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

*Second Reading — Cognate Debate*

Resumed from an earlier stage of the sitting.

*Visitor — Chris White*

**The SPEAKER**: Just before I give the call to the member for Collie–Preston, I acknowledge in my gallery Mr Chris White, who I used to work with at the department of occupational health and safety. Welcome!

*Debate Resumed*

**MS J.L. HANNS (Collie–Preston — Parliamentary Secretary)** [2.52 pm]: I believe that I have one minute left to conclude my contribution. In summary, I absolutely support the bills—unequivocally. We have all had problems putting our teeth in today! I want to place on the record that Miss Higgins' chewing gum policy was never, and would never have been, implemented in the classroom; I just wanted to clarify that. For those members who were not in the chamber for that part of my contribution, certainly it will be in *Hansard*. I finalise my contribution by saying that I commend the bills to the house.

**MS E.L. HAMILTON (Joondalup)** [2.53 pm]: Today I rise to make a contribution to the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023 and to speak on the important topic of workers compensation in Western Australia. As elected representatives, it is our duty to ensure that the workers of Western Australia are protected and supported when they suffer workplace injuries or illnesses. This bill, which has been in development for several years, is finally ready for discussion and debate. The bill represents a significant step forward in improving the state of workers compensation in our state, and I commend the Minister for Industrial Relations for his work in bringing this bill to the house.

Addressing the concerns of working people is a priority for this Labor government. These are not extraordinary reforms; we are not taking the system apart and rebuilding it. Rather, these reforms seek to modernise the legislation and implement the recommendations of the *Review of the Workers' Compensation and Injury Management Act 1981: Final report.*

This bill is part of the government's pieces of high-priority legislation, some of which we introduced in 2018 shortly after forming government. The workers compensation reforms that we introduced were about increasing entitlements and better supporting the dependants of people who die in work-related accidents. Those measures were built on with the 2020 COVID-19 reforms that removed the common-law termination day. We are now keeping the promises that we made to Western Australians at the 2021 election. This bill will fulfil a number of commitments made at that election to rewrite the Workers' Compensation and Injury Management Act 1981 and make it relevant to the twenty-first century. In rewriting the bill, we will create truly modern legislation that is easy to understand and implement, which will provide those who access the scheme with clarity and certainty as they navigate their workers compensation claim and the process surrounding that claim. This is so important because devastating workplace injuries are already hugely stressful events and we do not need to compound that stress with challenging 30-year-old legislation.

The bill will double the cap on medical expenses, which means that seriously injured workers who need more complex surgery or long hospital stays to recover will receive more financial support to cover their medical treatment than they do now. The rewritten legislation will see an increase in recompensed medical and health expenses from 30 per cent to 60 per cent. The capped amount, which will be indexed annually, will rise from approximately $73 000 to $146 000. It is only fair that a seriously injured worker who needs increased inpatient care is not left out of pocket in their pursuit of a full recovery.

The bill will extend the step-down point from 13 weeks to 26 weeks. This extension will double the period that weekly income compensation is paid. On top of this, the bill will preserve a safety net amount so that the step-down payment will not be less than a worker's base award rate, plus any regular extra income they earned in the 12 months prior to their injury. This is particularly relevant for labourers and community and personnel service workers, including care workers and machinery operators and drivers. This is because Safe Work Australia consistently finds that these three occupations have the highest rates of serious claims that require a long recovery period. Workers in these occupations are often on base award rates of pay and may rely on overtime or additional shifts for extra income. Extending the step-down point and maintaining the safety net minimum level will have a huge impact on those workers.

Our amendments will also prohibit employer attendance at medicals appointments. It seems highly unusual that an outsider would attend a medical consultation while someone is being examined by a medical practitioner. This bill will prohibit that anomaly from continuing so that an employer or agent is not able to influence the outcome of a doctor's determination as to whether a person's medical condition could have resulted from the incident

that they reported. WorkCover WA's guidelines for general practitioners state that it is not the treating doctor's role to determine whether a worker has a valid claim under the Workers' Compensation and Injury Management Act 1981; rather, the GP's opinion should be limited to whether the medical condition could have resulted from the incident reported by the worker. WorkCover WA acknowledges that it is important that doctors communicate with employers about the management of an injured worker. This bill will maintain the ability for doctors to engage with employers to best manage an injured worker's return to work on appropriate duties. It is completely inappropriate for a boss or supervisor to attend a medical appointment with a worker. That practice must come to an end in matters like this.

