WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Consideration in Detail

Resumed from 30 March.

Debate was adjourned after clause 178 had been agreed to.

Clause 179 put and passed.

Clause 180: Power to require medical examination of worker —

Dr D.J. HONEY: I appreciate that in asking this question I am referring a little bit to a previous clause, but in looking at clause 180, "Power to require medical examination of worker", obviously a worker can go off and have an examination done and there will be a prohibition on the employer or employer's representative being present at that examination. Will it be possible for a worker to request that both examinations are concurrent so that they do not have to go through two examinations? Could both examinations take place at the worker's request?

Mr W.J. JOHNSTON: There are two separate tracks for medical appointments. The first track is the question of the treatment of the worker and the other one is for the medical reports that the insurer or self-insurer might require. They are for different purposes, so they will not be concurrent. The worker will have a relationship with their medical practitioner that is about the treatment of their underlying pathology, and the costs of that will be compensated by the insurance scheme. There is also the separate issue of the description of the injury and its causation and all that, and that is what the insurance medical practitioner is about; it is not about the treatment. Of course, sometimes the reporting doctor comments on the treatment being provided by the other medical practitioner, and that is sometimes of passing interest, but it is not the purpose of the medical report. The medical report will be about the nature and extent of the disability, not the nature and extent of the treatment. When the person goes to see their own doctor, that will be about the treatment and will be completely unrelated.

Dr D.J. HONEY: What will be the process if there is contention about the other report? We hear people allude to the issue of doctor shopping by workers. Is there a concurrent fear that employers will choose to go to, let us say, hard-hearted medical practitioners and that workers will feel that they will be dealt with unfairly by the employer choosing a practitioner who is known to never say that workers are injured?

Mr W.J. JOHNSTON: That is a good question. I think I have commented previously that in my experience as a workers compensation officer, I would often see medical reports that were in the same format and contained the same language, even though the practitioner had examined different patients with different medical histories. It is something that I always found quite amusing. It is not constant, but it is not infrequent for there to be conflicting medical evidence. That is to say that the treating medical practitioner and the medical practitioner providing the report for the insurer may disagree about either the extent of the injury or disability or the causation, but that is what the WorkCover WA arbitration service is there to do; it is to resolve disputes. In the end, if there is conflicting medical evidence, it is presented to the arbitration process and the arbitrator makes the decision about what the weight of evidence shows. Of course, that is still subject to appeal but only on matters of law, not on matters of fact. However, as the Acting Speaker (Ms M.M. Quirk) could probably inform us, if an error in the assessment of facts is so wrong, it can also be an error in law. The capacity of the arbitrator to make a decision is not unlimited. They can make a decision based on the evidence that is presented, but it is a judgement of the conflicting evidence. That is the process that is used. Again, that is nothing new; that is the established procedure. Even in the old system when people went to the common-law courts, the court simply made the same judgement that the arbitrator now makes. That is a very long established process and we are all very familiar with that procedure.

Dr D.J. HONEY: Perhaps burrowing down a little bit, and I appreciate that this may go a little beyond this clause, if the medical practitioner is a recalcitrant poor performer and consistently appears to go in a direction regardless of the circumstances of the individual patient, is there a process whereby that person can no longer be accepted by WorkCover WA or the employer cannot use that medical practitioner, or are we bound by the fact that they are a medical practitioner and they have to be used?

Mr W.J. JOHNSTON: Speaking on behalf of every union official in Western Australia, I would love it if we were able to rule out particular practitioners, but no, we are not. These are medical practitioners. They are covered by legal obligations under their registration, which is unrelated. This legislation does not have anything to do with the capacity or registration of medical practitioners. That is dealt with by the commonwealth. We accept those standards. They have a whole series of obligations under those standards and procedures. There is a series of opportunities throughout the process for people to challenge that. It is fair to say that I cannot remember it ever occurring, but that is completely unrelated. We accept that practitioners are professional people. Of course, that does not mean we have to accept everything they say, but the evidence has to be obtained to support the case. Professional people can have differences of opinion. That is why the arbitration service is there. Of course, people go through

conciliation first, so there is an opportunity to try to reduce the areas of conflict. Then, if they cannot be eliminated, the arbitration service will make the decision.

Clause put and passed.

Clauses 181 and 182 put and passed.

Clause 183: Method of assessment —

Dr D.J. HONEY: I appreciate that where I am heading with my question overlaps with clause 187. It is about the method of assessment and the guidelines that are being prepared by WorkSafe. Is there any requirement for whom WorkCover WA will have to consult in developing these guidelines? Is there a specific body that it will have to consult? Will it have to consult a specialist body—for example, the orthopaedic surgeons' professional body, the Australian Medical Association or some other body—or will it be up to WorkCover WA to choose whom it will talk to about the matter?

Mr W.J. JOHNSTON: Thank you for the question. I am answering from my understanding of the question. There is a scale of maims for whole-of-body impairment. It was one of the controversial issues in the 1990s when these procedures were established. There is an understood table of maims and workers are assessed against that as a percentage of their whole-of-body impairment. Not every medical practitioner is recognised as capable of doing these assessments. There is a procedure for who can make these assessments, and that is a matter that WorkCover WA has procedures for. The table of maims states that if someone loses an arm, it is worth X per cent, which is pretty obvious because they have lost their arm, but other injuries may be more difficult to assess. Remember, it has to be a permanent disability. There is a set of procedures that are understood and the medical practitioners who do the assessment understand the issue that they are assessing. Obviously, a specialist in one part of the body may not do an assessment of a psychological injury, for example. The person can get their whole-of-body impairment assessed by a relevant medical assessor who is recognised through the WorkCover procedures, which, again, is subject to review. That is the accepted procedure.

Dr D.J. HONEY: In relation to the table of maims, technology moves on. At one stage, a permanent injury meant that a person could not do anything. For example, if someone lost an arm, there was not much that could be done about it; whereas these days, there are prosthetics and other technology that mean that although someone may be less able intrinsically, the disability can be mitigated substantially. Is there a rigorous application of that table of maims or is it something that evolves as technology evolves in terms of the impairment as it affects the worker?

Mr W.J. JOHNSTON: It is not the American table of maims, but it is based on the American table of maims. It is not uniform across the country, but it is a nationally consistent framework. It is of course adjusted as people understand things better. As I said in answer to the previous question, it is applied by select medical practitioners with specialist understanding of these things who are recognised through the processes of WorkCover WA.

Dr D.J. HONEY: On the point the minister made about selecting practitioners, how will that be done? Will it be simply the opinion of WorkCover or will there be a formal review process to assess their qualifications?

Mr W.J. JOHNSTON: I should also highlight that it cannot be the treating practitioner. There are recognised training and skills obligations that are maintained within the medical industry, if I can use that pejorative term, for these people. There is a set of recognised training and other processes that are required for medical practitioners to be recognised. We can look at that further at clause 191 if the member wants to.

