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

*Third Reading — Cognate Debate*

Resumed from an earlier stage of the sitting.

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [5.03 pm]: I will be fairly brief. I ask the parliamentary secretary to pass on our thanks to his advisers, who were incredibly useful in our debate on the Workers Compensation and Injury Management Bill 2023, which is a very long and complex bill. It is not easy to get one's head around 708 clauses, so I appreciated that help. The briefings were incredibly useful. This was an interesting experiment. I thought opposition members performed remarkably well because we came at the bill from completely different directions. I am not sure that the parliamentary secretary knew which direction we were coming from at any particular point. Hon Martin Aldridge was the champion for firefighters and emergency services, my friend Hon Nick Goiran was the champion for workers and employees and I was the champion for the business community, making sure that it was also represented and its issues considered. Between the three of us, it was a great effort. I commend the parliamentary secretary—I will not promote him this time—for his work, because he got questions from all different directions and performed very well. I want to thank Hon Martin Aldridge and Hon Nick Goiran. I thought that these were good bills to work on. I thought we worked very well as a team. I just remind members that the bills before the house were very complex—bills that we might think are highly contentious—but the opposition supported the bills all the way through. I thought the debate was of a remarkably high standard. With that, I also commend the bills to the house.

**HON NICK GOIRAN (South Metropolitan)** [5.04 pm]: I rise as we consider the Workers Compensation and Injury Management Bill 2023 and Workers Compensation and Injury Management Amendment Bill 2023. The primary bill is the Workers Compensation and Injury Management Bill 2023 and we are also considering its ancillary cousin at this time.

This has been a massive process—massive in the sense of the many years it has taken across governments of various iterations to get to this point. I recall that the reforms commenced under the first Barnett government, continued under the second Barnett government, continued under the first McGowan government, continued under the second McGowan government and are now about to be finalised by the first, and hopefully last, Cook government. This has been a monumental effort by respective governments over a long period. We still have before us this gigantic piece of legislation.

The problem at the third reading stage is that the Workers Compensation and Injury Management Bill arrived into the Committee of the Whole House as a bar 2 bill—in other words, amendments were made in the other place that were agreed to by the house during the second reading. We then had the Committee of the Whole House stage. President, I report to you that a number of amendments were made. As we seek to approve the final iteration of the bill, members do not have the benefit of what might be described as the bar 3 bill. If there were just one or two, if you like, trivial or minor amendments, it may not be so important. However, we are talking about a piece of legislation that, at least at the bar 2 version, had some 708 clauses. During Committee of the Whole House, we were told that some of the clauses would be renumbered as part of clerical amendments that would be made.

The significance of this point should not be misunderstood by members. At the heart of the reforms, which have my support, are a lot of changes in language. The language that has been used in the workers compensation system for many, many years has been judicially considered—in other words, litigation has been taken by both workers and insurers on the existing scheme to understand the interpretation of certain phrases and words. Some of those phrases and words are continuing under the bills that are presently before us, but several examples were considered by the Committee of the Whole House wherein the language was changed. In fairness to the government, it has been at pains to explain that the intention behind the change was to modernise and simplify the language. In fact, the government went out of its way on multiple occasions to expressly state that it does not intend to change the interpretation of those provisions.

During Committee of the Whole House, I asked the Parliamentary Secretary to the Minister for Industrial Relations on multiple occasions to clarify the government's intention with particular provisions, in reference to particular clauses in the bill—that is, clauses in the bar 2 bill. Moving forward, we will have an act that will be assented to in the fullness of time that will reference different clause numbers. I guess my concern is that those who will inevitably litigate on some of those phrases will have to unjumble that particular situation and try to make sense and reconcile which section of the assented act equates to the clause in the bill that was considered by the committee. I wish those people every success in doing so, but urge them, as they bring matters before the courts to be judicially considered, to give great consideration to the intention of the government and, ultimately, the intention of Parliament, which has agreed to those particular provisions.

I will take a moment now to identify some of those provisions. I was grateful that the government took on in good faith many of the queries that I raised about these matters and on multiple occasions went out of its way to clarify its intention. It is indeed one thing to say that we are looking to have a complete rewrite of the current scheme and, in doing so, to modernise the language, but, of course, it is another thing to alter established interpretation. Some of the examples that I draw to members' attention that were considered by the Committee of the Whole House relate to some of the definitions, particularly the definitions of "return to work", "injury" and "administrative action". The definition of "return to work" can be found in clause 5 of the bar 2 bill and the definition of "injury" can be found in clause 6, as can the definition of "administrative action", which I think almost certainly will generate disputes. As I said earlier, the government explained on multiple occasions that there is no intention to change the current interpretation, but, of course, only time will tell whether the appellate courts decide otherwise.