These first three updated provisions will deliver on the key commitments made prior to the 2021 state election. The government has also proposed a number of other amendments to address the points raised in the review of legislation, including lifetime care and assistance for those who have suffered catastrophic workplace injuries. In 2016, a no-fault catastrophic injury support scheme for motor vehicle accidents was implemented in Western Australia. This has been incredibly impactful on people across the community by supporting those with catastrophic injuries and giving them the care they need. This bill will allow an extension to the scope of that scheme to include catastrophically injured workers who have had a compensable workers compensation claim. This means that workers who suffer catastrophic injuries at work may receive lifetime care and support specific to their needs. Workers who are catastrophically injured will still be able to pursue common-law legal avenues for damages should they prefer that option.

The bill will require provisional compensation payments for pended claims to help achieve expeditious determinations in deferred claims while enabling workers to receive financial assistance even if the investigation by insurers extends for a long duration. Workers should not be left out of pocket because of the processes that can occur between government agencies, insurance companies and employers.

Finally, this legislation will prevent discrimination in pre-employment screening. I am sure many of us would have completed pre-employment forms that included questions on whether we had lodged a workers compensation claim before. That will be a thing of the past, as the bill will outlaw employers and recruitment agencies asking about previous claims. This important matter has been raised by a number of members in this place. It means that anyone who has made a claim in the past is not vulnerable to being seen as an undesirable candidate for a position. Written into this bill is a provision that prevents any person from disclosing information about someone else's previous claim, when it relates to pre-employment screening.

I take a moment now to reflect on what has happened in the past. Western Australia passed workers compensation legislation for the first time in 1902. It was introduced by Premier Sir Walter James with the enthusiastic support of what was then a young Labor Party. In fact, the legislation would not have become law without the advocacy of the Labor Party and the trade union movement. Back in 1901, when this legislation was first debated, the member for Murray, William George, MLA, argued that the implementation of workers compensation would doom development in this state by overburdening employers. He and other conservatives in this place said that the previous arrangements were perfectly acceptable, and that injured workers should just apply for charity. Mr George said the following about the bill —

> In my opinion we are getting hag-ridden with legislation. It appears to be almost a crime to be an employer. Most of those who bring forward legislation of this character are certainly never likely to understand either the position or the duties of an employer. Many of them have had very little employment themselves, for very obvious reasons, and do not seem to understand anything beyond what might be comprised within the four corners of a sheet of note-paper.

We then did not, and we now do not, accept this sentiment. It is not a crime to be an employer. Employers and small business owners are the linchpins of our state and they deserve our support. Every worker should be able to come home safe and our laws should support such an expectation. Compensation for injuries obtained at work is a right that we will continue to defend and reinforce, 121 years later, including with this legislation.

Our legislation is good for business and good for employers. By rewriting the act for 2023, we are ensuring that all language and provisions are up-to-date and easily interpretable for everyone. By clarifying and updating key provisions, we are helping to make sure businesses are aware of their obligations and are able to implement the necessary business planning to support their employees. Updating this legislation for the twenty-first century will make it easier for small business owners. It will also provide more certainty to their employees that they will be covered by right, and in the event of an incident, their families will be supported.

The 1902 bill was significant legislation, as WA was only the second jurisdiction in Australia to implement workers compensation. South Australia, and our friends across the seas in New Zealand, both created schemes in 1900. It would also be a long time until the federal government took action on this matter, with federal legislation coming in 1912. Over the next 79 years, various complex amendments were tacked onto the legislation, which necessitated its consolidation and modern rewriting as the Workers' Compensation and Injury Management Act 1981. In 2023

we are faced with a similar situation, and updates to this act are now required for similar reasons: it is the job of good governments to streamline and improve legislation so that it serves its purpose effectively. When it was first passed in 1981, the act contained 175 sections and was 155 pages long. It now contains 375 sections and is 419 pages long. Since the 1981 act, a vast number of changes have occurred in Australia's economic and employment landscape and the role and scope of the industrial relations system. There has been a massive improvement in medical treatments and rehabilitation options and, quite frankly, the way we go about our day-to-day lives, as people and as governments. As we tackle the digital space, the world is far away from what it was in the early 1980s. This is important for a matter such as workers compensation, which is critical in everybody's lives.

These changes will not only benefit injured workers, but also help to create a more efficient and effective workers compensation system overall. I take this opportunity to thank all stakeholders who have been involved in the development of this bill, including the trade unions, employer groups and legal professionals. Extensive consultation was undertaken, including 86 submissions on a consultation of the draft bill over a four-month submission period in late 2021. Those contributions have been invaluable in ensuring that this bill reflects the needs and concerns of all parties.