Clause put and passed.

Clauses 184 to 188 put and passed.

Clause 189: Asymptomatic pre-existing disease —

Dr D.J. HONEY: The clause is pretty direct —

> For a case in which the assessment of a worker's degree of permanent impairment involves taking into account a recurrence, aggravation or acceleration of any pre-existing disease that was to any extent asymptomatic before the worker's injury occurred, the Permanent Impairment Guidelines must not provide for a deduction to reflect the pre-existing nature of that disease …

I think everyone accepts that the employer responsible for the workplace should pick up the liability for any injuries that occur to a worker through their normal employment, but why make an employer pay for a pre-existing disease? It is almost as though we are asking the employer to take on a broader social security obligation or some such thing. Why would we force an employer to do that? That seems to go against the logic of employers paying compensation when they are responsible.

Mr W.J. JOHNSTON: It is an interesting question and there are a couple of issues here. First, this is not about the decision to create the obligation; that is a question of whether the claim is justified. This provision is about when

the claim has been proven and the other things that flow from that. Let us assume that a person has a pre-existing injury, but nonetheless it is shown that there is a workers compensation claim. The liability is because of whatever incident occurred, and that matter would have been determined before the provisions in this clause would apply. The employee's work contributed to the injury, whether physical or psychological, and, therefore, the workers compensation claim would be valid. The question of whether the claim should be paid would have been dealt with because, otherwise, it would not get to this point. The next thing is: if there is a permanent impairment, how will that be assessed and what deductions will be made? If a person has a pre-existing injury and recurrence of that injury or a fresh injury is compensable—we dealt with that previously—the level of permanent impairment will be tested. If the injury is asymptomatic, by definition it is not a disability because there are no symptoms and it does not impact on the worker, so a deduction cannot be made in the assessment of whole-of-body impairment. If the injury is asymptomatic and does not have any impact on the worker, it would have to be disregarded at this point in determining whole-of-body impairment.

The cost will be exactly the same because it is a cost on the scheme. The insurance scheme pays for this and then that is embedded in future premiums. The employer does not pay directly; it is the insurance scheme. It might contribute to the scheme average costs, but it is not the employer that pays; it is the scheme through the insurer that pays.

Dr D.J. HONEY: On that last point, minister, self-insured employers would pay for that directly. My concern is that—I think I mentioned this in my contribution to the second reading debate—employees could hide injuries, particularly soft-tissue injuries, and appear to be able to work through but then aggravate the injury. This enables workers to, as I say, hide injuries from previous employment, and the next employer ends up picking up the cost for that.

Mr W.J. JOHNSTON: There are 24 self-insurers in Western Australia. They are often global companies; they are not small businesses. There is a bond and they have to prove that they have enough resources available to pay the liabilities that might occur. The question of self-insurance is generally a furphy because those companies have chosen not to be part of the insurance scheme and to do it themselves. They are only sophisticated businesses. They are very large businesses, generally multinationals, and they have a bond for the potential costs. One thing I have to do is to seek the approval of the Governor for the establishment of the bonds and who comes in and out of the self-insurance scheme. It is not really an issue for the scheme. The scheme is a scheme and an overwhelming majority of employers are in the insured part. As I mentioned, it is not small business or whatever that carries the cost; it is the insurance scheme. Of course, the costs flow into premiums, but that is a separate issue. I am not trying to say that it does not, but I am making the point that given there are hundreds of thousands of participants in the scheme, the cost of any individual claim is only very marginal to the total cost of the scheme.

Next is the question of hiding injuries. Employers are entitled to do pre-employment screening; we have already been through that. An employee cannot "hide" an injury because the employer can do whatever pre-employment screening they may choose to do, and it is not restricted in any way. As we have discussed, the only restriction in this legislation once it is law is that employers will not be able to ask whether a person had a previous workers compensation claim. That is because the claim itself is not the issue; it is the impairment that is the issue. If an employer wants to do pre-employment screening to examine for impairment, they are entitled to do that, so we will not be restricting that.

Again, this is a very narrow issue. Notwithstanding any pre-existing injury, if there are no symptoms for the pre-existing injury, the employee is not "hiding" an injury. If there are no symptoms, there is nothing to hide. If a claim has been accepted through the process and all those issues we have talked about have been dealt with, and the whole-of-body impairment has been assessed, a pre-existing injury will not be deducted because it would not have had an impact on the person because they were asymptomatic. If there was a symptom, there would be a deduction. This is for asymptomatic cases. It is very narrow. It is not about hiding injuries. It is not about self-insurers. It is just the one small issue of making an assessment of whole-body impairment. It is not related to any other issue.

Clause put and passed.

Clauses 190 to 194 put and passed.

Clause 195: Minister may fix scale of fees and charges for permanent impairment assessment —

Dr D.J. HONEY: This clause provides that the minister may fix the scale of fees and charges for an assessment. I assume that is to make sure that the system is not burdened with excessive fees and charges. This is along the lines of the question that I asked previously: Is there a formal process to determine fees and charges? Is the reason for this provision simply that WorkCover WA cannot find specialists who will do the work for these fees; therefore, it believes it is time to bump up the fees? Is there an annual review process to look at fees and charges? Does WorkCover refer to a panel of specialists or others to determine what the fees and charges will be, or does it depend upon Medicare rates or the like? I am interested to know how that will work.

Mr W.J. JOHNSTON: It does not relate to Medicare. It is a special activity. Remember that we are talking about a limited number of practitioners who have been approved through the WorkCover scheme. It does not apply to all medical practitioners. I am advised that the scale of fees and charges was set in 2005, I assume by negotiation with the relevant union, the Australian Medical Association —

Dr D.J. Honey: The most powerful union in Australia!

Mr W.J. JOHNSTON: Yes—and it has been indexed annually since that time. The difference is that fees and charges are currently set by regulation but now will be done by ministerial order, which is obviously a simpler process for issuing the decision. It is not intended to change the practice of annual indexation. I imagine that the relevant union might come and talk to WorkCover at some time. In my five years in the role of Minister for Industrial Relations, I have certainly had the AMA talk to me about the rates of pay under the WorkCover system, so I know that it is able to advocate on behalf of its members about the payments from the scheme.

Dr D.J. HONEY: The minister said that there is a set of indexed fees in the regulations and the like. Has there been a lack of specialists in this area and therefore a delay in the assessment of workers compensation claims, or is the required number of specialists available?

Mr W.J. JOHNSTON: About 240 or 250 assessors are part of the scheme. I am told that at some time there was a challenge in finding psychiatrists to be part of the scheme, but that has now been resolved. About 1 200 assessments are done a year, so it is not a burden on the processes of medical practitioners. The wording in this clause is to enable WorkCover to make recommendations to the minister so that if there were a challenge in one speciality or another, adjustments could be made to take account of that. My advice is that it is not a challenge at the moment.

Clause put and passed.

