have seen over and over from successive Liberal–National governments has been either inaction, as was the case under the Barnett government, or, as I mentioned earlier, the active reduction of people's entitlements, as happened under the Court and Kierath government. It takes Labor governments to stand up for working people; they are the only governments that can be relied on to deliver fairness in our workplaces. It is no surprise that this is true in the workers compensation space as well. It is great to have the opportunity to have this long-awaited bill before the house. There has been significant consultation on it. There is no doubt it will deliver a better workers compensation system for many working people, and one that is more fairly structured.

I want to talk about some of the provisions in the bill in more detail. Before I do that, I started my opening remarks by illustrating that being injured at work has a significant impact on workers. It is important for members to understand that the way the workers compensation system operates, it is not a level playing field by any stretch of the imagination. When employees are injured at work, they are often incredibly vulnerable. Permanent employees perhaps feel a little comfort in being able to access paid leave entitlements, but the vulnerability of a casual or insecure employee is greater. Employers are by and large insured for workers compensation, so at the point an injury occurs, many employers will be required to complete some forms and notify their insurer. Many workers claims are acknowledged and paid, but when that is not the case, it is often a situation in which employees, who may or may not be represented, are seeking to get a fair deal out of a system in which employers are typically represented by insurers that are often very large multinational companies that are not particularly concerned about the interests of the employee, or about the interests of the employer either, but are often primarily concerned about their bottom line. It is important to acknowledge that not all insurers are the same, but clearly some engage in the workers compensation system in a way in which their primary focus is on minimising their liability. Often, that means taking quite an aggressive approach to how claims are dealt with.

I have heard many times that workers do not want to be in the system and, quite rightly, are very upset when they are injured. Overhanging people once they get into the workers compensation system is a lot of the public commentary around the workers comp system, typified by some of the more populist news channels, which unfortunately makes people feel like they are rorting the system. I have had a number of working people whom I have represented say to me, "I know a lot of people rort the workers comp system, but I'm genuine; I'm really injured." The fact that people have this sense that they are not going to be taken seriously when they say they are injured points to some of the real deficiencies in the system. No-one whom I have met would willingly be injured at work. Employees often find themselves going through a number of different hurdles and challenges before they get an appropriate acknowledgement of their claim or, perhaps, a settlement. As we know, the bills do not stop pilling up just because a person is injured at work. People feel an enormous amount of pressure when they find themselves in the system with a claim that has not been accepted. The pressure often stays for the duration that a person is managing an injury. I think it is worth acknowledging again that not all injuries are repaired quickly so that people can get back to work. Sometimes people have very significant injuries and can be out of the workplace for very long periods. In some instances, people are simply unable to recover sufficiently to return to their previous work at all.

It is excellent that this bill seeks to address a number of pain points. Working people pursuing workers compensation entitlements can find themselves at particular pain points as they struggle to work their way through the system. Insurers, as it generally is, have additional power at particular inflection points in the system. A really good example of this is the changes we are making to pended claims. The legislation will require that there is a response to a worker's claim for compensation within a prescribed period by the insurer. They will need to get back to the worker so that they can know with some certainty whether their claim has been accepted. If it has not been accepted, they can decide whether to pursue a review of that decision. It is often the case that insurers will pend claims. Under the current scheme, if a claim is pended, a person would not necessarily get financial support while the claim is pended, and that often puts them in financial difficulty. If a person has access to leave, it may be acceptable to them. But in a situation in which a person does not have any form of paid leave—we know that is increasingly the reality for working people—having their claim not decided contributes a significant amount of stress. Unless people are well advised by unions or lawyers, they would not necessarily know the steps they can take to get some kind of resolution that would allow their claim to be either accepted or rejected; and, in the event it is rejected, take steps to have it overturned.

[Member's time extended.]

Ms M.J. HAMMAT: That is a really important change and I congratulate the minister for introducing it. I hope that it will mean insurers just get on with the job of making a decision one way or the other about whether they will accept or reject a claim. As I said, in the event that a claim is rejected at that initial step, there are further steps working people can take to have a decision reviewed. This provision will stop people from getting stuck in a no-man's-land in which no decision is made one way or the other. I commend the minister for that change.