Workers compensation is by no means a substitute for workplace safety. Tragically, the start of 2023 was marked by a series of workplace incidents that demonstrate the need for improved workplace safety to prevent injury, and a framework to support adequate compensation for any injuries that occur. I am proud that our Labor government has already updated the work health and safety framework and made industrial manslaughter a crime in this state. That bill put stronger penalties in place for employers who contribute to a worker's death, and now this legislation seeks to support those who experience non-fatal incidents in the workplace. In supporting the workers compensation bill, we are taking an important step towards creating a fairer and more effective workers compensation system for the people of Western Australia. I commend the bill to the house.

**MS C.M. TONKIN (Churchlands)** [3.05 pm]: I rise to speak in support of the Workers Compensation and Injury Management Bill 2023 and the Workers Compensation and Injury Management Amendment Bill 2023 cognate debate. The purposes of this bill are to make employers liable to compensate workers who suffer injuries from employment; to establish a scheme for compulsory insurance against that liability; to provide for the management of those injuries; to provide for the resolution of disputes; to make administrative and other related provisions; and to make consequential and related amendments to various laws, including the Fire and Emergency Services Act 1998, the Insurance Commission of Western Australia Act 1986, the Motor Vehicle (Catastrophic Injuries) Act 2016, the Motor Vehicle (Third Party Insurance) Act 1943, the Police (Medical and Other Expenses for Former Officers) Act 2008 and the Police Act 1892. I did not realise that we still had a current police act from 1892!

As many of my colleagues noted, Minister Hon Bill Johnston has made an enormous, outstanding and far-reaching contribution as Minister for Industrial Relations. The Workers Compensation and Injury Management Bill is an exemplar of the thorough approach of this minister to the policy and legislation of which he is the steward. The bill has had a long gestation and is the result of extensive consultation with stakeholders. It is therefore a thoroughly well-considered reform.

It would seem that the higher the risk of injury in a workplace, the more prominence is given to achieving a safe working environment. In my lifetime I have seen considerable changes in workplace awareness and focus on workers' safety. There has been a significant cultural shift whereby increasingly everyone in workplaces is or should be interested in safety. Worker safety is a core value of unions and their dedication to identifying and seeking to have unsafe work practices and environments addressed is rightly unrelenting, as is their advocacy for reform of workers compensation and injury management. Their input into the framing of this legislation is therefore acknowledged.

The story related by my good colleague the member for Cockburn resonated with my personal experience of working with noxious chemicals when pregnant. My first degree included a major in statistics, and my first job after graduating was as a research assistant. My job involved gathering and supporting the analysis of data for a project involving a wheat trial. Eventually, part of that work involved counting the florets on the heads of wheat that had been stored in formaldehyde. The smell of formaldehyde made me feel nauseous. As I was pregnant, I was very concerned about the potential effects on my unborn child of exposure to that chemical, especially when I started to experience some difficulties with my pregnancy. I was given no information about how to safely work with formaldehyde or about the implications for my health of working with that chemical. As contact with formaldehyde was part of the job, I thought the only choice I had was to resign. Perhaps today there would be other options for me, as there were for the woman whom the member for Cockburn mentioned during his contribution to this debate. It was, however, a good decision for me to leave the role when I did, because I did not know what effect the exposure was having. I am glad I never had to navigate a workers compensation claim in that regard, as this experience even predated the Workers' Compensation and Injury Management Act 1981.

Internationally, I have worked in many unsafe workplaces, including in Afghanistan, Sudan and Papua New Guinea. Fortunately, for the most part, I escaped any workplace injury or health-related issues, except for my experience in a peacekeeping mission in Sudan. The mission in which I worked, UNAMID, served the Darfur region of Sudan—

the far western region; it is in the middle of the Sahara Desert. My work there included times when our peacekeeping troops came under attack and were killed; when colleagues were kidnapped; and when a devastating fire broke out at night, destroying a storage facility and part of a hospital in the guarded compound in which I lived. That was extraordinarily frightening, because I could hear what I thought was gunfire. I thought we were under attack. There were troops running everywhere around the container in which I lived. It was not until I dared to look out the door that I saw that it was actually a fire, and I was advised that the reason for what sounded like gunfire was batteries exploding in a warehouse facility.