Clause 196 put and passed.

Clause 197: Suspension or cancellation of approval —

Dr D.J. HONEY: This clause is about suspension or cancellation of approval. Is there a formal complaints process for people who are dissatisfied with an assessor, or is it an informal process that relies on either WorkSafe or the minister receiving a complaint from a union or a worker?

Mr W.J. JOHNSTON: There has been one case of an assessor who was taken off the approved list by WorkCover. WorkCover does, of course, have to provide natural justice in that process. WorkCover made the decision that it wanted to remove that assessor from the scheme. This is obviously an important power. I imagine that it would be possible for anyone to bring to WorkCover a complaint about the scheme, but WorkCover would have to provide natural justice to the affected party as part of the process.

Clause put and passed.

Clause 198: Compliance audits and investigations —

Dr D.J. HONEY: This clause provides that WorkCover may conduct audits and investigations. Have any audits been carried out in the last year or last two years, for example, or is this a catch-all clause to enable WorkCover to carry out an audit if a complaint or concern is raised by a party?

Mr W.J. JOHNSTON: That is a great question. WorkCover advises that in the last 12 months it has not used the audit power that is currently in the legislation. That is because not everybody is able to get onto the list of assessors, so there is only a small number of recognised medical practitioners; therefore, there is quite a high standard, as the member would imagine. If a complaint were made about an assessor, or if WorkCover itself had any reason to consider that something needed to be looked at, it would need to have the power and capacity to respond to that. This is simply an enabling power for WorkCover to take action if needed. As I have said, it is only a small number of well-respected medical practitioners. That is not to say that they are all beyond reproach, because we are all subject to these things, and that is appropriate. If a person had a negative experience, they could bring the matter to WorkCover and WorkCover would have the capacity to look at those issues and make a relevant determination, but of course it would have to apply the rules of natural justice in doing so.

Clause put and passed.

Clause 199 put and passed.

Clause 200: Terms used —

Mr W.J. JOHNSTON: I move —

Page 156, line 13 — To delete “relative” and substitute —

dependant

This is a minor amendment to a technical term. The amendment to clause 200 is to delete "relative" and substitute "dependant" in the definition of "damages" for the purposes of part 5 of the bill, which deals with insurance, at pages 156 to 158. Although the Fatal Accidents Act 1959 applies to relatives, the insurance provisions in the bill will apply to damages payable to dependants only under the Fatal Accidents Act 1959.

Amendment put and passed.

Dr D.J. HONEY: The minister referred to the group self-insurer licence. I cannot find the detail of that in my perusal of the bill. What is the formal process for the granting of the self-insurer licence? The minister spoke generally about the size of the employer, which I appreciate. Is there a specific requirement? Is this just an assessment made by WorkSafe or does it also require the minister to agree to that designation?

Mr W.J. JOHNSTON: The act provides for the procedures to be applied to the person to be approved as a self-insurer. At the moment, the minister gives approval; in the future, it will be WorkCover. Obviously, the minister does it on a recommendation. I assure the member that although I read all the papers that are presented to me, I do not personally do the investigation and the examination of the employer to ensure they meet the criteria of WorkCover to become a self-insurer. Procedures in the existing act and in the bill will need to be complied with for one to become a self-insurer. This is simply the definitions clause to provide for what a self-insurer is. It is defining a self-insurer as a person who holds the licence and related entities as defined. That is what we are doing in this clause, but subsequently we will deal with the procedures that will be used. In the end, WorkCover will use an established set of procedures to examine an employer who applies to be self-insured. An existing set of procedures is used to make that decision; that is then recommended to the minister and the minister approves it through executive council. In the future, that will be done by WorkCover.

Dr D.J. HONEY: Which clause will change the responsibility to WorkCover?

Mr W.J. JOHNSTON: Clause 245 and beyond start the procedure for self-insurers. Clause 245 is the application and the other provisions follow.

Clause, as amended, put and passed.

Clauses 201 to 203 put and passed.

Clause 204: Offences —

Dr D.J. HONEY: Given that it is a five-year review and things could change in that time, is there any reason fines are not included in regulations? Is it just a general principle in bills that because fines are a serious matter, they are included in the legislation so that Parliament has to agree to them, or is it something that might be suitable for regulation subject to disallowance?

Mr W.J. JOHNSTON: I am advised that parliamentary counsel's recommendation is that we include the dollar amounts in the legislation and that it is not done either as penalty units or subsidiary legislation. It is the practice to include it in the legislation. I am sure the Clerks would have strong views about these things being done in legislation and not through subsidiary legislation. I am advised by WorkCover representatives that they sought the penalties to be in regulation and parliamentary counsel gave the strong advice that it should be included in the principal legislation.

Clause put and passed.

Clauses 205 to 207 put and passed.

Clause 208: Liability of responsible officers of corporations —

Mr W.J. JOHNSTON — by leave: I move —

Page 163, lines 25 and 26 — To delete the lines.

Page 163, after line 28 — To insert —

responsible officer, in relation to the commission of an offence by a body corporate, means a person who is convicted of that offence in accordance with subsection (2).

Page 163, lines 29 to 33 and page 164, lines 1 to 13 — To delete the lines and insert —

(2) The *Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 204 of this Act.

Page 164, line 15 — To insert after "offence" —

under section 204

Page 164, lines 18 and 19 — To delete "whether or not the responsible officer has been convicted of the offence".

Amendments put and passed.

Dr D.J. HONEY: Perhaps the minister would care to explain the requirement for those changes that have just been made by way of amendment and their impact.

Mr W.J. JOHNSTON: These were consequential amendments in light of the assent to the Directors' Liability Reform Act 2023 so that clause 208 of the Workers Compensation and Injury Management Bill 2023 dealing with the criminal liability of a responsible officer of a corporation aligns with that act. Clause 208 will now provide for a responsible officer of a corporation to be liable for an offence committed by the corporation under clause 204—for example, not having a workers compensation policy—if the officer fails to take all reasonable steps to prevent the commission of the offence. Subclause 208(3) as originally drafted clarified what the court must have regard to in determining whether things done or omitted to be done by a responsible officer constituted reasonable steps. Clause 208 will apply whether or not the responsible officer has been convicted of the offence. The amendments made a number of changes to clause 208 that will collectively require a responsible officer of a body corporate to be convicted of an offence in order to be liable for any unpaid amount of a premium reimbursement order made against the body corporate.

One amendment deleted the defined term "officer" in clause 208(1) and inserted a new definition —

> ***responsible officer***, in relation to the commission of an offence by a body corporate, means a person who is convicted of that offence in accordance with subsection (2).

It deleted subclauses (2) to (4), relating to the liability of officers for the offence and the matters a court must have regard to in determining whether things done or omitted to be done by an officer constitute reasonable steps to prevent the commission of the offence, and inserted as clause 208(2) —

> The *Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 204 of this Act.