I also want to talk about the step-down provisions. I think a sufficient number of speakers before me have spoken about step-down provisions. Embedded in the legislation is the idea that the amount of weekly income that people receive by way of compensation payment has a step-down point embedded into it. This legislation will extend that from 13 to 26 weeks. It is an incredibly important provision that will make a real difference to people on workers compensation for longer periods. Getting any kind of reduction in one's take-home pay is not easy for working people, particularly those on low incomes, to manage. This provision will ensure that people will continue to receive their earnings for at least 26 weeks so that they can make any necessary plans. It is a really important provision of the bill. I know it is something the union movement has campaigned on for some time, so it is great to see that that provision will be introduced.

I cannot resist talking about employers attending medical appointments. When I first heard that this occurs, I found it extraordinary. I cannot imagine that any employer representative would find it all that comfortable to sit in a medical appointment with an injured worker and their doctor having what no doubt would be an incredibly personal discussion, yet it is what employers have been doing. It is often dressed up as concern for the employee. It is often human resources personnel who are required to attend, but it may be other members of an organisation as well. Typically, it is presented to the employee that their attendance comes from a place of caring for that employee. But in practice, from the stories I have heard—perhaps others have had a happier ending—employees at best feel intimidated having an employer rep attend a consultation with them and they are less likely to tell the story to their doctor in a way that accurately reflects exactly what happened. They minimise the story while the employer's representative is sitting alongside them. It is an appalling breach of a worker's privacy. It does not allow for the full and frank discussion between a worker and their medical practitioner that one would expect. Whether it is a physical injury or something else, the reality is there may be a whole range of things a doctor might want to talk to a worker about in the context of an injury, and having an employer rep sitting alongside the worker is simply not appropriate and, quite rightly, will be banned under this legislation. Clearly, employers can still get information about what a medical practitioner has said. They can get all the information they need about managing return-to-work options. None of that will stop under this change in the law, but it does mean that employer reps will have no place in medical consultations; they should not be there. I am really pleased to see this provision incorporated into the bill.

I talked earlier about how workers are often incredibly vulnerable when they are injured at work. It is very easy to see how it might be quite hard for a worker who has been injured to say no to an employer insisting on going into a consultation with them. They are often not able to get advice in a timely fashion so that they are clear about their rights. To put the onus on the worker to stand up and say, "No, you're not coming; get out", makes it incredibly difficult for them. This bill makes it clear and I think it gets the balance absolutely right, ensuring that workers will have a right to privacy and dignity, and the ability to speak to their medical practitioner privately. This was a really important election commitment in 2021 and it is excellent to see it now incorporated into this bill.

In the time left to me, I want to talk about a couple of other things. First, I want to make a few comments about the definition of "worker" in a broader context. People who work in this area will know that it is increasingly challenging to define "employees" in laws like this one. I think legislators, unions and possibly employers as well have been challenged by the fact that the nature of work, and the nature of the employment contract, has changed substantially in recent times. The original iteration of this legislation was introduced in, I think, the 1980s. Over time what work looks like has changed significantly. Increasingly, working people are employed in different forms of temporary casual employment or what is called the gig economy in which they are typically not considered to be employees at all. The consequence of an increasing number of people in the gig economy is usually typified by Uber or Deliveroo drivers. A number of consequences arise from people in effect performing employment in a way that means they are not defined as a traditional employee. Obviously, those workers falling outside the workers compensation system is one of the challenges. I raise it because, of course, it does not mean that people performing those roles do not get injured. They do. A Deliveroo driver dodging in and out of traffic is perhaps quite likely to get injured in the course of that work. People get injured, but there is no insurance scheme. There is no employer to have taken the steps to insure them in the event of an injury and to provide them payments so that person has some income to live on while they are recovering.

