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

Second Reading — Cognate Debate

Resumed from 21 June.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.55 pm]: I was not meant to jump up quite so quickly because Hon Colin de Grussa was going to give his budget speech this afternoon; however, he has been struck down with a lurgy. He has tested himself and it has come back negative for COVID. As I explained to him carefully, it is not fatal unless he passes it on to me, in which case it is likely to be. There is a bonus to unfortunately having one's seated partner not present; that is, I can spread out a lot further! That is particularly pertinent as we deal with the workers compensation bills because this is massive legislation. It is not often that we are presented with a bill that looks like this and that occupies in total 445 pages and 700 clauses. It is not an insubstantial piece of legislation. It will take a fair bit of time to work our way through this process because it is effectively a complete rewrite of the workers compensation act. I am sure the parliamentary secretary will be good natured in the no doubt drawn-out process this will become. Seven hundred clauses will take us a little while to debate.

Hon Matthew Swinbourn: I think it's 900.

Hon Dr STEVE THOMAS: Nine hundred? Maybe if we combine the two bills it is 900. There are 700 clauses in the major bill; I was simply going off the first bill. We do not do a lot of 700-clause bills.

Hon Stephen Dawson: Thank goodness.

Hon Dr STEVE THOMAS: Yes, there might be a safety in the workplace issue if we did them all the time. Perhaps changing our sitting hours might not be feasible if we had these sorts of bills often.

In an hour-long contribution to the second reading debate there is obviously no chance of getting to all the bits of the bill that we want to talk through in detail and examine, so there is no point my rushing through that.

Hon Matthew Swinbourn: I thought we could skip the committee stage, member!

Hon Dr STEVE THOMAS: Does the parliamentary secretary want to jump through the committee stage? I think that is unlikely.

Hon Matthew Swinbourn: Or have a substantial reply!

Hon Dr STEVE THOMAS: If the parliamentary secretary is prepared to give a three sitting week substantive reply, maybe we would give it some consideration. I suspect he would break the record for a single contribution. My record is about only six hours, but there are certainly far longer substantive contributions than that.

Hon Matthew Swinbourn: I remember; I was here.

Hon Dr STEVE THOMAS: Yes, I am sure the parliamentary secretary remembers more than most.

This is a massive piece of legislation and I do not intend to run through all the technical details of it in this hour. I suggest that the parliamentary secretary does not need to take a lot of notes from my contribution. I think we will get to most of the substantive debate when we return from the winter recess and get to the substantive parts of the bill.

It is an important bill, as demonstrated by the debate this morning, and it generates a lot of passion. I thought this morning's debate was a very positive debate. It was around workplace deaths, which are part of the workers compensation bills. It obviously is an issue of great passion for a large number of members. We will try to treat this legislation with a fair degree of respect and the seriousness with which it deserves to be treated.

Although it is an issue of passion for many people, not many people have dwelt on both sides of the workers compensation process. For my sins, I started a business back in 1991. I was at that stage purchasing workers compensation insurance for workers as early back as the middle of 1991 and that was a fair while ago now. I do not know how many other members have been on the employer side of the workers compensation argument. Hon Darren West has. Yes; he ran a business. Hon Jackie Jarvis has. I certainly have, but not a huge number of members in the house. I suspect it is not all that common for members of Parliament. In the old days, we probably had a lot more businesspeople on my side of politics who would have run their own business. I think it is less common than it used to be. But certainly I am able to talk about this from both sides of the fence.

As reflected in the motion presented by Hon Peter Foster this morning, obviously workplace deaths are not acceptable and we should never be complacent about them; workplace injuries are not acceptable either and we should never be complacent about them. But they are going to occur, sometimes despite the best efforts of everybody to prevent them and, on occasions, because somebody failed in their duty of care. That will always be the case. We have a few statistics to work with. For the reference period of the 2021–22 financial year, because 2022–23 has not quite completed yet, according to the Australian Bureau of Statistics, across Australia 497 300 people had a work-related

injury or illness. That is a fairly big number. The Australian workforce is around nearly 15 million workers; it is 14 point something. It might even be written in there. I will have to check that. Western Australia normally sits around that 10 per cent mark, so we have 1.4-something million workers, heading towards 1.5 million workers. We would assume, therefore, that the number of workers injured in Western Australia is probably a fairly equal proportion of that. Basically half a million injured people would reflect out at 50 000 injuries in Western Australia. When we come back the parliamentary secretary might have some more specific figures on that. We will see where we end up.

It is a significant number of people. I was just saying the parliamentary secretary might come back with the numbers in Western Australia, for example. I am using Australian numbers but when the parliamentary secretary replies in August, he might have more detail about those numbers in Western Australia specifically. Let us assume that with nearly 15 million workers across the country and half a million injuries—injuries and illness related to work, as opposed to catching the flu at home—Western Australia —

Hon Matthew Swinbourn: Sometimes that is a workplace injury as well, depending on where someone works.

Hon Dr STEVE THOMAS: It can be, but it is probably the less common component of that.

Hon Darren West: Check with your deputy leader.

Hon Dr STEVE THOMAS: It depends where he caught it. We will have to work that out. If I catch it off him, can I put in a claim?

Hon Matthew Swinbourn: I could not possibly give you any legal advice.

Hon Jackie Jarvis: He could but he would have to charge you.

Hon Dr STEVE THOMAS: Hang on; if we are going to start talking about lawyers and do lawyer jokes, we will be here for months. I will just mention one lawyer thing and that is that despite the fact I have carriage of the bill, I am not our expert in this area. My friend and colleague Hon Nick Goiran will no doubt know much more about this issue.

Hon Darren West: Oh, honourable member, I thought you were going to say Hon Neil Thomson!

Hon Dr STEVE THOMAS: I do not think Hon Neil Thomson is a lawyer but I know that Hon Nick Goiran is and he has worked in this area. I advise the parliamentary secretary and members opposite that if there is a difference of opinion between me and Hon Nick Goiran, I will take his opinion as —

Hon Matthew Swinbourn: Take my view, not his.

Hon Dr STEVE THOMAS: I will be taking his, but, hopefully, he and the parliamentary secretary will continue their usual flirtation across the chamber and we will see where we end up.

Hon Matthew Swinbourn: It is a very professional relationship.

Hon Dr STEVE THOMAS: We digress a little.

Of that 14-odd million people in the workforce, if we look at half a million, according to the Australian Bureau of Statistics, it equates to a work-related injury rate of 3.5 per cent. In a piece of good news, that was down from 4.2 per cent in 2017–18 and 6.4 per cent in 2005–06. Proportionally there has been a reduction in workplace injuries over the last couple of decades. That is a very good outcome. But, obviously, I would say that the total number of injured people is reasonably steady or rising slightly despite the fact that it is a lower percentage. It is a significant section of the population.