In clause 208(5), after "offence", the amendment inserted "under section 204". It also deleted "whether or not the responsible officer has been convicted of the offence". These amendments were consequential to the passage of the Directors' Liability Reform Act 2023, which was only a bill at the time this legislation was drafted.

Dr D.J. HONEY: For clarification, would that also mean that a director or a responsible officer could not insure against that penalty and that that penalty would have to be paid personally? That is what I understood happened in the directors' liability legislation reform.

Mr W.J. JOHNSTON: My advice is that no, unlike the work health and safety legislation, there will be no prohibition on insurance under this legislation. This is just to align the bill with the changed directors' liabilities under the other legislation. As I said, the amendments could not be included in this bill when the Directors' Liability Reform Bill 2022 was still a bill. We could not amend this bill to take account of that bill, because it was also only a bill at the time. We had to wait for it to become an act in order to bring these amendments forward. If the other legislation had become an act prior to us reading this bill in, we would have made these amendments at that time. Alternatively, if the Directors' Liability Reform Bill 2022 had passed after this legislation, it would have amended this legislation. It is simply a matter of timing and consequential amendments; it is not intended to change the current arrangements for these matters.

Clause, as amended, put and passed.

Clauses 209 to 214 put and passed.

Clause 215: Both principal and contractor taken to be employers —

Dr D.J. HONEY: I assume this clause is in the bill so that employers cannot outsource risk. I mentioned in my contribution to the second reading that I saw a tendency in my industrial career for employers to outsource what they considered to be dangerous or dirty work. I think that is still a practice in a lot of industrial areas. The aim of this clause is to make sure that that cannot happen. Perhaps the minister could clarify the intention of this clause.

Mr W.J. JOHNSTON: This is a continuation of the existing arrangement under the current legislation. It is not quite the way the member put it; rather, because this is focused on the worker, it is not the worker's fault if somebody did not have insurance. If the subcontractor does not have insurance, the insurance of the commissioning organisation will cover the worker. The worker will not be disadvantaged, notwithstanding that an employer may have not acted appropriately. Of course, it would be an incentive for the commissioning organisation to ensure that the subcontractor is properly insured, and I imagine that in the set of procedures they have for making outsourcing arrangements, that would be one of the things they would look at. It is really focused on the worker to make sure that the worker has insurance to support them if they are injured.

Dr D.J. HONEY: There is perhaps a simple answer to this question, but will that enable a worker to take action against a subcontractor and the contractor concurrently, or will it be determined that there is an employer? I appreciate

that, for example, a subcontractor may not be insured, so a principal employer would then pick up the obligation. Would the worker be able to take separate action against both, even though they were doing specific work under a particular employer?

Mr W.J. JOHNSTON: Again, the critical issue is to make sure that the worker is not disadvantaged and that there is an insurance policy that carries the liability for the injury, because we would not want to have either nobody carrying the liability and the worker being disadvantaged or, just as badly, WorkCover WA to pick up the liability through the uninsured processes. It is just to make sure that there is an insurance policy that covers the injury. Of course, there could later be action to resolve between the employers whose insurance scheme should pay. A series of parties might be involved in a contracting arrangement, but that will not be the worker's problem. If the worker is insured, their claim will be covered by the insurance scheme and they will get their benefit. If there is need for a resolution of the shared liability, that could be resolved separately, but that is not what drives this. This is about protecting the worker to make sure that they have the insurance scheme that protects them for liabilities that are generated from the injuries.

Clause put and passed.

Clauses 216 to 221 put and passed.

Clause 222: What constitutes an avoidance arrangement —

Dr D.J. HONEY: Regarding what constitutes an avoidance arrangement, which is a little towards the topic I was discussing earlier, have there in fact been penalties for this? Is the minister or his advisers aware of employers trying to do this, or is it unusual and there for the sake of completeness for the bill?

Mr W.J. JOHNSTON: I thank the member for the question. I am advised that this will provide sufficient deterrence and there has not been a case when this has occurred. Again, it is an important protection for the worker because we have to make sure that the workers—remember, they are not employees, they are workers—are covered by an insurance scheme, otherwise they would either miss out or the liability would fall to WorkCover. The currently drafted legislation is doing its job. This is just translating that provision into the new legislation.

Clause put and passed.

Clauses 223 to 229 put and passed.

Clause 230: Duration of licence —

Dr D.J. HONEY: This is a simple question about the duration of indefinite licences. The minister said before that there is a relatively small number of indefinite licences. Would it not be prudent to have a review period for these licences or is the minister satisfied that there is a process for review after a complaint has been made? If there was a large number of indefinite licences, I guess a standard review period would be called for, but if the number was small, maybe not.

Mr W.J. JOHNSTON: Obviously, we do not want to overburden insurers with red tape. There is a whole range of obligations on the insurers to provide information to WorkCover so that it can monitor their viability as a workers compensation insurer. As I mentioned previously, we have eight here in Western Australia. Our scheme is relatively healthy compared with some of the complications that are happening elsewhere—just look at New South Wales. We all know that at particular times the workers compensation scheme in Western Australia has been under pressure because insurers have not wanted to get involved in the market, so we have to make sure that it is a healthy market. If a new insurer came along, they would be given five years. Once we were used to them and they were used to the scheme, they would get an indefinite licence, but that does not mean that they would not be monitored. They would continue to be monitored; a whole range of provisions go to that issue. We would make sure that they are provisioning et cetera. As I said, the workers compensation scheme in Western Australia is pretty stable compared with some of the challenges we see around the country.

Dr D.J. HONEY: The minister indicated that Western Australia currently has eight insurers. Has there been a significant change in the number of insurers or is it a relatively stable space that is working well without a dramatic change in the number of providers?

Mr W.J. JOHNSTON: Again, we have had a stable scheme for quite some time. The eight participants include the Insurance Commission of Western Australia, which is also called RiskCover. It looks after state government employees and organisations. Obviously, government trading enterprises are in the insurance market, but the non-GTE parts of the government of Western Australia are all insured through ICWA. Catholic Church Insurance is withdrawing from the scheme, so Catholic schools and others will be out to market looking for insurers. We will go from seven private sector insurers to six private sector insurers, and nobody is seeking to join the scheme. The good news is that they are all covering their costs and maintaining their interest in the scheme, and that is a good situation to be in. As a former workers compensation officer for a union, one of the things I can tell the member is that a frequent change in insurers is a real challenge. We want employers to have a long-term relationship with the

same insurer; it is better if that can be achieved. Of course, we still need competitive tension to keep costs down, but we do not want all the loss leaders that used to happen back in the 1990s. I refer, for example, to HIH Insurance, which was one of the single largest donors to the Liberal Party in Australia. It ended up going broke, which led to a royal commission. We want to avoid that situation. We cannot have these large Liberal Party donors going broke, leaving workers on the scrap heap and having to be picked up by others.

Clause put and passed.