I also draw to members' attention that there has been an issue with reviewing the entitlements of Western Australian workers. We heard the government say that, from its perspective, this was not the time to be reviewing workers' entitlements, yet it should be noted that this is actually being done through the bill in two ways. Firstly, under clause 55, the step down will be increased from 13 weeks to 26 weeks. This is important because, once this scheme comes to fruition, which is expected to occur on or around 1 July next year, if a worker in Western Australia is injured, their step down—in other words, their rate of pay—will go to 85 per cent not after 13 weeks, but after 26 weeks. This is an improvement for Western Australian workers. Under clause 75, compensation for medical expenses will increase to 60 per cent. In my view—this was mentioned on multiple occasions during the Committee of the Whole House stage—there are equally important areas, such as the capped amount for weekly payments, the prescribed amount for weekly payments and the replacement of the specialised retraining program, that ought to be addressed sooner rather than later. In particular, the specialised retraining program ought to be considered by the government at the earliest possible opportunity, because if it was considered necessary in 2004 to introduce the specialised retraining program, what has made it any different in 2023? Indeed, I would say that if workers were promised a specialised retraining program nearly 20 years ago, and we were told during the Committee of the Whole House stage that it has never once been accessed by any worker in Western Australia, what is the proposal to replace or substitute that particular scheme?

One of the other issues that came out of the Committee of the Whole House stage was about the WorkCover WA guides. I sought from the government clarification of an anomaly that has been found in the American guides for spinal injuries, which is neither explained nor rectified in the WorkCover guides. This anomaly has been in existence since 2004. It just so happens that it impacts a worker's assessment of 15 per cent whole of person impairment. It was confirmed in the Committee of the Whole House stage that the government is not changing the threshold for common-law access for negligence claims. In other words, the bill presently before us, whether we consider it a bar 2 or a bar 3 bill, will still have hoops and hurdles for workers to jump through or over in order to access their common-law rights. One of those can be accessed as if a person has 15 per cent whole of person impairment, but this does not work if the WorkCover guides and the American guides for spinal injuries specifically leave out the percentage with regard to those for back injuries. I acknowledge and report favourably that the parliamentary secretary representing the Minister for Industrial Relations confirmed on behalf of the government that in some respects it was grateful that it had been brought to its attention and that there was an intention to look specifically at that issue. I encourage the government to do so at the first available opportunity. In my view, the new guides must address this anomaly.

In respect of clause 165, I have raised concerns about a worker not having representation at a case conference. The government has taken that on board and I was grateful that the parliamentary secretary was able to clarify that there will be a support person present at those conferences, and that if a support person happened to have legal qualifications, it is not intended that that person would be excluded from being able to support the worker. I think that was another demonstration of good-faith discussions between government and opposition members during Committee of the Whole.

It is notable that this bill has a significant number of clauses that reference regulations and subsidiary legislation. This leaves us to ponder what those regulations and the subsidiary legislation might look like in the fullness of time. It is worth noting that clause 2 allows for multiple dates for provisions to commence, but it is also worth noting that the government's spokesperson explained that the government intends to have only one day on which everything will ultimately come into effect, and that best endeavours will be made by those responsible for facilitating this legislation to have that done by 1 July 2024.

At clause 391, there is a 28-day appeal time frame, without any provision for an extension. It is worth noting that this strict 28-day period is in direct contrast with how other appeals are conducted in our courts, where there are opportunities for extensions of time. One wonders why workers in Western Australia would not have available to them the same provisions for an extension of time as other litigants might have when they take matters before the courts. Although this bill does not directly address that issue, in fairness to the government, we were told that stakeholders had not expressly drawn this matter to the attention of the government. There is, of course, now an

opportunity for stakeholders to do so, noting that this bill and the scheme will come into effect most probably on 1 July next year.

The best thing that happened in the Committee of the Whole House related to the transitional provisions. I put on the record my thanks to the parliamentary secretary, the advisers and, ultimately, the Minister for Industrial Relations, who made the decision to amend the bill to address the potential unfairness to litigants on both sides who might be operating under the existing scheme or have a matter currently before WorkCover, or maybe even a decision pending, and then find that the new scheme has come into effect and that they would have to start all over again. It was clear that that was not the government's intention. Regrettably, the transitional provisions, as originally drafted, did not cater for that, but an amendment has been agreed to by the Committee of the Whole and presented in this final iteration of the bill, which addresses this unintended consequence.

Finally, I note that there is a significant issue in the bill with regard to registered independent agents. There is a group of Western Australian workers—in this instance, independent agents—who assist workers with their applications before WorkCover. The independent agents have essentially another two years left in their line of work. This bill's intention is that they will no longer be able to continue as independent agents after the two-year period. During examination of that provision, the government made it clear that WorkCover continuing to administer those registered agents is proving to be a costly matter.

Debate adjourned, pursuant to standing orders.