As a result of my work at UNAMID, I experienced what I regard as mild post-traumatic stress disorder. I have an emotional reaction to weapons and am driven to flee situations that I perceive are potentially violent. I cannot watch violent movies or television and had a meltdown when my Canadian stepson was checking his weapons before going out on patrol as a Royal Canadian Mounted Police officer in the Yukon. The RCMP officers at that stage patrolled by themselves and had to carry quite a significant weapon to be able to easily bring down a grizzly bear, because there were often encounters between people and grizzly bears. However, the sight of those weapons was a little bit more than I could stand. As an aside, I add here that my stepson has been one of those who pushed for the unionisation of the RCMP. I was staggered to know that the members of the RCMP were not represented by a union until very recently. Having achieved that goal in recent years, my stepson continues to advocate as a union member and representative for better and safer working conditions for his RCMP colleagues, including for those suffering with PTSD. Brian was given an award by the Governor General of Canada for his meritorious service concerning work with veterans suffering with PTSD. He was an army reservist who went into the RCMP but continued his work among veterans. Brian Harding, in my estimation, is an inspiration.

In this place, I had to restrain myself from fleeing the chamber when shown a video about a hypothetical intruder during my induction. I am very grateful to the Clerk of the Legislative Assembly, Ms Kirsten Robinson, who now understands my circumstances and warns me of situations that I might perceive as threatening or violent, including emergency drills. There is no question of me seeking any form of workers compensation based on the mild PTSD I experience; I was compensated with the payment of danger money for working at the peacekeeping mission. However, I am pleased to note that under this legislation, PTSD will be recognised as a workplace illness for which workers compensation is available. It is especially important to note that PTSD will be presumed to be work-related for ambulance workers.

I have a son who works in the building and construction industry. I fully appreciate the workplace hazards that arise in his industry, including risks associated with working at heights, dust inhalation, injuries associated with using equipment, falls, crush injuries, eye injuries et cetera. Mercifully, he has never had any serious injury. I think that is really attributable to my son being well schooled in and obsessive about construction site safety. However, as the member for Victoria Park highlighted, the construction industry makes up 20 per cent of workers compensation claims in this state. In fact, during 2021–22, a total of $1.07 billion was paid for workers compensation claims. Of that amount, $960 million, or 89.9 per cent, was paid for the benefit of workers, with 68.4 per cent of payments made directly to workers in the form of income payments and common-law and lump sum settlements; 21.5 per cent of payments made for treatment services, such as medical, allied health and workplace rehabilitation services; and the remaining 10.1 per cent of payments related to legal expenses.

The quality of the management of claims is crucial for those who suffer workplace injuries. This bill will improve the ways in which the scheme will impact on them. Being injured at work is bad enough, but adding to that trauma through difficulties with workers compensation claims is avoidable through the proper management of the process, as set out in this bill.

This bill is a complete rewrite of workers compensation legislation and is largely a technical exercise. It is underpinned by some key and important improvements to worker entitlements and elements of the workers compensation scheme. The principles that have guided the drafting process make to this legislation a modern act are really important. There has been restructuring and reordering of the parts in a logical sequence commencing with the most fundamental aspects of the workers compensation scheme, including coverage, compensation and injury management. Related concepts have been grouped by part or division. Renumbering all sections has also been undertaken with no gaps between numbers or letter references in section numbers. Improvements to readability have been made with the use of a modernised drafting style. Wording of provisions has been clarified to ensure they are legally sound and easily understood. There is greater clarity and consistency in the usage of fundamental terms like “worker”,” injury”, “injury from employment” and “incapacity”. Notes are used to convey important information about a provision, particularly when the provision references another provision or another act. The improvements will also provide an appropriate balance of matters provided for in the act and in regulations. This is very important because being able to make certain changes or updates through regulations will add flexibility and improve the timeliness with which changes can be made. The principal and all related acts have also been repealed and savings and transitional provisions to make a seamless transition to a single new act are being used.

There are many key policy, technical and administrative changes as part of the modernisation of the act. These include clarifying the status of contractors in the definition of "worker" and providing flexibility for regulations to extend cover to persons doing work in the gig economy and other non-conventional employment arrangements if the circumstances justify it in the future. The gig economy has become such an integral part of our society. For those workers who are very vulnerable, the ability to come within the orbit of this act is very important. The changes will also clarify the presumption of work-related injury for workers suffering dust disease, including silicosis, and streamlining provisions for how dust disease compensation and common-law claims are made and determined. That is a very important aspect of this bill.

[Member's time extended.]

**Ms C.M. TONKIN**: Amending the Limitation Act 2005 to ensure workers with silicosis are on the same footing as workers with asbestosis is another important measure to promote consistency between like workplace diseases. Unfortunately for those who suffer asbestosis, the problems can arise even decades after the exposure to asbestos. Likewise with silicosis, the evidence of illness arising from exposure to silica can take many years. Facilitating the updating of the list of diseases presumed to be work related through regulations is, as I have said, an extremely important part of this bill. This is a particularly significant provision because it will allow greater flexibility to recognise more diseases that are presumed work related in a timely manner. We will not have to wait for an amendment to the act for this to occur, so there will be flexibility as understanding of diseases that can be presumed work related are better understood. This is a particularly significant provision. The member for Landsdale mentioned in this context the potential for the future inclusion of female diseases to which women firefighters may be at risk.