I will probably come back to this several times because I want to encourage businesses that employ people to engage in the workers compensation issue to adequately insure and to recognise the obligations that go on. As I said this morning, I think most businesses do exactly that. I recognise that some of what the members opposite put into the contributions this morning was very much focused on workplace injury. Some of it was the required union support and I understand that. I might not agree with it, but I understand that the union is important to members opposite.

Hon Matthew Swinbourn: To all workers.

Hon Dr STEVE THOMAS: The old BLF in particular is important.

Hon Matthew Swinbourn: The Builders Labourers Federation.

Hon Dr STEVE THOMAS: I am not sure who might have been associated with that.

Hon Matthew Swinbourn: Me and my dad. He was a builder.

Hon Dr STEVE THOMAS: I knew that. I was baiting the parliamentary secretary.

Hon Matthew Swinbourn: He was a member of the BLF and the CFMEU.

Hon Dr STEVE THOMAS: What are you now—CFMEU?

Hon Matthew Swinbourn: It is still the CFMEU. Hansard likes to add the extra "M" in. CFMEU is the national —

Hon Dr STEVE THOMAS: Is there a split in the camp at the moment?

Hon Matthew Swinbourn: No split.

Hon Dr STEVE THOMAS: The mining union is not separated out?

Hon Matthew Swinbourn: I will give their full name—the Construction, Forestry, Mining and Energy Union, construction and general division, WA divisional branch. Hansard better get that absolutely correct including the right dashes and that.

Hon Dr STEVE THOMAS: The member might want to write it down.

Hon Darren West: Do you know the BLF has a songbook of songs?

Hon Matthew Swinbourn: I am sure it does.

Hon Dan Caddy: So does the Barmy Army!

Hon Klara Andric: We have so much to teach you, honourable member!

Hon Dr STEVE THOMAS: Exactly right. So does the Barmy Army, amongst other things.

The ACTING PRESIDENT (Hon Dr Sally Talbot): Members, do you think we might return to a more traditional form of debate?

Hon Dr STEVE THOMAS: I take your guidance, Acting President. Those opposite are doing their best to distract me from what is a very important bill.

As we get into a conversation around the two sides of workers compensation, I just wanted to throw this into the mix as well. Again, this is from the same report. I will leave a copy for Hansard, but the report is the Australian Bureau of Statistics work-related injuries, released on 15 February 2023 dealing with the reference period 2021–22 financial year. It is the most recent one we can get. Of those half a million or so workplace injuries, the report states —

- 85% continued to work in the job where their injury or illness occurred.
- 8% changed jobs.
- 7% left or lost the job where the injury occurred and were not working (at the time of interview).

Eighty-five per cent continue to work in the same job. Despite the rhetoric that we heard this morning and the strongly anti-employer slant that the Labor Party and government members tend to put on this issue, 85 per cent of people who were injured in the workplace in the last financial year for which we have the numbers continued in the same job. They continued to work for the same people, doing the same thing. I take that as an 85 per cent vote of confidence in the employers that are in the system currently in place. Probably not everybody was 100 per cent happy with the way that process occurred, but 85 per cent of people injured in the workplace across Australia remain employed by the same employer, doing the same job. This suggests to me that the scare campaign that Labor members occasionally engage in around how bad employers are around Australia is precisely that. What is 85 per cent of half a million? That is 420 000 to 450 000 of the half a million people who were injured have maintained the same job with the same employer. I think that is a really important message to give back. Most employers are trying to do the right thing. It is not easy. In the weeks that it will take to delve into this bill, I do not want to be the defender of employers who do the wrong thing. It is a bit like the reformed smoker syndrome. For all of us who did the right thing and had adequate workers compensation insurance and tried to make our workplaces as work-safe as possible, there are cowboys out there who do the wrong thing, let us down and embarrass us. It is not in the interest of the opposition, businesses, business groups and lobbies to try to protect those business owners and employers who do the wrong thing. It is absolutely reasonable for all those groups—including the opposition and me—to defend, as an estimate, the 85 per cent of businesses that are actually doing the right thing and whose employees felt comfortable enough to remain in the same job.

I thought the parliamentary secretary's contribution this morning was a measured one on an issue that he is probably passionate about as well. I take on board his comments when he says that it is everybody's job, and it is everybody's job to do. That does not, in my view, change the fact that the government is the backstop and underpins the whole process, so I do not think we are actually far apart on it.

Hon Matthew Swinbourn: Member, to be honest, the comment was one made on his feet—and I took it as that—but I wanted to provide my perspective from this side of the chamber.

Hon Dr STEVE THOMAS: I stand by my comment, but I accept the member's position on that and we actually were not disagreeing at the time. I stand by his needs as he saw that position and I did not disagree with it when he put it. To make the workplace safe is the job of the employer; he is absolutely right. It is also the job of the employee to identify when it is not safe. I am a big believer in the 80 to 20 rule of life, but I do not know what the numbers

are here, so I am going to use 85 per cent. I do not have an exact number. I do not how to measure the exact percentage of employers who are doing the right thing. It might be higher than 85 per cent, because looking at the numbers of what happens as a result of injury, eight per cent of employees changed jobs and seven per cent left or lost their job and were not working. Some of those seven per cent of workers may have been permanently disabled as a result of their accident or did not re-enter the workforce for other reasons. It may or may not have been the fault of the employer that they had at the time, so I am going to use a minimum of 85 per cent; I think that is right. The number itself is immaterial. What it says to me is that the vast majority of employers and businesses are trying to do the right thing by their employees. That is not the easiest thing in the world to do. I will relate some of my initial experiences of going through that process of shifting from employee to unemployed—I quit—to employer. I tell you what: it is a heck of a learning curve to shift from employee to employer; it is an absolute learning curve. I peaked at five or six employees, I think. In my view, that is the classic small business. We had arguments on my side of politics for many years about the definition of a small business, and there was a time, when we were talking about fair work components, that we said a small business should be a business with up to 100 employees. When a business has 1 000 employees, it says that 100 employees is not many, but I think five or six employees, or maybe up to 10, is a genuine small business.

Hon Matthew Swinbourn: Sorry to interrupt, but the member makes a distinction between what might be a microbusiness and a small business.

Hon Dr STEVE THOMAS: I do. Most businesses in Western Australia basically have either zero employees or one. Those are microbusinesses. Most businesses involve someone who works for themselves and does not employ anyone. They are probably the happiest people in industry because they do not have to employ anybody else. It is a learning curve. People say that raising children is the toughest thing a person will ever do; it is not. Employing people is easy, but going through the process of trying to work out who will be the best employee is not the simplest thing in the world to do. Employing people is easy, but firing people is when an employer really knows they are alive. If an employer has never sacked somebody from a job, in my view, they have not actually learnt what running a business is about. It is not simple. It is a tough process if it is done properly.

Hon Dan Caddy: Or manage someone back to a level where they would succeed.