Clause 231: Suspension, cancellation or surrender of licence —

Dr D.J. HONEY: Has the suspension, cancellation or surrender of a licence occurred or is this just a prudent clause that will make sure that this provision is covered if it is required?

Mr W.J. JOHNSTON: There has not been a surrender; there have been amalgamations and takeovers but no surrenders and there has never been a cancellation. Surrendering a licence does not mean that the insurer loses their liability tail. Using Catholic Church Insurance as an example, even when it withdraws from workers compensation—at some point it will apply to have its licence surrendered—it will still be liable for those insurance matters for which it has taken liability. It could be a very long tail for those insurance liabilities many years into the future. Just because an insurer has surrendered its licence does not mean that it has surrendered its insured obligations.

Clause put and passed.

Clause 232 put and passed.

Clause 233: Improvement notice to licensed insurer —

Dr D.J. HONEY: Has there been a requirement to issue improvement notices to insurers; and, if so, can the minister please explain the nature of those notices?

Mr W.J. JOHNSTON: I am advised this is a new provision. Informal guidance has always been given to insurance companies. As a result of the commonwealth's Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, it was recommended that regulators provide a more formal process for engaging with relevant entities. Given that WorkCover is the regulator for the financial services companies that are providing workers compensation insurance here in Western Australia, it has, as part of this process, responded to the royal commission and this provision is that response.

Clause put and passed.

Clause 234 put and passed.

Clause 235: Special arrangements for Insurance Commission and public authorities —

Dr D.J. HONEY: Are all public authorities required to go through the state Insurance Commission or can they enter into their own arrangements with independent insurers or determine whether they get better value, if you like, for that service? Obviously there are state government direct agencies per se, but also the corporations, several of which the minister has responsibility for.

Mr W.J. JOHNSTON: That is an excellent and interesting question. The first thing is that at the moment all public authorities are insured by ICWA. This provision prevents ICWA from running off to get business in the private sector. Even though it is taken to be a registered insurer, it is only for public authorities. Government trading enterprises are not public authorities; they all have their own insurers. They compete like any other business in the market. Interestingly, public authorities are not under an obligation to insure with ICWA; they can choose to go somewhere else, but none of them have.

It is interesting that the Department of Justice was going through a process to review the cost structures in the prisons through the prison services evaluation process, which is not a point in time; it is an ongoing process. I have actually discussed through the PSE process with the Insurance Commission whether we should trial private insurance for a couple of our prisons. It is a very, very complicated issue, and it would be very interesting to see how the private insurers would cost the risk. Obviously, we have only one private prison in Western Australia—Acacia Prison—which obviously has its own private sector insurance arrangements. ICWA has responded that in its view it is something it would like to see occur, because it is hard for ICWA to know what the correct cost profile should be in these narrow occupations that do not exist in the private sector. Although we have not started any formal process, there are discussions through the prison services evaluation process about whether we should ask the private sector to price workers comp in one large and one small prison. But, at the moment, all public authorities are insured through ICWA, and there is no private sector insurance of public authorities.

Government trading enterprises are not public authorities under the act. All GTEs have private insurance because, to the extent they can, following the 1980s reforms under the Hawke and Keating governments, they need to compete in that open market. But notwithstanding the fact that ICWA is deemed to be an insurance company

under the scheme, it cannot then go out and compete with the seven—soon to be six—private sector insurers for workers comp work.

Dr D.J. HONEY: How does the minister then ensure that we are getting good value for money in that process? Potentially, government agencies would always look to another government agency, but it may not necessarily be value for money.

Mr W.J. JOHNSTON: That is a very good question. That is exactly what we are trying to establish through the prison services evaluation. As a former practitioner in the workers comp area, I was quite surprised to see some of the long-tail claims in the prisons. A long-tail claim is a claim for an injury that occurred many years ago. In a scheme that is designed to get people to settlement, it is very strange that in the prisons, there were hardly any settlements entered into, so one thing I have done is ask for all long-tail claims to be reviewed to see whether a settlement can be arranged. I think there were 42 or 45 claims that were more than eight years old, which no private insurer would ever have looked at. It is a live issue, and I know that the Treasurer is contemplating the exact same issue, because we need to make sure we are getting value for money out of workers compensation. We do not want workers to not be properly protected when they lose income in their workplace. Of course, the best way to protect them is to have high work health and safety standards and therefore eliminate injuries and eliminate the need for workers compensation.

Just taking the prisons as an example, the number one reason for a workers compensation claim in a prison is being injured by a prisoner. The unions have been raising that with me for some time. I have asked the department to look at that, and I was getting to a point at which it was going to commission a review of the interaction between prisoners and prison officers. Of course, under the powers in the work health and safety legislation, WorkSafe has now actually asked the department to do that anyway, so that is being done with my support. The corrective services function of justice is currently going off to have a look at who it will engage, because it obviously needs a specialist to engage on that. Nonetheless, we still need to make sure that we get value for money from the Insurance Commission.

It is now an issue that has been confronted by this government. I mean, the good news is that this government, with the leadership of Premier McGowan and in his role as Treasurer, does not just allow history to drive costs. We are trying to examine how we can get more value for money out of the Insurance Commission's operation of workers compensation in the public sector, because we know that this government has worked hard to get value for money for taxpayers in its expenditure. We do not want to see what happened under the Barnett Liberal government, whereby money was wasted and used unnecessarily. It ran the state into the ground. We were on track to be at $42 billion of debt if we had not come in and changed the trajectory and put ourselves back on a better pathway. We do not just look at the big issues; we look at all the issues. This is another opportunity for the Labor government to show that we are superior managers to the former Liberal–National government.

Clause put and passed.

Clause 236: Obligation of licensed insurers to insure employers —

Dr D.J. HONEY: I will not rise to the obvious bait, minister!

Mr W.J. Johnston: What bait? I just set out the facts!

Dr D.J. HONEY: I will talk about debt next week in my reply to the budget speech. I am always interested in facts!

Clause 236 deals with the obligations of a licensed insurer to insure employers. That insurance is only for the employer. Would the insurer be aware of the employees who are insured, or is it only aware of the employer? I am thinking here of a situation in which an insurer may think that an employer is foolhardy in the way that it takes on employees, or an employer is taking on an employee that the insurer knows has been a serial claimant of workers compensation.

Mr W.J. JOHNSTON: That is an interesting question. No; the insurer is obliged. If it has its certificate to participate in the scheme, then it must insure employers. Of course, there are two things here. The first is that there is industry rating. I will give an example. I think that the average industry rating is two and a bit per cent of payroll for insurance; however, in the agricultural sector, it is 8.1 per cent. Under that industry rating, a bad industry has a higher rating, which means a higher percentage of its payroll goes to the insurer. That is the first issue.