The bill will also provide for catastrophically injured workers to receive lifetime care and support under the catastrophic injuries support scheme administered by the Insurance Commission of Western Australia. There will be simplification of the method for calculating income compensation payments. This kind of clarity will help everybody to understand how the guts of the legislation—the guts of compensation claims—will work for individuals. Extending the period from 13 to 26 weeks before income compensation payments step down, and increasing the cap on medical and health expenses compensation from 30 per cent to 60 per cent of the general maximum amount are both 2021 McGowan government election commitments. Improving insurer liability decision time frames, including the requirement to make provisional payments to workers when a liability decision is not given in time, will make for greater peace of mind and certainty for affected workers. It will also provide an incentive to speed up decision-making concerning liability decisions. The legislation will also clarify and provide more flexibility in settlement pathways.

Again, this is a modernising bill that will make the administration and understanding of the legislation easier for all concerned. Clear provisions and processes for discontinuing, reducing or suspending compensation payments are another feature, as is recognising the role and functions of the worker's treating medical practitioner and the right of workers to choose their treating medical practitioner. If someone is injured or has a health issue, they need the confidence to be able to go to their own health practitioner and trust them and their knowledge of the person to make judgements about medical decisions following a workplace injury. Prohibiting employer attendance when a worker is being physically or clinically examined by their treating medical practitioner was also a 2021 Labor government election commitment. It is a further enhancement of the dignity with which people will be treated. When someone is injured, they may lose their self-confidence or they may be physically affected. Anything that can bolster their self-confidence and dignity in this process is important.

Under the legislation, there will be consolidation of safety net funds for claims associated with uninsured employers, insolvent insurers and self-insurers, and terrorism events. These are all extremely important features of the legislation. Providing modernised frameworks for WorkCover WA to licence, approve and regulate service providers is a critical feature. It is an attestation to the quality of services that are provided to injured workers. Discontinuing the regulatory framework for registered agents who represent WorkCover parties in Western Australia's conciliation and arbitration services is yet another streamlining feature of this legislation that adds confidence to its administration, as well as updating fines and penalties for offences under the act. These are all very important features of this legislation, some of which were McGowan Labor government election commitments, others necessary changes to modernise the administration of the act. But they all come together in what is a very well considered piece of legislation that will have far-reaching and beneficial impacts on injured workers who seek compensation.

As for the cost impacts, only marginal increases to the scheme costs and premium rates are associated with the improved entitlements resulting from the 2021 McGowan government's election commitments to increase the medical and health expenses cap, to extend the income compensation step-down point and to enhance entitlements for catastrophic workplace injuries. In an actuarial assessment, PricewaterhouseCoopers estimated a 2.83 per cent increase in premium rates resulting from these changes, which is fair, reasonable and affordable for employers, and a reasonable level of additional cost to the economy in general.

This Workers Compensation and Injury Management Bill 2023 reflects Labor values and incorporates the commitments of the McGowan Labor government. For this reason, I am proud to stand in support and commend this bill to the house.

**MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations)** [3.32 pm] — in reply: I am pleased to speak in conclusion to this second reading debate. I want to thank all the members who spoke in the debate. The Workers Compensation and Injury Management Bill 2023 is a very important piece of legislation. The member for Cottesloe, on behalf of the opposition—the shadow Minister for Industrial Relations is in the other house—asked some questions and I will talk about those in a minute. I want to thank the members for Hillarys, Bassendean, Bateman, Victoria Park, Riverton, Cockburn, Willagee, Mirrabooka, Landsdale, Southern River, Nedlands, Collie–Preston, Joondalup and Churchlands——I do not think I missed anybody—for bringing their perspectives to this discussion on what is very important legislation.

I will pick up something that the member for Churchlands referenced: the reinsurance for terrorism events. That was one of the issues that led to a significant amount of conversation in the targeted consultation on the drafting of the bill. If one thinks about it, there are three sets of interests here: the interest of the working people who are making claims, the interest of the employers who are insuring themselves against those claims, and then, of course, the interests of the insurance companies who are trying to manage those claims. Terrorism is one of those parts of the legislation that is effectively government underwriting because a single act of terrorism could lead to hundreds of claims, and, therefore, the insurance companies want to limit their liability. It is actually one of the issues that took a lot of discussion and conversation to get it in the form that we wanted here.