Hon Dr STEVE THOMAS: Yes, ideally. Let us briefly discuss the process, because I do not necessarily disagree with Hon Dan Caddy. I had an employee who just did not seem to be interested in the job. If a business had 100 employees—that would be a pretty big business—there would be a reasonable chance of finding a position within the company that the employee could perform. The employer might not be overly happy, but the bigger the business, the more likely it would be to find a position that the employee could fulfil. If the business employed four, five or six people and all those jobs were critical, and one person could not do their job, it would be almost impossible to find a way around that. It just cannot be done. It is a miserable experience. Luckily for me, I had to do it only a couple of times in 17 years of running a business. It is a miserable experience because the employee has to be given a formal warning. These days, employees must be given a formal warning three times in writing. When I first started, a verbal warning was adequate in the first instance. The employer must give a verbal warning: "This work that I require you to do is not being done to the standard that I require. This is your first formal warning." When that first formal warning is given, there usually have been weeks or months of attempting to get the worker to do the job that needs to be done. Generally speaking, if a good employee is told, "You are doing this and this is the result, but what I need you to do is this," I suspect that 99 times out of 100 the employee will say, "Yes, absolutely; I'll give it my best shot." Most employees will improve and get better. That is what Hon Dan Caddy was referring to—that the employee needs to be managed into a position in which they do the job they are required to do and in the way they are required to do it. Through my experience in business, most employees absolutely do that, but that is not always the case. Sometimes, weeks and months are spent on training and it gets to the point at which the employee is told, "I am going to give you a formal warning. I have told you 10 times that I need it done this way," and yet they still either cannot or will not do it. If I owned a business with 100 employees and employee X had reached that first warning point, I could usually find a place for them somewhere far away from me and have them line managed by somebody else so that going to work was not miserable. I could go in and say to my chief operating officer, "I have told person X three times. I need you to line manage them because I am just going to go off my trolley if I have to tell them again", but a boss with a staff of four cannot escape. Every day they go into their office. This is business, and it is what people who have never run a business never understand. Generally speaking, all your life's work is tied up in this thing. Hon Darren West has run a farm business. I do not know whether he started it from scratch or inherited it. It makes a big difference if it is started from scratch versus inherited, in which case one takes on an existing, operating business.

Hon Darren West: It was a bit of both—inherited and built.

Hon Dr STEVE THOMAS: It was a bit of both. It is a big step, and there is no disrespect in the question.

A member interjected.

Hon Dr STEVE THOMAS: Is that to keep me awake, parliamentary secretary?

Hon Matthew Swinbourn: No. The red light is still on.

Hon Dr STEVE THOMAS: Are we picking up your secrets? Excellent!

Hon Matthew Swinbourn: No, I am being very cautious about what I am saying. The minister next to me might be doing something.

Hon Jackie Jarvis: I am just having a snack. I am the minister for food.

Hon Dr STEVE THOMAS: You are not eating in the chamber, are you, minister?

Hon Jackie Jarvis: No, I am not.

Hon Matthew Swinbourn: She is not. No! Not at all.

Hon Dr STEVE THOMAS: I might have to refer that to the Acting President.

The ACTING PRESIDENT (Hon Dr Sally Talbot): My attention is on only you, Leader of the Opposition, because you have the call. If you focus on me, then somebody else can keep their eye on the members.

Hon Dr STEVE THOMAS: Thank you, Acting President. That is very true; I will do that. I am sure that there is no skulduggery going on on the other side. They are honourable people.

The issue is that someone has started that business, potentially, and that is what happened with me. I arrived in the south west with three suitcases and about $200 in my pocket. At that point, that was my entire wealth and assets.

They are trying to find out what the parliamentary secretary is saying. It is really interesting.

Hon Matthew Swinbourn: It is the thoughts that they are reading—that is what I am worried about.

Hon Dr STEVE THOMAS: That was in 1989. By 1991, I had been employed for a while. The south west of Western Australia was a great place to work, but I probably had the worst bosses. My experience was that I had some of the worst bosses, I think, that anybody has had.

Hon Matthew Swinbourn: In your industry, I would agree with you.

Hon Dr STEVE THOMAS: I did not realise it at the time, but when I arrived in Donnybrook in late 1989, that position turned over every six months because no-one ever wanted to stay. It was a miserable and abused position in the best town, the best region and the best state in the world, so I set up my own business. It was a bit weird. I was going to leave. I actually lasted 18 months, which was a record at the time, but I was moving on. Some local farmers came in and said, "We are sick of having a new vet every six months. We want you to set up for yourself."

Hon Martin Pritchard: It's better the devil you know.

Hon Dr STEVE THOMAS: Hon Martin Pritchard is exactly right, although I am not sure whether that works out in the long term. So I did.

Hon Darren West: At least you get a warm arm.

Hon Dr STEVE THOMAS: Yes, but it is only the one arm. It is only the left arm, and I still keep an arm in.

Hon Klara Andric: How many watches have you lost?

Hon Dr STEVE THOMAS: None! I tell you what: do not wear a wedding ring, because it is a heck of a thing to try to get back if left behind. I have still got mine; it might be stained a little green, but it is still there.

It was a horrible place to work, but it was a great location. I set up for myself. I set up on a shoestring budget because that was all I had. Everything I had in the world at that point was invested in the business. I started with a leased premise. I bought a vehicle with the savings I had. I borrowed, I think, $10 000 to start off. Holy mackerel—talk about a shoestring budget, but that is what starting out in small business means. Until I sold the business, which was 17 years or whatever it was later, the assets that I owned were invested in that business and then, ultimately, a house, but the house was mortgaged to fund the business. Everything I owned was tied up in that business.

The first thing I did was employ a clerical staff member. It was good because I walked into the local government employment agency and said, "I am setting up a veterinary practice. I need a receptionist and occasional vet nurse. Give me someone 40-plus who is sensible and has some life experience." They said, "No-one ever asks for a 40-plus woman to work in a business, so you have the choice from all this group." It was probably more sexist back in those days. I started my first employee on the standard wage for the industry for the first six months. It was the only time that I ever paid the award wage in my business career, because it was a low wage and I always wanted to be encouraging. That first six months when I set up was the only time I paid that wage. Bear in mind that the average annual wage when I set up that business was $25 000. I know that because it was the wage I was working for when I was working; I looked it up. At the time, $25 000 was both my wage and the average wage. I do not remember the clerical wage, but it was less than that. I had an employee, and the workers compensation bill was a couple of

hundred bucks. I went, "Sure. No problem!" It made obvious sense that when somebody is employed, a business needs to have workers compensation. I had not thought about it before that point.

I had that beautiful experience of quitting and starting my own business just before the onset of compulsory superannuation, so I had no superannuation. I did not have superannuation at all until I started in Parliament in 2005, in the house that shall not be named—the Slytherin House of the Parliament of Western Australia. I did not have superannuation at that point.