The second issue is that we have a deregulated scheme, so insurers are not obliged to charge the exact rate. They can add a loading or give a discount depending on claims history. If a business goes to an insurer, usually through a broker, and says, "Will XYZ insurer take on our workers comp risks?", the first thing the insurance company will do is have a look at the claims history for that employer. If it has a terrible claims history, the insurer might put a loading on top of the industry rating. Again using agricultural as an example, I have heard of shearing contractors having three or four per cent loadings added to their 8.1 per cent underlying industry rating for their insurance premium. Of course, most operators would have a broker, and the broker would be shopping the claims history to insurers to look at what they charge. If an insurance company does not really want to take on that business, it

will give it a higher rating, so a bad employer in the agricultural sector may end up with an insurance cost of 12 or 13 per cent of its payroll.

On the other hand, this is one of the ways that private insurance companies make money. Indeed, large businesses share in the savings. An insurance company will look at a claims history and say to an employer, "This is a bad claims history; applying better worker health and safety practices will reduce your premiums", and they will then share in the benefit of the reduced premiums. Some would go to the employer as a lower cost and some is kept by the insurer as a higher profit. The benefit for the workforce is that they get better health and safety outcomes. Good employers are rewarded through the scheme and bad employers are punished, but the workers do not miss out. Insurance companies do not miss out either, because they are able to manage their costs and risks through the premiums, but that is the idea. We firstly have the question of the industry ratings, with the agriculture sector sitting out there as an outlier; I think it is 50 per cent more expensive than the next highest, which is transport. These are round figures; I do not want the Western Australian Farmers Federation complaining about things again. I am giving a rounded figure of agriculture being about 50 per cent more expensive than the transport industry, and in that there are ratings that the insurers provide depending on the risk profile of the business.

Clause put and passed.

Clauses 237 to 249 put and passed.

Clause 250: Requirement for security —

Dr D.J. HONEY: With regard to the provision for security, how do we know that that money exists in terms of security? Will the security exist in a fund or will there be an order to the employer to make sure that they actually set up a separate, untouchable trust fund, if you like, within which the money cannot be used for another purpose and will always be there for the ongoing liabilities of a self-insurer?

Mr W.J. JOHNSTON: I thank the member for the question. Again, these are the 24 self-insurers. Obviously, the money is bonded in an unconditional bond. It has to be held in an Australian bank and it is WorkCover's bond so that it does not have to rely on the employer taking action; it can exercise the bond itself. The bonds are periodically adjusted, based on professional actuarial advice sought by WorkCover in respect of each self-insurer. Currently the minister, through Executive Council, applies the bond, but in the future we will have a more simplified set of procedures. When I act, I read all the notes in detail; I am not trying to say that I do not do that, but at the moment it is on the recommendation of WorkCover, and then I send it through to Executive Council and it is approved. In the future there will be a new procedure, but it will be the same underlying process. It is an unconditional bond held within a AAA-rated Australian financial institution, so there are no funny money challenges. Also, it is WorkCover that has access to the bond; it is not held through the employer.

Dr D.J. HONEY: I thank the minister. Just to clarify, regardless of whether the company goes broke, for example, and a receiver is appointed by the company, that money will always be there and will not be recoverable by a receiver or some other entity; it will always exist for that purpose.

Mr W.J. JOHNSTON: Yes, that is correct. It is always between WorkCover and the bank, not between WorkCover and the employer. It is an unconditional bond. The member comes from industry and will know that unconditional bonds are used in Mines and Petroleum as well. It is a well-understood practice through which the money will be available as working capital for the business but also has to be available to WorkCover whenever WorkCover requires it. It has to be in an Australian financial institution because some of the companies amongst the 24 self-insurers are international companies that have their headquarters in Pittsburgh and other parts of the world, so we do not want to have any challenges around being able to exercise the bond at the point we need it. It is not easy to become a self-insured employer, so we do not think any of them are in financial stress. We review that to the extent we can, but if they were to go into stress, we would have 100 per cent access to the bond.

Clause put and passed.

Clauses 251 and 252 put and passed.

Clause 253: Fixing of recommended premium rates —

Dr D.J. HONEY: Can the minister please describe the process that is gone through to fix the rates for the policies that ensure that employers are not unfairly burdened?

Mr W.J. JOHNSTON: Each year WorkCover commissions very detailed actuarial advice that looks at claims histories and sets the premium rates for each industry. The recommendation comes from the actuary and is passed to the board. The premium rates are a decision of the board; it is not the minister's decision. I have spoken before about the things I do; this is one of the things that I do not do. The ability for the minister to set this premium rate was removed many years ago, in 2004. I do not publish a media release even when the rate goes down, because sometimes the rates go up. If you crow when the rate goes down, you have to accept responsibility when it goes up, so I do not

make any comment on the premium rate, either on the upside or the downside. It is genuine actuarial advice that goes through the claims histories and sets the premiums for the industries.

The industries are recognised under the Australian and New Zealand Standard Industrial Classification codes. Of course, that is an artificial construct, but it is not an artificial construct to WorkCover; it is an artificial construct of statisticians in Australia and New Zealand. The ANZSIC codes are set through a process that people understand and the rates are then set for each of the industries through that recognised process. It is a very professional process that goes to the board. The board has representatives from employers as well as employees, plus specialists from the insurance industry. It is, to the greatest extent possible, an open and transparent third-party process so that we do not have any sort of artificial interference.

The scheme costs have been very stable over a long period; there was a 1.85 per cent average premium rate in 2007–08 and it is now 1.82 per cent in 2022–23, and I think it is actually going down for 2023–24. It is going down by five per cent, in round figures, for the next financial year. It has been very stable for a long time, and that is the aim—to have stable costs, not costs that go up and down on a frequent basis. Of course, there are adjustments based on claims history. The interesting thing here is that improvements in health and safety lead to lower premiums. We talked earlier about industry ratings. Industries can be rewarded by being better on health and safety, but companies can do that as well in the way I described about the discounts that some insurers apply in recognition of a good claims history.

Clause put and passed.

Clauses 254 to 257 put and passed.

Clause 258: Payments to and from General Account —

Dr D.J. HONEY: Clause 258 states that excess funds in the default insurance fund can be transferred to the government. There is provision for the government to return that excess money to the fund in need. Why would we not simply leave that money in the fund, recognising that over time there will be liabilities against it and the like? There will always be a risk that money can be transferred back if there is pressure on the government budget or perhaps other pressure to transfer money, so why would we not leave that money in the fund rather than transfer it back?

Mr W.J. JOHNSTON: That is an excellent question. If we had a stable and sensible government with strong leadership like that provided by Premier McGowan, there would not be any risk of that because the state's finances would be properly maintained. Of course, if we had a Liberal–National government that ran the state down, like the Court government did when it ran five deficits in eight years and undermined the economy or like the Barnett government did when it trashed our finances and put the state into recession, that would be a risk. This provision already exists; it is not a new arrangement. It has never been used. It is simply transferring an existing provision in the current legislation to the new legislation. Nobody involved in the entire consultation process—remember, this consultation process started in 2007, so it is not like it has been a short period of consultation—thought this provision needed to be amended. Given that it has never been used, there is no expectation that it will be used during the life of the Labor government. We could perhaps add a little clause so that if the Labor government were ever to be defeated—that seems so unlikely as we sit here today, but we never know what might happen—we could have a provision that says that a future Liberal–National government cannot exercise this. I do not think we should be too worried at this stage.