I want to emphasise that apart from the specific areas that were 2021 election commitments, this legislation is not about improving the benefits under the workers compensation scheme. Some critics say that we have not gone far enough along that path of improving the circumstances for working people under this legislation. My second reading speech and the commentary of many members described the long gestation of this bill starting in 2009 or 2008 through to now. Indeed, I think we put out a media release in July 2017 to say that we had approved the drafting of the legislation, so it took nearly six years to get the legislation even after it was approved for drafting. That partly reflects the challenge of getting legislation drafted, but it is also the fact that this has been an incredibly consultative process. There was consultation with the review, arising from the review and arising from the drafting instructions. There was also consultation with the draft bill. The member for Cottesloe made a comment about how he had not had anyone in industry pushing back against the bill, but I think that is because we did, in fact, go through an unbelievably detailed consultation process, including on the bill as drafted. I think it is something like version 23 or 24 that is actually being presented in Parliament, which just shows the level of conversation that we have had on this legislation.

Before I talk about anybody else, I want to specifically mention the member for Mirrabooka, who completely underplayed her involvement in how we got to this point, first as an Australian Services Union official and later as the secretary of UnionsWA. Her leadership has been an important contribution for the union movement in getting this legislation before the Parliament. I acknowledge Owen Whittle, the current secretary of UnionsWA, and assistant secretary under the member for Mirrabooka's leadership, who had principal carriage of the details of the workers compensation discussions between the Labor Party, the Labor government and the union movement more broadly. But let us not underestimate the member for Mirrabooka's contribution to that.

I am going to address the questions raised by the opposition and then I will talk about other issues raised by government members. The first is the question about cost impacts. The government did not do the analysis of how much impact this legislation would have on premiums. We engaged WorkCover WA and PwC actuaries who are independent of government to do the assessment of the cost impacts for this legislation. They made preliminary cost estimates for the bill as drafted in 2021. Those cost estimates were then shared with stakeholders as part of the consultation process on the bill. The stakeholders were able to make submissions to WorkCover on those cost estimates. Subsequently, PwC took into account the issues raised by stakeholders in providing final comprehensive costings on the bill, which are the figures highlighted in my second reading speech and in the supporting information. We are happy to provide that report to the opposition if it thinks it would be useful because it is a highly technical report. It is not a secret. It is the sort of thing that regularly goes to the WorkCover board, which makes many important decisions.

**Dr D.J. Honey**: I think you answered my query. You sent out at least the original scoping, or the preliminary study, to the stakeholders and they have had the chance to review it.

**Mr W.J. JOHNSTON**: Yes. Every year, fresh actuarial advice is commissioned and provided to WorkCover. That is then shared with the board of WorkCover, which makes a decision based on the recommendation of the leadership of WorkCover, and a decision is then made on the premium rates. I acknowledge Chris Watt, the chief executive of WorkCover, at the back of the chamber. The premium rates do not, of course, bind any individual insurer. Those rates are adjusted on people's claims experience. The premium rates are in a band. We have talked

about that for the agricultural industry. Within the band, some insurance companies will add loadings if people have a very bad claims performance. The bands are the guidelines for the costs.

It is interesting that the changes in this legislation are not particularly expensive, and I will explain why. The catastrophic injury arrangements are a requirement as part of the creation of the NDIS. We have to do that. All the other states have done it. We have done it for third-party motor vehicle insurance and we are now doing it for this area. Because we have a capped scheme, we push the costs on to the commonwealth when they get beyond the limits of the scheme. That whole idea of NDIS is that everybody gets enough support. No matter the cause of the injury, the support is there. We have to make sure that the scheme covers those costs because we cannot push it on to the NDIS. That is the purpose of that. Everybody is insured. I am sure the member understands that, mathematically, the broader the base, the smaller the impact individual cases will have on the large base. It will not be particularly expensive. It is the same as the doubling of the medical expenses. We already have a provision in the act that allows people to get access to a higher amount for medical expenses and almost everyone who needs the additional expenses can access them, but they have to go through the process of showing that they do not have enough of their own resources. That is not really a modern way to do it, but not many people need the additional money, and therefore there is no expectation that more people will claim for the maximum amount; it is about how people get access to it. Because most workers compensation claims are at the smaller end of the scale, it will not have a large impact on the cost of the scheme. It is the same with the increase in the step down from 13 to 26 weeks. For workers covered by awards, the step down will not have the same impact as it might for other workers. Nonetheless, most workers return work within 13 weeks, and therefore extending it to 26 weeks will not be as expensive as people might have originally thought. The scheme is designed to get people back to work as quickly as possible. As a former workers compensation officer for the Shop, Distributive and Allied Employees Association, the former National Union of Workers, the Food Preservers' Union of Australia, and the Clothing and Allied Trades Union of Australia that worked out of our office, I can tell members that it is better for everybody to get people back and reconnected to their workplace as quickly as possible. This legislation aims to do that. However, it is very important to provide adequate support to those who have more serious injuries, and that is why we are pushing out the step-down provision from 13 weeks to 26 weeks.