It is hard work doing it on your own. I was on call 24 hours a day. If it is a one-vet practice, like a single-doctor practice, the vet is on call 24 hours a day. That has a limited life span. I employed my first vet in about March 1992 because business was good. People in Donnybrook were sick of having a new vet every six months. Most of the vets were new graduates who had to learn a lot on the job. I employed my first vet, and the wage I put them on was the wage that I had been on, which was $25 000. I then thought, "Okay. I need workers compensation for the vet." The workers compensation bill at the time was about $2 000; it was eight per cent of their wage, and the reason for that was that being a vet was considered a high-risk occupation. It kind of is a high-risk occupation.

Yesterday, there was a debate here about dogs. Hon Peter Foster spoke about dogs, and I was very tempted to stand up and tell a hairy dog story or two, but I resisted the temptation because I was busy getting ready for this bill and missed the early contributions to the debate.

Being a vet is a risky occupation; I think it was the second-highest tier. I have to say that it was scary when I started a business and got hit with a workers compensation bill of $2 000 that had to be found up-front. I had a little panic. I wondered whether I could contract somebody instead if I could not afford it. What could I do? I bit the bullet, and I paid two grand. I forget how many weeks it was, but that was my entire income. In the early stages of a business, the income is generally not very good. It depends which number is used, but let us use the 80:20 rule of life. Most small businesses fail in their first couple of years, and the reason for that is that the economics are not there. My business still exists; I sold it in 2006.

Hon Dan Caddy: Provisional tax does not help, either.

Hon Dr STEVE THOMAS: Provisional tax does not help. I can tell the member a couple of stories about that, too. Do not start me on the Australian Taxation Office because I am in the middle of a battle with the tax office, which says that parliamentarians are not allowed to advertise. That is a whole other battle, which we will talk about another day. Believe me—that is the battle that I am having. I tell members what I will do with that one: I have to win that because every parliamentarian in the country—this is the rule that they say applies to state and federal MPs—is not allowed to advertise until after the issuing of the writs. Then, we can advertise until the election. I got a dud auditor. I tell you what—if I do not win that case, I will be around to the federal Treasurer's and finance minister's electorates to make sure that they are not advertising anywhere. That will be a bit of a battle. Anyway, I have digressed again, Acting President. I blame Hon Darren West again. It might have been Hon Samantha Rowe this time!

Hon Samantha Rowe: What have I done?

Hon Dr STEVE THOMAS: Do not start me, "Rowdy"!

It is a big impost in a rather high-risk industry. Guess where the injuries and deaths occur. They occur in those high-risk industries. It was $2 000 at the time. Talking about starting a business, I remember that I had a paper accounting system in the first two years. I sent invoices out, and I used to sit there at the end of the day working out how many invoices we had got together and whether I could pay the wages bill at the end of the week. That is what starting a business is like.

Hon Darren West: Did you use the other arm for that?

Hon Dr STEVE THOMAS: Yes, I used the right hand for that—the left hand was for pregnancy testing, the right hand for other work! I am right-handed. You have to train yourself to use your left hand.

It is a big impost. It is not inconsiderable, and it probably frightens some people from employing people. I said earlier that the happiest business owners are generally those who do not employ anybody, because wages are the biggest impost for the most part. But good staff are a business's biggest asset; they were always our biggest asset and we looked after our staff. Like I said, after my first six months when I was figuratively on the bones of my butt, I never paid the award wage again because staff are the biggest asset and we had an obligation to look after them to the best of our ability. But it was not easy. I will spend a bit of time during the debate on this bill making sure that we talk about and look after the interests of employers. What I forgot to tell the parliamentary secretary at the start of this process is that the opposition supports the bill. I probably should have begun with that, but I got very excited.

Hon Matthew Swinbourn: We had a conversation behind the chair.

Hon Dr STEVE THOMAS: The parliamentary secretary knew we supported the bill, but I thought I had better put it on the record. That is not to say that the bill is perfect; there are some issues we will debate along the way. The

bill is a complete rewrite of the Workers' Compensation and Injury Management Act, and that is important. I will probably not go into a lot of detail in the second reading debate because we will do it as we go through committee.

Workers compensation has a big impact. It is a big cost, and we have to be across the issue. I paid workers compensation for 17 years or whatever it was, and we put in one claim in that time. I tell members that that was probably a bit more by good luck than good planning, because there are a lot of things in the veterinary profession that cannot be controlled—for example, if a cow or a horse is mad. I will say what business owners do. I had good staff except for two—one vet and one lay staff. Business owners put themselves at risk before they put their staff at risk. As it was in my business, a good employer is the first to arrive and the last to leave. If there was a risky job, I took the risky job on myself, and I tried not to put my employees in a risky situation. So the employer, who has no insurance, takes the risky jobs away from the employees for whom they pay significant dollars to insure because that is what they do for their employees. I think 85 per cent—whatever that number is—of employers do exactly that: they put themselves at risk instead of their employees. It is easy to throw rocks at the bigger businesses that do well, but a lot of big businesses that I know—those with 100 to 1 000 employees—particularly in the contracting industry, do precisely that. If they think something is a bit dodgy, they do it themselves. The farming sector does that more than anybody else. That sector does not have an insignificant component of workplace injuries and deaths, but farmers are probably the people who put themselves at risk as much as anybody else. That is precisely what an employer does. I think that reflects that employers generally try to do the right thing. The issue with my employees was that, of course, we were dealing with large animals, particularly in a small farm environment, and a lot of places do not have particularly good facilities. I said in a previous speech that the biggest issues my staff and I had was inadequate restraint. That is why we are big believers in chemical restraint, and there should be more of it, mostly for animals, but on occasions I would stretch that out! That is a safety issue.

Hon Matthew Swinbourn: My wife was a vet nurse and the most serious injury she got was from a rat biting her finger and almost going through the tendon.

Hon Dr STEVE THOMAS: A rat! You get infections.

Hon Darren West: How big was the rat?

Hon Dr STEVE THOMAS: Some of the rats are pretty big.

Hon Matthew Swinbourn: The rat was coming out of anaesthetic and it panicked, and she was the one holding it.

Hon Jackie Jarvis: Why would you give a rat an anaesthetic?

Hon Dr STEVE THOMAS: Yes, they are gassed down. They go into the gas mask, but it has to be held steady, and if someone does not have the strength in the hand to hold them steady, they will bite. Give me a rat over a ferret any day though for bites, but that is a whole different argument.

Restraint is the key. As vets get older, they use more and more chemical restraints because there is a risk, and they encourage their staff to do that. When we are younger and fitter, we think we are bulletproof and we will try all these things—we will try to wrestle bulls to the ground and all the rest of it. I will not go through some of the stories I related when we debated the Veterinary Practice Bill with Hon Alannah MacTiernan. Some of those stories can remain in history for the time being. My point is that employers tend to put themselves at risk first, which is a bit crazy, but that is how it works. Good business owners put themselves at risk first, despite the fact that they are not insured, and suddenly they have to rely on their employees to step up if they do get injured. Later in the debate we will come to the cowboys who do the wrong thing, and they are out there. We should all be focused on businesses that do not do the right thing, but most employers try to do the right thing.