Clause put and passed.

Clauses 259 and 260 put and passed.

Clause 261: Required contributions by insurers and self-insurers to DI Fund —

Dr D.J. HONEY: Can the minister please take me through the process that will be used to define those contributions? He outlined before that farmers are a higher risk and that transport is the second highest risk, and we know that mining and other areas are on the list and construction is a significant area. Will some lens be applied to that? Will it be based on the number of employees times some risk factor or will it be a simpler process than that?

Mr W.J. JOHNSTON: Thank you for the question. The funds will be collected by a direct levy on licensed insurers and self-insurers. That will make it much more administratively simple. There are eight insurance companies and 24 self-insured employers and there are 110 000 insured entities. Rather than levying each of them separately, just the insurers and self-insurers will be levied, and it will be based on their share of the market. Again, that is nice and simple. A more complex scheme could be done if we wanted to, but then the administrative costs would go up. This is a nice simple way. Only 32 contributors need to be dealt with. It will be very easy to administer. There will be no need to get into detailed calculations because it will just be a levy on their market share.

Clause put and passed.

Clauses 262 to 289 put and passed.

Clause 290: Claims for compensation in respect of declared act of terrorism —

Dr D.J. HONEY: Maybe the minister can clarify this for me. I understand that if there is an act of terrorism and a workers compensation claim results from that act, funds will be drawn down from the default insurance fund. What will happen if the compensable claims exceed the amount of money available in the default insurance fund? Will all the claims be reduced proportionately to the amount available in the fund or will the government ultimately be the insurer of last resort, if you like, and be responsible for recompensing the fund to ensure that the full amount of compensable claims is paid?

Mr W.J. JOHNSTON: Believe it or not, this whole division about terrorism was one of the most controversial parts of the consultation because it is about who will bear the risk. One of the funny things is that an unlikely event that has a catastrophic outcome is very hard to assess. People do not realise that it is unbelievably expensive to get insurance for being killed by a meteorite, because the probability is that if someone is killed by a meteorite, so will lots of other people; therefore, the risk is massive and it is hard to insure. This presents the same problem. The chance of a terrorism act is very small, but the outcome might be catastrophic and include thousands of victims potentially. Therefore, there was a big discussion between insurance companies and WorkCover WA about exactly where the risks will fall. It might sound strange, but it was one of the big issues. Indeed, after all the consultation, some people came and saw me separately to argue against the outcome of the consultation. The Insurance Council of Australia was one of the groups that came and saw me, as were plaintiff lawyers and some others. I think the ICA raised about nine or 10 issues with me and one of them was the question of terrorism insurance.

When an act of terrorism takes place, the fund will pay and then the excess will be shared between insurers in the scheme. That will be the mechanism. Up front, the default insurance fund will pay. When the default insurance fund runs out, the costs will be passed back to all the insurers in the scheme. That is obviously one of the issues, because how will they recover that in the future? The default insurance fund might get emptied, but there will be a procedure to look after the workers. Again, we are focused on the benefits to the workers, not the benefits to the scheme. Workers will always get their payment, but that is the way it will be funded.

Dr D.J. HONEY: What is that mechanism? Is the government ultimately liable or would it go back to the insurers to make a proportionate contribution to that fund to make up any shortfall?

Mr W.J. JOHNSTON: The government might have to cover the costs in the meantime on a loan basis, but, no, it is not taxpayers who will bear the cost; it will be the insurance scheme. In the same way they are levied for contributions to the default insurance fund, they would be levied for the excess costs for the default insurance fund. They would be levied their proportionate share based on their share of the market for the additional money required by the default insurance fund, and they would then pass that on through insurance premiums to their clients. It is not taxpayers who stand behind the fund; it is the scheme. If you like, eventually, it is the 10 000 insured entities.

Let us hope that we do not have to confront this situation because we do not want to have a terrorism event. We are fortunate that a terrorism event has not touched Western Australians in Western Australia, and we hope that never occurs. But the community can be assured that if one were to occur, they will not miss out on workers comp insurance if that is available to them if they are at work when such an incident occurs. Again, there is a very low risk of it occurring, but it needs to be taken into account. This is the scheme. I think I have made it very clear that the Insurance Council of Australia, representing its seven private insurers, believes there should be a different process for this because it is about sharing risk, but in our view this is the appropriate structure for sharing the risks in regard to acts of terrorism.

Clause put and passed.

Clauses 291 to 296 put and passed.

Clause 297: Terms used —

Dr D.J. HONEY: I am intrigued why this exists as a separate section. I would have thought on what I have read that workers are covered, but if they are not covered, there is a default insurance catch-all. Why do we need a separate section altogether for the catastrophic injuries fund outside the other mechanisms for workers compensation?

Mr W.J. JOHNSTON: When the NDIS started, all states were asked to update their existing insurance arrangements to take into account lifetime care for people with a catastrophic injury so that when there was an existing scheme, the costs were not shifted onto the NDIS. Under the last government, the catastrophic injuries fund was created for the no-fault third-party motor vehicle insurance scheme, and, as we should, we all paid extra for our third-party insurance. We do not have the catastrophic injuries fund arrangements for workers compensation that make it consistent with the NDIS, but the provisions in this legislation will update our obligations to that. Of course, a person with a catastrophic injury would also have access to a common-law claim because they would be "through the gate", as it is referred to in the scheme, and able to access the common-law courts to sue under negligence. They would

therefore be protected and compensated through that action and not need the NDIS. But a person might choose not to sue for negligence or there might not have been a question of negligence. The workers compensation scheme needs to have an arrangement to deal with people who do not go through the common-law courts for their catastrophic injury, either because they do not believe they have a claim or because they do not think there is negligence, or, alternatively, because they have chosen not to. We have to have a catastrophic injury arrangement in place.

Given there will be only a small number of claims for catastrophic injury in the workers compensation scheme compared with the reasonable number of claims under the motor vehicle scheme, we are piggybacking—I think that is the right way to say it—onto the catastrophic injuries fund arrangements under the motor vehicle insurance scheme. There is a number of provisions in the bill. What is the scheme for people who have a workers compensation claim who do not go through the common-law jurisdiction but stay in the workers comp jurisdiction? This is the scheme and it is the scheme that is used for motor vehicle injuries. We are not creating another set of procedures and more bureaucracy. This scheme is for the small number of cases in which a person is both catastrophically injured, which is a small number under workers comp, and does not go to the common-law scheme. How will we do it? We are executing it by effectively joining to the existing motor vehicle one.