We are not changing the rehabilitation expenses. Rehabilitation is already paid for as part of the compensation scheme. We are not changing the status of the rehab expenses. Therefore, there should not be any impact on the premium. We are just changing the administrative arrangements around the rehab.

I was here when the member for Cottesloe talked about the issue of preventing employer attendance at medical examinations. I want to make this point immediately. When I came to the job, one of the first things I discussed with the leadership of WorkCover was that I wanted it to put out a clarification on the status of medical appointments. There are two different types of medical appointments that an employee can be asked to attend. The first is when they are getting treatment for their injury and the second is if they are being reviewed on behalf of the employer's insurer. They are fundamentally different issues. There has never been a right for an employer to attend a treatment. I worked with the WorkCover leadership, including members of the board. WorkCover pointed out through notices that there was no right for an employer to attend a worker's treatment because it is none of the employer's business what the treatment is; that is between the injured party and their medical professional and is a decision based on the medical issues, not on the workers compensation claim.

A separate issue is a review of a worker's injury by a doctor engaged by the employer's insurer. That is a separate issue because communication might be needed with the medical practitioner. Again, all we are doing here is codifying the fact that employers have no right to attend the treatment session and codifying that although a patient is given a personal examination by a medical practitioner for the report, we do not want that done in the presence of an employer. If a person had a back injury and had to partially undress to receive the review by the medical practitioner engaged by the insurer, it would be completely unreasonable for someone representing the insurer or the employer to be present while the physical examination took place. All we are doing is codifying common sense. That is why I do not think it is attracting much pushback. There has never been a right for an employer to be present for the treatment and they are not to be present when an employee is being physically or clinically examined by a doctor on behalf of the insurer. Of course, the employer, or the insurer on behalf of the employer, has the right to ask for a report from the treating doctor to show that the employee's medical certificate says X, Y and Z and to ask about the view of A, B and C. The insurer may need to get a medical report by a doctor. Again, as a former union official dealing with workers comp, we all know that certain doctors are favoured by the insurers and that the reports that we see from those particular doctors are often similar, even though different patients have been examined. It is always amusing to read three or four reports on different workers and yet the wording is exactly the same for each one. That amuses us on this side of the bar.

The next issue is independent registered agents. This was a recommendation of the review under the former government, but the former minister for industrial relations did not support it. He was lobbied by the small number of independent registered agents and said that had he ever actually done this bill, he would not have included this bit, whereas when I came to government, I supported the recommendation from WorkCover. In 2018, maybe, I met

with the registered agents and talked about this, but I was not moved on this issue. We are going to look at this issue. Perhaps we will not have a ban, but we will look at what happens in the industrial system. The problem is that we need a regulation regime, yet I think there are only five individual registered agents, so there is a lot of administrative expense for a very small number of people.

The other thing is that there is a difficulty. A union official is acting on behalf of an institution; they are not acting on their own behalf. Let us assume a union official gave advice that was incorrect. It is not the union official as an individual who is liable; it is the union that is then liable to be held to the wrong advice. That, obviously, is a different issue from an individual.

Another problem for lay advocates is that they walk a fine line between giving general advice about issues of experience and legal advice, and it is hard to see where those two things cross over. Again, that is not something that the union suffers because it is the union as an institution that is providing the advice; it is not providing legal advice. As I understand it, most of the independent registered agents are not actually former union officials; some of them are former plaintiff lawyers. Indeed, we brought in a provision in the part relating to industrial relations that struck-off lawyers cannot act as lay advocates, because that is what was happening: people would be struck off from practising law and then act as lay advocates, effectively doing the same work. Effectively, there has been nine years' notice because the report was in 2014, and there has been five years of me saying that I was not going to extend the regime. It is not a major part of the costs of WorkCover, but it is an unnecessary administrative burden that we can do without, so we are fixing that.