I remember the best vet that I employed, who is still vetting in the south west. One day, I walked out and she was trying to deal with two dogs for a client who I suspect had bikie and drug connections. I think they were guard dogs; they were the 60-kilogram mastiff-cross things that we tend to find. One of the dogs decided that they wanted to eat her. She had the sense to stand perfectly still, thank heavens, and the dog was growling and biting and got about one inch and a half—four centimetres sorry—away. Eventually, the dog just stopped. The one workers compensation claim that we had was an injury that occurred in a cattle yard. It was not too severe, and the person in question still works as a vet today, but obviously not for me. The risks are absolutely significant, but for the most part we try to avoid them. Most businesses do that. I know people will want to use the debate on workers compensation to talk about bad bosses, and they exist, but I would hate it to become such a large focus of the debate that it is all we talk about because I think most bosses try to do the right thing.

This bill is a complete rewrite. As far as I can tell, the origin of the rewrite of the Workers' Compensation and Injury Management Act 1981 goes back to about 2009 and Hon Troy Boswell—I think he is still honourable. I think it goes back that far. There has obviously been a lot of work involved. The problem is that when we deal with this bill, every document is bigger than *War and Peace. I* have a copy of the WorkCover review that came out in 2014, which was another one of the documents that contributed to the rewrite of the act. There is a universal view that

a rewrite of the act was necessary because, having had to sit down and read the thing, it is almost impossible to understand. It flows terribly. So a rewrite of the act is a good thing. According to the explanatory memorandum, the rewrite covers the following areas. I will not have time to get to all of them in detail in this second reading debate, but I want to throw them in there. The areas include workers and employers covered by the scheme; forms of compensation; how the claim process works; injury management and returning injured workers to work; dispute resolution; mandatory insurance by employers and self-insurance; constraints on common-law damages for negligence; scheme administration by WorkCover WA and licensing; and approval and regulation of service providers. We will get to each of those as we run through the different parts of the bill. As I said, it is difficult to work through just in a second reading contribution.

Some of the concern around the bill—I might raise this in my second reading contribution—from an employer's side will obviously relate to the cost of compliance and insurance. I do not think that the government has commissioned or put forward a regulatory impact study on this bill; I am not sure why. I suspect that many of the proposed changes will have relatively limited cost impacts. I might be wrong about that in some parts, but I suspect that the debate that we will have over the next sitting weeks will largely not be around the cost. It would be useful if we could get an indication of the government's expectations of the cost. To be honest, I would have preferred a full regulatory impact statement, given that we are dealing with a bill of 700 clauses. I acknowledge that for the most part, it is a rewrite. Rather cheekily, I did ask for a marked-up bill, but that was put in the too-hard basket.

Hon Matthew Swinbourn: Even I do not have one of those, member. There is no blue bill because it is not an amending bill.

Hon Dr STEVE THOMAS: Yes; I thought it was worth a try. It is the old saying, "If you don't ask, you don't get." I would have thought that, just to appease employer groups and businesses in particular, a regulatory impact statement would have been a particularly useful thing for this bill. I do not think that we will necessarily get the parliamentary secretary's reply today, but when we come back in August, perhaps the parliamentary secretary might give us some indication of the cost impacts of this bill; and, if a regulatory impact statement has not been done, why it has not been done. The parliamentary secretary is a very good and hardworking member and a very good parliamentary secretary. He probably should have been a minister. The people downstairs could have made way. We could have four in the upper house.

Hon Matthew Swinbourn: If you keep saying that, it will never happen!

Hon Dr STEVE THOMAS: It could be a 50–50 split.

Hon Matthew Swinbourn: Every time you give me any endorsement, it sets me back years!

Hon Dr STEVE THOMAS: I am still working on the preselection of a few members on the other side; we will see if we cannot shift the parliamentary secretary further up the chain, or out—one or the other.

The parliamentary secretary will hopefully be able to give us some indication of what the genuine costs of this will be. We are actually supporting this bill. We will try the odd amendment; the parliamentary secretary is already aware of some of those. I will make very brief comments in a bit, before I run out of time, on the presumptive illnesses of firefighters, but I ask the parliamentary secretary to give us an indication of why a regulatory impact study has not been done. For all the parliamentary secretary's good work, we will now have six weeks of non-sitting. That is probably time enough to develop a regulatory impact study. The parliamentary secretary might pass on my compliments to the minister, for whom I have enormous respect, and suggest that it is probably a reasonable request to get a regulatory impact study done in six weeks. He might have other things he needs to spend time and money on, like the energy system. He is not dealing with corrective services now, so he should have a bit more time on his hands; he can focus on this.

Where will we get to in the debate on this bill, given that I am going to run out of time fairly soon? I briefly mention the presumptive diagnosis of illnesses of firefighters in particular. Hon Martin Aldridge will conduct that campaign. I suspect that he will have an opportunity to complete his contribution to the second reading debate when we come back after the recess. It is absolutely the case that there are additional presumptive illnesses for firefighters on the federal list to those on the state list. The opposition has foreshadowed this; the supplementary notice paper outlines that we seek to add those additional illnesses to our list to catch up with the commonwealth. The parliamentary secretary might come back and suggest that doing it by regulation would be a better way to manage it, and I am obviously prepared to have that debate. In fact, as I understand it, the minister could actually move along these lines in the interim, should he want to. If we do not want to bog down that debate too much, perhaps the minister might be encouraged to give some commitments down this path.

Again, I understand that the government is looking to try to establish causal links as best it can. Having worked in science and medicine—I am sure Hon Dr Brian Walker would agree—I know that the causal effect of some issues are difficult to prove. It is not the easiest thing in the world. But we will have that debate, and the opposition has flagged some proposed amendments on that. At this stage, it is not my intent to flag a large number of proposed

amendments to the bill more generally, but we will be looking for the parliamentary secretary to justify various positions within the bill.

I have no doubt that there will be a debate on the first part of the bill, which deals with the definition of a worker, and there will be particular debate about contractors and subcontractors and the circumstances in which someone is a worker. I suspect that the opposition and the government may well find some interesting common ground here. Various parts of the industry may not be happy. I have this statement that I often say: if everybody is a little bit unhappy, one is probably approximately where one needs to be in legislation. I have not looked at it, but apparently that was quoted by someone desperately trying to be relevant in a weekend newspaper on another debate. Luckily, I generally do not read letters to the editor, and I do not take any notice of desperation to be relevant, but I still think it is a reasonable policy to use. I think we will probably find some common ground on those definitions, but there will be some questions on them.