In the absence of that scheme, the workers' protection falls back on the state broadly, so the medical expenses of people who are required to go to hospital will be met through Medicare. To the extent that there is any shortfall, that will fall back on the workers. Clearly, someone who is unable to work will still need to access some form of payment through sickness or unemployment benefits. Employers finding ways to engage people that is outside of the traditional employment relationship has consequences because we still need to make sure that people who are injured get the necessary protections. I know some time was spent on trying to find an appropriate way to ensure that the legislation will cover as many workers as possible, given the rapid changes that are happening in how people are employed and the challenges of doing that. I want to acknowledge some of the unions that have been doing work in this place to ensure that people engaged in this form of work have access to proper protections, and in particular the Transport Workers' Union of Australia.

I also want to take this opportunity to speak about International Workers' Memorial Day, which is recognised all around the world on 28 April. It is a solemn day that encourages people to stop and remember the many workers who have died or been injured at work. Every year, UnionsWA brings together unions, workers, government representatives and community members for a memorial service and wreath laying at Solidarity Park just across the road from this Parliament. I want to take this opportunity to encourage people to join this service if they are able to. If they are not able to, I encourage people to stop and reflect on the terrible personal toll of workplace death and injury not only here in Western Australia but also all around the world. In raising International Workers' Memorial Day, I also want to extend my thanks to Owen Whittle and his team at UnionsWA for hosting this really important annual event. It is important to reflect, as we deal with workers compensation, that its main framework is to provide support for workers who are injured, but indeed some workers die at work, and International Workers' Memorial Day is a really important way of reflecting on that as well as people who are seriously injured.

Although it is not the subject of this legislation, the minister recently legislated to introduce industrial manslaughter laws and I know that in the course of that work, a number of people who had lost family members at work were a really important part of the advocacy. I want to take this opportunity to thank them for their really powerful advocacy. It cannot have been easy to have told the story, time and again in government hearings and in the media, about what it is like to lose a beloved family member as a result of a workplace tragedy. I want to say to them on this occasion that I thank them greatly for their work and for their advocacy, and it is really excellent to see that we will have not only good workers compensation laws, but, importantly, a framework for industrial manslaughter and appropriate penalties when people die at work.

With that, I am pretty much out of time so I am going to conclude my comments and commend the bill to the house.

MS M.M. QUIRK (Landsdale) [6.24 pm]: It is very difficult to follow my colleague the member for Mirrabooka, who has a long and distinguished career in the union movement and, certainly, these issues are second nature to her. But at the end of the day, I feel I need to make a few comments and they will not be necessarily injected with the wisdom or the experience of those that some of my colleagues from the union movement have made. It is obvious even to casual observers that the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023 have been a huge undertaking, and I congratulate Minister Johnston and the McGowan government generally for the introduction of these bills and for honouring its 2021 election commitment. The consultation alone has been substantial and I understand in excess of 85 submissions were made on the draft Workers Compensation and Injury Management Bill 2023.

We have already heard that workers compensation has been the subject of review for many years, since 2009, but I think the consensus is that the current laws are technical and, most importantly, not regularly understood by those to whom the legislation applies. It is trite to note, but it is not readily achieved that our laws should be accessible and comprehensible to those to whom they are supposed to apply. Over the years, the current workers compensation system has become adversarial and in the words of the Shop, Distributive and Allied Employees Association's submission to the consultation draft bill —

> The current system is not one founded upon a meeting of equals. It is not a system where the parties have shared interests. It is not the case that the parties are working towards the same goals. The reality is that the insurers/employers are seeking an avenue by which to deny liability for the claim, and they do not seek ways in which they can accept liability.

It continues —

> Those that exacerbate the adversarial nature must be excluded, and those that are conciliatory or in some other way promote equality between the injured worker and the insurer/employer must be given priority.