The member for Cottesloe asked about the safeguard arrangements for settlements. Settlements are very important. Western Australia's workers compensation system encourages settlements. It is an important aspect of the system. I must say that when I came into government, I was surprised that there were very few settlements under RiskCover in the public sector. One of the things I have done as Minister for Corrective Services is to encourage a lot of these long-duration claims to be settled. The whole idea of our scheme is to get closure. Of course, it is important to understand that just because there is a settlement, it does not mean that a fresh injury will not lead to a new claim, but that is an aggravation claim; it is not a continuation of the existing claim. Even if someone does not have a settlement and sustains a fresh injury, it will actually be a new claim, not the existing claim, so getting a settlement is often a better way forward.

We should also remember that just because a person is injured at work, it does not mean that they have an automatic right to go back to their original job because their contract of employment is for the original job; if they are not able to perform that job, they will have to either find another job or leave their employer. It is not straightforward, and this is actually one of the things for which we have been criticised for not fixing. Some people say that there should be compensation for people who are not able to return to their job. Workers compensation in WA does not do that; it is the common-law system, but we restrict access to common law because people have to have a 15 per cent total bodily impairment and most workplace injuries do not lead to a 15 per cent total bodily impairment. We have been criticised by some advocates, including plaintiff lawyers, for not fixing that through this legislation, but we have not changed those arrangements.

We are trying to make sure that there is always a pathway to settlement and that some safeguards are built in so that the director has to perform statutory functions to make sure that the settlement is genuine, that the issues involved in the settlement have been properly reflected in the agreement and that the worker is aware that when they reach the settlement, that is the end of the claim. They need to understand what is occurring. Often when I meet people in the community on matters relating to challenges in the workers compensation system, I find that they made a decision when they did not understand the decision they were making. They criticise the system when it is actually the decision they made, and they made the wrong decision because they were unrepresented.

This is one of the challenges in our workplaces because of lower unionisation rates. If someone is a union member, they can go to the union and get advice. The union can help them navigate that process. Someone might be injured at the workplace and not exceed the 15 per cent total bodily impairment, so it might not be directly noticeable that they have been injured, but they are injured nonetheless. It could be a psychological injury. If they are unrepresented, they can often accept an agreement that is not the best outcome for them. I encourage people to join their union because it is the insurance against the insurance. If someone has a union to represent them, the union can help steer them through a complex system. Even after this legislative change to simplify the act, it is still going to be complicated legislation because it is a complicated issue, so I would encourage most people to be represented, even if it is by a plaintiff lawyer. However, I think the easiest pathway is for them to join a union. They get other benefits, but the number one benefit is that they will always be represented in this process to make sure that they understand what the consequences are of any decision they make along the way.

It is often amusing. I remember once representing a low-skilled worker and the employer was going on about the surveillance footage they had of this worker. They said, "You wouldn't want this matter to go to arbitration because we would have to produce our surveillance footage." I asked for the footage and I watched it at the union office. Something did not look right, so I got a stopwatch—this was back in the days before digital everything—and timed

it, and the time stamp was wrong. The employer had edited the tape. I cannot remember the exact figure, but the timer said something like seven minutes, but it was actually five and a half minutes, so we asked what happened in the missing one and a half minutes. In another case there were four sections of tape and each of them were 30 seconds long. That is ridiculous, because you cannot see the actual story. So workers can be presented with situations like this, with employers saying, "This could be really bad for you", but if they have an advocate, they can clear these things up pretty quickly and make sure that they are looked after in the whole process.

The member also asked a question about presumptive firefighter cancers. I make the point that this legislation deals with the issues in the current legislation. They are not designed to create new entitlements, other than the specific entitlements that we took to the election. I know the United Professional Firefighters Union of WA is currently asking questions about presumptive cancers, so WorkCover engaged external professional advice. It went to an academic who works in the area of epidemiology, who has prepared a review. That review will be made available to the Nationals WA because it asked for it. If the Liberal Party wants it, it can have it also. I am not tabling it, but we will make it available. We have nothing to hide; that is the professional advice that is before WorkCover and it will add some additional cancers to the presumptive cancer list, including melanoma and mesothelioma. This legislation will allow that to be done by regulation, so we do not have to do it through an additional act of Parliament. We will continue to talk to the UPFU about other issues, but I make it clear that the technical professional advice that we have a moment is that there is no scientific evidence to support other cancers being added to the list.

As I said, we will continue to engage with the union. I met with the national leadership of the union, the state leadership of the union and the gentleman from Canada, Alex Forrest, on Monday evening in a pub in Victoria Park. That sounds like a real union place to meet! We talked through all the issues from everybody's perspective and will continue to talk to the union about what happens next.

Pre-employment screening is the next issue that was raised.

Debate interrupted, pursuant to standing orders.