One issue that we will want to look at and, I expect, have a fair bit of debate on will be the rehabilitation or replacement of workers. The parliamentary secretary can expect that to be a particular area of interest. The rights of the employer and the rights of the employee both have to be considered when an employee comes back into the workplace. As we said before, according to the Australian Bureau of Statistics, 85 per cent of workplace injuries see the injured worker coming back to the same company and doing the same substantive job, but there may be circumstances in which that cannot occur or it cannot occur in the way that either the employer or the employee can work with. When we get to that part of the bill, we will have a debate on workers being shifted to parts of the business in which they can be employed, but not necessarily doing the same job that they were doing before for a range of reasons. I flag that because I suspect members of the Labor Party will be more stringent on the fact that they expect employees to go back to the same job, but I think there has to be a balance, with employers providing a workplace to which an employee can return, hopefully in a positive light, but not doing the same job. Employers need some freedom to be able to manage their businesses. I know that we are back to the argument about the potential vilification of —

Hon Kyle McGinn: Flexibility.

Hon Dr STEVE THOMAS: Yes, flexibility.

Hon Kyle McGinn: That is all good, until people get sacked from their job.

Hon Dr STEVE THOMAS: Sacking is a bit of a different issue.

Hon Kyle McGinn: They use the medical issue, basically.

Hon Dr STEVE THOMAS: The member was out of the chamber on urgent parliamentary business.

Hon Kyle McGinn: I tried listening to it.

Hon Dr STEVE THOMAS: Yes; 85 per cent of workers go back to the same company and do the same job, according to the Australian Bureau of Statistics. We have asked the parliamentary secretary to see what numbers he can come up with from the Western Australian experience. I think that would be really interesting.

Employers still have to be able to run their business. I have said before that if someone is in a big business, they can shift people around, but that is very hard to do in a small business. The capacity to encourage people back to work but to not have to provide them the same job again is obviously part of the debate that we will no doubt get to in the fullness of time. I suspect that we will spend some time talking about psychological illnesses and post-traumatic stress disorder. Holy mackerel! That is a vexed area of policy and law.

Hon Matthew Swinbourn: What was that? I missed that.

Hon Dr STEVE THOMAS: Psychological illness and post-traumatic stress disorder. I suspect any medico would say that the problem with those illnesses is that we cannot put a bit of the body under the microscope and say "This is it". That cannot be done in this area. It is an incredibly vexed area of law. I would love to stand here and say that I have all the solutions to make this better. If I did, I would probably be working in the industry and making a lot more money than a parliamentarian. It is an area that we are going to have to spend a bit of time trying to identify.

Again, as it is hard for employees, it is also hard for employers. I suspect that we are dealing with that final percentage, to a large degree. These are all sweeping generalisations; we will get to the detail when we get there. Eighty-five per cent of employees come back to their job with the same company. I suspect the vast majority of people would have a degree of comfort with that. It is the last 15 per cent group, of which some cannot work, which are probably highly distressed. In both cases, that is the tricky part for employers and employees. When we get to the significant part of the debate, I suspect that we will spend some time returning to that.

There are a couple of other things that we will spend a bit of time on. We will discuss rehabilitation expenses when we get there. If, hopefully, the Minister for Industrial Relations picks up my suggestion to do a regulatory impact study, the shift of the cost of rehabilitation, how it applies and what those costs might be may be part of that.

That would be an interesting part of the debate as well. Hopefully, the parliamentary secretary will prepare some information on those proposals that he can give us when he gets back.

I am going to run out of time, Acting President.

Hon Steve Martin: Extension?

Hon Dr STEVE THOMAS: There is a very good speaker to follow me, so I probably will not seek an extension. Hearing loss is an interesting one, particularly for those of us who grew up driving tractors. As demonstrated this morning by an interjection from Hon Kyle McGinn, my hearing is not what it used to be when I was a young man. That is probably because of all the years I spent sitting on a tractor, particularly the old Ford 5000. My brother built a set of radio speakers so that we could listen to the radio, but it did not block out the tractor noise.

Hon Kyle McGinn: It was probably the firearms.

Hon Dr STEVE THOMAS: We did a bit of that, too.

I had to turn up the volume on the radio loud enough to drown out the tractor. For the many years I spent driving tractors around, that probably did not do my hearing a lot of good. I think we will have to have a bit of conversation and debate on that too, parliamentary secretary. I might have to declare a vested interest in that.

Those are probably just some of the key areas that we want to get to. I guess I will just briefly close by saying that workplace-related deaths are also a significant issue. We debated a bit of that to some degree this morning and will no doubt go back to that. I forget the exact clause, but there is a part of the bill that relates to workplace deaths. As a little bit of information, I pulled out an interesting WorkSafe Western Australia report. It is a little old now. It deals with workplace fatalities from 2011–12 to 2020–21, so it is a couple of years old. I thought the statistical summary on pages 8 and 9 was quite useful. Again, I will leave this for Hansard. In that 10-year period, there were 170 fatal injuries in the workplace, averaging 17 a year. Funnily enough, in 2021 there were 17 workplace deaths. Again, that is not a big proportion, but as we talked about this morning, every workplace death is a tragedy. Those 17 deaths a year work out at about 0.001 per cent of the working population. It is an absolute tragedy, though. Those are not big numbers, but every death we can prevent from occurring is important.

We will obviously have a more detailed conversation about what is impacting on workplace deaths and I have some more information that I will break down in a bit more detail. That is an important part of the debate as well, but again, it is not my position or job to vilify the vast majority of employers who are trying to do the right thing, for whom a death in the workplace is as big a tragedy as it is for the worker's family. Employers' workers become family and it is as much a tragedy for good employers as it is for anyone else. We will get to that in the fullness of time.

HON NICK GOIRAN (South Metropolitan) [3.56 pm]: I rise as we consider this package of two bills that the Acting President (Hon Dr Sally Talbot) has drawn to our attention: the Workers Compensation and Injury Management Bill 2023 and the ancillary Workers Compensation and Injury Management Amendment Bill 2023. I acknowledge the contribution made by the Leader of the Opposition as lead speaker for the opposition on this bill, and also the introductory remarks made by Hon Martin Aldridge, who I recognise is away from the chamber on urgent parliamentary business. It is my hope that, when we return from the winter recess in August, we will have an opportunity to hear the balance of Hon Martin Aldridge's contribution to the second reading debate, not least because, as members may be aware, the honourable member has three amendments standing in his name on the supplementary notice paper and I would like to hear more about them.

My interest in this area of law stems from a decade of legal practice in civil litigation. The package of cases I managed at the time included a portion of cases for workers compensation clients. I say at the outset, particularly for the benefit of members opposite, that in handling those cases I always acted for the plaintiff, which means I always represented the worker. It was my job in those cases to ensure that those workers' rights were not trampled upon by the strength of the lawyers on the other side, who were obviously backed by insurance companies. It was a rewarding area of work to practice in, it must be said. However, in that time I saw firsthand that there were many consequences of what can only be described as complex legislation, including injustices and the fact that appeals were relatively common. I would describe that as the result of piecemeal amendments that have been made to the act since 1981. To demonstrate this point so that members not only have a sense of the piecemeal nature of the amendments made over the last 42 years, but also the complexities that arise as a result. It may interest members to know that, for example, the act was first assented to on 23 November 1981. Since that time, amendments were made by virtue of the Workers' Compensation and Assistance Amendment Act 1983. There was then a second act—the Workers' Compensation and Assistance Act (No. 2) 1983, followed by: the Health Legislation Amendment Act 1984, part 24; the Workers' Compensation and Assistance Amendment Act 1984; the Workers' Compensation and Assistance Amendment Act 1985; the Acts Amendment (Financial Administration and Audit) Act 1985; the Workers' Compensation and Assistance Amendment Act 1986; the State Government Insurance Commission

Act 1986; the Workers' Compensation and Assistance Amendment Act (No. 2) 1986; and the Acts Amendment (Workers' Compensation and Assistance) Act 1986, part 3.