I certainly endorse those observations. No doubt we will be canvassing in some detail the individual and technical aspects of the bill in the consideration in detail stage, but I want to take a slightly different approach. I want to make some observations about how dehumanising and demoralising elements of the current system are. Most of us can recall the long saga of the James Hardie company and litigators strenuously deploying tactics to ensure that plaintiffs would die of asbestos-related disease before the cases were decided. Such bad behaviour is not limited to those cases and is, to some degree, present in many of the interactions between workers compensation claimants and employers/insurers. At the very time an employee is focused on recovery and the restoration of health, they are mired in the stress and unfamiliar bureaucracy and delay of the workers compensation system. They are further demoralised by the underlying assumption by some practitioners or employers that the worker is malingering or illegitimate in their claims.

At this stage, I should commend our colleagues in the union movement for the advocacy and assistance that they give to their members in navigating this complex system. The wise counsel and assistance is reassuring to those workers and much needed. I consider that these days there is a growing acceptance in workplaces that workers need to be treated equitably and decently. It is seen as a feature of good leadership that a culture of dignity and respect should be engendered in workplaces and that is because, if for no other reason, it makes good economic sense. With an

environment of almost full employment, if a worker finds himself in an unsafe workplace in which there is a lack of respect, or is the subject of bullying, harassment or financial exploitation, there may be greater opportunity these days to leave and find a job where his talents are appreciated and there is scope for growth and developing skills.

The notion of the dignity of work and the dignity that should be afforded workers is by no means new. In fact, in 1891, Pope Leo XIII outlined the notion of workers' rights and the duties of employers in his encyclical *Rerum Novarum*, which, for those non-Latin scholars, means "Of revolutionary change". That document recognised the dignity of workers to work in safety and receive fair compensation. Dignity is a human right, but it is too often not considered strongly enough in the workplace.

That is a good segue to the human rights discourse today. The Human Rights Commission outlines some relevant considerations in its 2010 publication *Workers with mental illness: A practical guide for managers*. Some of the matters canvassed there are generally applicable to workplaces. Under the heading "Creating a safe and healthy workplace for all", it notes —

> **The most effective way to attract and support competent and productive workers is to ensure a healthy and safe work environment for everyone including workers with mental illness.**
>
> …
>
> Developing long-term strategies in the organisation is most effective when coupled with direct services that assist workers who require support and reasonable adjustments in the workplace.

The guide goes on to outline some characteristics of a healthy and safe workplace. It states —

- **professional development is supported and encouraged**
- **obstacles to optimum mental health are identified and removed**
- **diversity is viewed as an organisation advantage**
- **staff turnover and sick/stress leave is low**
- **staff loyalty is high**
- **workers are productive members of a team.**

It then continues under the heading of "Commitment to a strategy for creating a healthy working environment" and states —

> A key component to the success of creating a safe and healthy work environment is commitment and awareness. This can be demonstrated throughout the organisation by:
>
> - commitment from senior managers and other senior staff to develop a healthy working environment through mission statements and policies
> - managers demonstrating their commitment by implementing the strategies
> - making all staff aware of your managerial commitment to having a healthy and safe working environment.

When discussing the development of a strategy, it states —

> …it is important to involve workers and their representatives in strategies and policies related to OHS, risk management and mental illness. Not only is consulting with workers required under OHS law, it also makes good sense in creating a safe and healthy workplace.

It then discusses the issues of identifying hazards, assessing risks and implementing controls to minimise them. It states that the workplace needs to be assessed to identify whether it is healthy and safe. If that assessment fails to occur, it could also contribute to poor mental health. I think this is very important, and I am going to talk about it shortly. It notes that stress is a major contributing factor to mental health issues in the workplace and that the risk factors are —

1. high demand (work overload)
2. low support from co-workers and supervisors
3. lack of control
4. poorly defined roles
5. poorly managed relationships and conflict
6. poor change participation
7. lack of recognition and reward
8. organisational injustice.

It also notes —

> *Bullying and harassment* in the workplace can greatly affect a person's mental health. Bullying and harassment can take the form of:
>
> - abusive behaviour or language
> - unfair or excessive criticism
> - purposely ignoring the worker's point of view
> - tactless remarks or actions which put down the person
> - malicious rumours.
>
> …
>
> 'Risk to health and safety' means risk to the emotional, mental or physical health of the person(s) in the workplace.