All of those piecemeal amendments took place from 1983 through to 1986. That is merely the first three years of the piecemeal amendments. Then there was the first reprint of the Workers' Compensation Assistance Act 1981 as at 6 February 1987. Just to add a little bit of complexity to that reprint, the amendments in that reprint included all the ones I have just mentioned, except in the Workers' Compensation and Assistance Amendment Act (No. 2) 1986, sections 7 and 11. That is just the legislation up to 1986 and the first reprint. Given that I am time limited, I do not intend to go through the various amendments that were made thereafter.

The piecemeal amendments that I mentioned take us to the first reprint. It might interest members to know that the most recent reprint is reprint 12. If I had to describe to the house all the piecemeal amendments for each reprint, I do not know how many minutes I have spoken for so far, but it would take 12 times that amount of time. The legislation that we have in June 2023 guides, facilitates and, in many respects, restricts compensation that might be made to an injured worker in Western Australia. It ought not surprise members that as a result, we can see how easily injustices occur and why at times it then becomes a lawyer's picnic when many appeals are run and why I describe the legislation more generally as complex.

The substantive bill before us—this massive 445-page document—has been 14 years in the making. That happens to coincide with the amount of time that I have served as a member of this chamber. I recall that this process started under Minister Troy Buswell. He was the first minister responsible for the progression of these reforms. We were told at the time that the reforms would take place in two phases. The first phase was a series of what were described as immediate amendments, and I will get to that in a moment. Thereafter, there was the second phase, which resulted in WorkCover WA's final report, tabled on 26 June 2014, some nine years ago.

Essentially, phase 2 has taken nine years to get to where we are now, but before I get to phase 2 and where we are now, I want to briefly note that even those interim amendments that were considered to be part of phase 1—members might recall that I talked about the reprints of the act a little earlier—take us from reprint 8 through to reprint 11. Again, to give members a bit of flavour of the number of amendments that includes, I will indicate to them how many amendments there were between reprint 8 and reprint 9. We had the Statutes (Repeals and Miscellaneous Amendments) Act 2009, which was assented to on 21 May 2009; the Acts Amendment (Bankruptcy) Act 2009, which was assented to on 16 September 2009; and the Police Amendment Act 2009, which was assented to on 3 December 2009. On that same day, assent was given to the Statutes (Repeals and Minor Amendments) Act 2009. The following year, on 28 June 2010, the Standardisation of Formatting Act 2010 was assented to. Thereafter, the Health Practitioner Regulation National Law (WA) Act 2010 was assented to on 30 August 2010, the Public Sector Reform Act 2010 was assented to on 1 October 2010 and the Petroleum and Energy Legislation Amendment Act 2010 was assented to on 28 October 2010.

With the exception of that final amendment and some amendments pertaining to the Acts Amendment (ICWA) Act 1996, that package of amendments over that period formed reprint 9. Thereafter, another series of what we were told were immediate amendments led to reprints 10 and 11, and now, of course, we are at reprint 12. I might add that since reprint 12, another series of amendments have been made—the Workers' Compensation and Injury Management Amendment Act 2018, the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020, the Work Health and Safety Act 2020, the Legal Profession Uniform Law Application Act 2022 and the Directors' Liability Reform Act 2023. We have had all of that and now we have what has been described as phase 2 and the reforms that are presently before us.

I might also add in conclusion on this point that in all those years, would members believe it, still to this day, there remain three provisions that have not yet commenced? The State Superannuation (Transitional and Consequential Provisions) Act 2000 was assented to on 2 November 2000. Nearly 23 years ago, the Parliament of Western Australia passed laws impacting on the workers compensation legislation, but they never commenced. Then there is section 123(2) to (7) of the Workers' Compensation and Injury Management Amendment Act 2011, which was assented to on 31 August 2011. Those subsections have never seen the light of day; they are yet to be proclaimed. There is also section 160 of the TAB (Disposal) Act 2019, which was assented to on 18 September 2019.

With all of that, might I say that, to the extent that there is support from me at this time for this full rewrite of the act, it is well and truly time, some 42 years later, for us to desist with these piecemeal amendments and have one substantive, comprehensive piece of legislation guiding compensation for injured workers in Western Australia.

As I said earlier, phase 2, which is essentially the genesis of the bill before us, emanates from WorkCover WA's final report tabled in June 2014. We are just four days shy of the nine-year anniversary of that report having been tabled. It is no secret to members on either side of the chamber that I have described that process, which started under the previous government, as flawed. It ought never to have been the case that WorkCover was given responsibility for undertaking that review process. WorkCover is a statutory body in Western Australia whose responsibility it is to facilitate workers compensation claims. Why would it be appropriate for it to then undertake the review process?

It ought to have been undertaken by a person or body entirely independent of the workers compensation process. That did not happen; however, nothing can be done about that. I again acknowledge that was not of the current government's making. I made no secret at the time of my objection to that process.

What made that process under the former government worse was the secrecy surrounding the submissions. There is something about government; there seems to be an almost contagious disease that manifests itself in secrecy, regardless of who is on the government benches. I did not understand it at the time. I was on the record publicly, and on many occasions privately, raising my objections about those submissions being kept secret by my own party. I have no problem whatsoever making it crystal clear for members that if a member of the public or a stakeholder wants to make a submission on a confidential basis, that confidentiality should be respected. Equally, a competent management of the review process would start on the basis that submissions would be made public unless a submitter expressly requested that they be made confidential. WorkCover and those responsible at the time for the administration of that review did the opposite. To this day, submissions have been made to that protracted review process that remain under lock and key and that the 36 members of this chamber will never see. Yet after all this time—40 years and all the piecemeal amendments—we are now expected to agree to this massive bill. My attitude is that after all this time, the precise opposite is required.

This is absolutely no time for the Legislative Council to provide a rubber stamp. If after all this time, including this flawed secret process, we are expected to now pass this bill, it will receive scrutiny from the house of review. My approach when it comes to full rewrites like this is that we look to retain the good that exists in the current workers compensation scheme and fix the broken elements. In order to achieve that end, careful analysis by the 36 members of this chamber will be required. It will require the government to undertake a transparent consultation process. With respect to the latter, might I give the government some credit because the consultation process it has embarked upon on this occasion has been superior. It does not happen too often, but on this occasion, credit where credit is due, the consultation process has been more transparent than what was embarked upon previously.

The third thing that will be required for us to be able to fulfil our duty on this massive piece of legislation is for members to have an understanding of judicial consideration. The guiding principle that I was made aware of when first interpreting workers compensation, now many moons ago, was found in the High Court decision Bird v Commonwealth (1988) 165 CLR 1 of 19 May 1988. That was a decision of five justices of the High Court. The parliamentary secretary, among others, might recall that the Chief Justice at the time was Chief Justice Mason. The other members of the High Court who were responsible for this decision in 1988 included Justice Brennan, who went on to become Chief Justice of the High Court, and Justices Deane, Toohey and Gaudron. What they had to say was as follows —

> Moreover, it is well to remember that employee's compensation legislation, such as the Act and the regulations, is remedial in its character "and, like all such Acts, should be construed beneficially"

Beneficially to whom? It is not beneficial to the insurer or the employer but to the injured worker. Those three elements will be needed, in my view, if we are to give this massive project its just reward. If it is beneficial legislation for an injured worker, a number of questions arise that I hope when we return from the winter recess the parliamentary secretary will be able to inform the house of. Is it intended that the bill before the house will remove any existing statutory rights for workers? Alternatively, is it intended that the bill before the house will restrict any existing statutory rights of workers? If either scenario is the case—the removal of a worker's statutory rights or the restriction of a worker's rights—which provisions will be removed or restricted? More importantly, what is the justification for the removal or the restriction of the worker's statutory rights?

In addition, I call upon the government to disclose whether any concerns have been raised by stakeholders about the bill before the house. To be clear, I do not think that the house is interested in, and it would not be a good use of its time, being told about any concerns that have been addressed over the mammoth period of review. I am talking about what I would describe as the current concerns. In other words, since the 445-page bill has been made public, which concerns that have been put to the government remain? After all this process, now is the time for all concerned stakeholders to speak up. If they stay silent at this point, for whatever reason, with all due respect to them, the house of review cannot assist them, but the house can assist interested stakeholders who choose to use their voice at this time to express any concerns they have about the bill before the house. I would like to know whether any such concerns have been raised with the government. I believe there have been some, but I would like the government to transparently disclose what those concerns are and ideally from whom, unless there are some compelling reasons when confidentiality is required or has been expressly requested by the stakeholder, and, in particular, to which of the 15 parts in this 706-clause bill do those concerns relate?

Having made those introductory remarks, I want to now take the opportunity, if time permits, to outline my top 10 areas of concern with the bill. The first commences at clause 5, which is the definition section or, more appropriately, "Terms used". One term, of the many that are in the bill, to which I draw the attention of the parliamentary secretary and his advisers is "return to work". At page 7 of the bill, the definition of "return to work" reads —

> ***return to work***, in relation to a worker who has an incapacity for work, means —

(a) the worker holding or returning to the position that the worker held immediately before becoming incapacitated if it is reasonably practicable for the employer who employed the worker at the time the incapacity occurred to provide that position to the worker; or

(b) if the position is not available, or if the worker does not have the capacity to work in that position, the worker taking a position, whether with the employer who employed the worker at the time the incapacity occurred or another employer —

(i) for which the worker is qualified; and

(ii) that the worker is capable of performing;

The government proposes that that be the new definition of "return to work". The question that arises is: why will the definition of "return to work" change? Who has requested that the "return to work" definition change? That definition has been understood over a time. It has a body of work behind it. If changes are going to be made, it is important for us to understand what are considered to be the deficiencies in the existing definition that will then be remedied by this new definition.

To give another example, I turn to clause 7 of the bill, "Exclusion of injury: reasonable administrative action". The concern that arises here is in respect of stress claims that might be made by workers. Clause 7(2) reads —

> A psychological or psychiatric disorder, including any physiological effect of the disorder on the nervous system, that a worker experiences is not an injury from employment if it results wholly or predominantly from —
>
> (a) administrative action, not being administrative action that is unreasonable and harsh on the part of the employer; or
>
> (b) the worker's expectation of administrative action or of a decision by the employer in relation to administrative action.

Once again, at first glance, that seems reasonable. But it requires members to have an appreciation for what the bill defines as "administrative action". That is found in clause 7(1), which says —

> ***administrative action*** includes any of the following actions —
>
> (a) an appraisal of the worker's performance;
>
> (b) suspension action;
>
> (c) disciplinary action;

So far perhaps members might not quibble with any of those three limbs, but then comes limbs (d) and (e) —

> (d) anything done in connection with an action described in paragraph (a), (b) or (c);
>
> (e) anything done in connection with the worker's demotion, dismissal or retrenchment, or the worker's failure to obtain a promotion, reclassification, transfer or other benefit, or to retain any benefit, in connection with the worker's employment.

For the benefit of the parliamentary secretary, the point is whether a significant number of stress claims will be excluded from the workers compensation scheme moving forward as a direct result of clause 7 of the bill. Is that the intention? Does the government understand that that is the outcome that will be achieved as a result of this? If the government says that that is exactly what it is trying to do, it is of course the right of the government to do that, but it needs to be done transparently.

What I do not want after all this time—it has been a 14-year law reform project for workers compensation—is for this Labor government to say to the people of Western Australia, through a media release or otherwise, that it is looking after the workers of Western Australia by modernising the workers compensation legislation in Western Australia. I do not want to read those sorts of trite lines in a media release if what is buried in the detail of the bill is a restriction on or removal of workers' statutory rights. That is what we need to get to the bottom of. The parliamentary secretary may come back and say that there is no problem and that there will be the same number of stress claims as a result of workers compensation both pre and post this bill. If the bill is not going to have an impact on workers rights, we want to hear that; we want it on the record.

I turn to clause 12 of the Workers Compensation and Injury Management Bill 2023 and, in particular, the definition of "worker". It will be obvious to even the ordinary reader that there is a significant difference between the definition of "worker" in the current workers compensation scheme and the definition in the bill before the house. The definition at section 5 of the Workers' Compensation and Injury Management Act states —

> ***worker*** does not include a person whose employment is of a casual nature and is not for the purpose of the employer's trade or business, or except as hereinafter provided in this definition a police officer or

> Aboriginal police liaison officer appointed under the *Police Act 1892*; but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing;
>
> the term ***worker***, save as hereinbefore provided in this definition, includes a police officer or Aboriginal police liaison officer appointed under the *Police Act 1892*, who suffers an injury and dies as a result of that injury;
>
> the term ***worker*** save as aforesaid, also includes —
>
> (a) any person to whose service any industrial award or industrial agreement applies; and
>
> (b) any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services,
>
> and any reference to a worker who has suffered an injury shall, where the worker is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

That is the definition of "worker" under the current act. Clause 12 of the bill before the house will manifestly change that definition. Does the government intend to reduce the number of workers who can apply for workers compensation under the new scheme? It would be worth the government being transparent and clear on that question when we return after the winter recess.

Debate interrupted, pursuant to standing orders.

[Continued on page 3274.]