It then proceeds to talk about workplace trauma. As we all know, in some workplaces, there are risks of one-off or cumulative incidents that are severe and traumatic for workers and contribute to post-traumatic stress disorder or other mental illness. I will address that shortly as well. Again, managers need to assess the workplace and the risks that could cause workers to be exposed to those stressors.

It concludes by stating —

> Providing safe and healthy work conditions benefits all workers and minimises the risk of or exacerbation of mental illness in the workplace. Some examples include:
>
> - regular rest breaks
> - limits on overtime or workload
> - breaks between shifts
> - flexible work hours …
> - ability to work part-time
> - study leave or professional development
> - effective grievance and conflict resolution procedures
> - workplace change consultation provisions.

These days, workplace stress is endemic. It is commonplace for workplaces involving service delivery to have signs up for the public requesting that the bullying or harassment of staff not occur. I have always found these very perplexing because these staff are actually delivering a service and trying to assist, yet it seems that it is commonplace for those very workers to be treated badly. I like the phrase that the Shop, Distributive and Allied Employees Association campaign used: "No One Deserves A Serve".

Likewise, many employers do not have good systems to address PTSD. Unlike physical injury, it is often difficult to pinpoint a particular incident; rather, it may well be cumulative. Managers need to be trained to recognise the signs and act in a more sensitive and timely manner. The Community Development and Justice Standing Committee, of which I was chair at the time, did a fantastic report on post-traumatic stress in first responders. That report certainly emphasised the need for managers to be well aware that this could be a problem and to take remedial steps at an early stage. In the case of the police service at that stage, members who had post-traumatic stress were not identified as such within files, but were merely claimed to have stress. How could that be adequately addressed when the issue was not actually identified? That was something we found very perplexing.

Finally, I want to reflect on the format of the bill and the criticism that has been made in some of the submissions that some of the specifics should be included in the substantive bill rather than in regulation. To use the cliché, I think it gives us greater agility. When we come across new areas that might need coverage as a matter of urgency in light of new medical research or information, we need to be able to act expeditiously to ensure that affected workers have adequate and timely coverage.

While we are in the mood of boasting, Mr Acting Speaker (Mr D.A.E. Scaife)—you set the tone!—I want to say that I am very proud to have introduced a private members' bill, which was not supported by the Barnett government, for presumptive legislation for firefighter cancer. Ironically a year later, the Barnett government introduced a bill in almost identical terms, but it delayed some firefighters in being covered.

It is likely that as medical research progresses and other forms of cancer are identified, the current list of cancers that are presumed to have been acquired occupationally will increase. For example, with the recruitment of more

female firefighters, we anticipate that the current list of cancers will include such things as ovarian cancer that is deemed to be acquired through their work. However, that may take some time as the cohort of female firefighters is quite small at this stage. Internationally, there is a lot of communication amongst different firefighting organisations and researchers so that we are made aware in a timely way of the atypical occurrences of these cancers.

Having these sorts of lists within regulations will be much quicker and we will be able to streamline a good response. It is in contrast, alas, to this Parliament, where the introduction and passing of substantive laws continues to proceed at glacial speed. Another example, as mentioned by the member for Hillarys, is of course the issue of silicosis. It is now widely understood that the installation of kitchen benchtops with a particular material causes disease. We need to respond to that in a timely way, and regulation will enable us to do that. We will be able to modify those regulations from time to time with reference to Safe Work Australia's list of deemed diseases. It is a great read! It is revised from time to time. The other issue that I think needs to be reflected in the new laws is that there are changes in the constitution of workplaces. We do not necessarily have the same employer–worker relationships. There are all sorts of permutations and combinations. We have to have laws that are sufficiently flexible to cover the evolving relationships between employers and workers in the various different permutations that such relationships can have.

In conclusion, I trust that these more streamline and equitable laws will alleviate the rollercoaster of emotions for claimants in the workers compensation system. I also hope that these laws will ensure a more complete, fulfilling and timely return to work and, as a corollary of that, that workplaces strive to enshrine the fundamental human rights of workers, which I have outlined today.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.