Dr D.J. HONEY: I understood from previous discussion that there is already provision in the act for workers who have permanent or long-term injuries and that that will continue. As we heard, funds are required for self-insured employers, for example, and they will put their money into a bonded account that WorkSafe has access to. What kinds of workers would fall into the category of catastrophic injuries? I appreciate that the minister said it is a small number, but which cases would fall outside that category and why would a long-term claim fall outside the existing provisions in the Workers' Compensation and Injury Management Act?

Mr W.J. JOHNSTON: It is an interesting question. The overall majority of injuries in the workplace are not catastrophic, so the question of lifetime care does not arise. I would see losing an arm as a catastrophic injury. I do not know how I would cope with that. But that does not necessarily mean it will require the sort of lifetime care that one might need for a serious brain injury.

Dr D.J. Honey: Or mesothelioma.

Mr W.J. JOHNSTON: Mesothelioma is a different issue. Part of the agreement to establish the NDIS was that the states would update their existing insurance arrangements to take into account lifetime care for people with catastrophic injuries. There are people who are injured at work who have lifetime care needs. That might include spinal injuries, brain injuries and permanent blindness. There has to be a procedure to access the catastrophic injuries processes for people who choose not to go to the fault scheme and want to stay in the no-fault scheme. Remember, workers comp is not about who is to blame; it is about what is the injury. There has to be a scheme to take into account the lifetime needs of people who have a catastrophic injury, given that that is outside the normal procedures of the legislation. Remember all expenses are normally capped because our scheme is not unlimited. Therefore, there has to be some way of giving that small number of people who go through this process access to the resources that they will need for their lifetime care. This will be paid for through the default insurance fund, which we talked about a few minutes ago. It will be on a no-fault basis, because, as I have said, workers compensation is a no-fault scheme, but it will have to take account of lifetime injuries. It will also have to go beyond the existing caps, because if we stick to the existing caps, we will push people off workers compensation and onto the NDIS. The commonwealth government said right at the start of the NDIS that it did not want to have cost shifting between the existing insurance arrangements and the NDIS.

This is the response to the small number of catastrophic injuries. This is about the procedures that we would need if, let us assume, 10 people needed lifetime support through the workers compensation scheme, and eight of those wanted to go through the common-law scheme and be looked after through that set of procedures, and two wanted to stay in the no-fault scheme. The provisions in this part of the bill will enable us to do that. Given that it is such a small number of people, rather than creating a new set of bureaucracy and procedures, we will be joining this with the existing motor vehicle processes. That will be a lower cost for the scheme and a better outcome for everybody.

Dr D.J. HONEY: I thank the minister for that explanation. In order to ensure that I understand this correctly, I will give a scenario. A worker has lost an arm in a workplace accident, and that means that if they were a bricklayer, they can no longer be a bricklayer. However, although that worker has only one arm, which is clearly a significant disadvantage, and we would not wish it on anyone, if that worker retired, they would be able to care for and look after themselves and lead a normal life. If I understand this correctly, if that person does not require ongoing help to live, they could not make a claim under the catastrophic injuries fund. However, if a person was catastrophically injured at work and became a quadriplegic and could not possibly care for themselves and would require care until the day they die, the ongoing care for that person would be paid out of the catastrophic injuries fund.

Mr W.J. JOHNSTON: Yes. In general terms, that is correct. It is about the small number of catastrophically injured people who will require lifetime care. It is the classic issue that was raised when the NDIS was first contemplated. Our scheme is limited. This is for those cases that do not fit within the normal limits in our scheme. The reason

that we have confidence in the costs of our scheme is that our scheme does not insure everything; it insures only what it insures. The plaintiff lawyers argue that access to the commonwealth system is too narrow, and I accept their perspective, but one way or another that is still what the scheme does. They would argue otherwise, but this has been the general perspective.

There was an expectation when the NDIS came in that the states would take account of the needs of catastrophically injured people who were already in their state insurance schemes. Currently, a catastrophically injured worker would get support from the scheme until the caps have been spent. They would then be handed over to the commonwealth government. The commonwealth government is now saying that because it has created the NDIS and its costs have gone up, it wants the states to insure those people rather than it doing so. That is what this provision will do. It is about a small number of people and how we can apply this in a no-fault situation. There will be criteria and a set of rules about how people will be able to access the scheme and a set of rules about how it will be paid for.

Clause put and passed.

Clauses 298 to 300 put and passed.

Clause 301: Transfer from DI Fund to CIF —

Dr D.J. HONEY: We have been told that there is capacity for the default insurance fund to pay money back to the government, and the minister has said that he would never do that. What would trigger the transfer of default insurance funds into the catastrophic injuries fund? The default insurance fund receives premiums from industry and others. Why would money from the default insurance fund be transferred to the catastrophic injuries fund when that fund gets to set its own premiums to cover its particular requirements? Why not leave those moneys in the default insurance fund?

Mr W.J. JOHNSTON: This is an arrangement to protect the assets of the insurers. If a person who had been catastrophically injured was being managed by the Insurance Commission of Western Australia, and we had excess moneys in the default insurance fund, the board of WorkCover could decide to transfer those funds rather than add those costs to the levy that is applied to insurers each year. It is an opportunity for the scheme to manage the moneys that are in the DI fund and the funds that might come from the levy. It could choose to use excess DI funds rather than increase the levy.

Clause put and passed.

Clause 302: Additional insurer contribution for unexpected liabilities —

Dr D.J. HONEY: Who will pay for those additional premiums? Will that be met by the government or will that be disbursed generally to the insurers so that they will have to make that additional contribution?

Mr W.J. JOHNSTON: As is outlined in the explanatory memorandum, if there was a need for an out-of-cycle contribution, this provision would allow for that, but we would expect that to be done ordinarily in the levy each year.

Dr D.J. HONEY: Will there be any process to enable the insurers to dispute that or will it simply be applied and there is no recourse—they will simply have to pay those moneys?

Mr W.J. JOHNSTON: It is a question of whether ICWA will ask WorkCover to pay more. ICWA is a professional organisation. It is not profit driven. If it had excess costs because of some clients who have been transferred to it, it would ask WorkCover to pay for that and WorkCover would make the arrangements and pay ICWA back. We would expect the costs to be taken account of in the levy each year.

Clause put and passed.

Clause 303 put and passed.

Clause 304: Exclusive jurisdiction of arbitrators —

Dr D.J. HONEY: Is there any other process for disputes? Obviously, agencies and others typically have SAT or access to the courts in disputes. Why is that an exclusive provision in this case?

Mr W.J. JOHNSTON: Thanks for the question. This is an existing arrangement. It is not new; it is just transferring it into the new legislation. Arbitration of matters to do with workers compensation are dealt with by WorkCover; they are not dealt with anywhere else. This is simply establishing the exclusive jurisdiction. It is not controversial.

Clause put and passed.

Clauses 305 to 703 put and passed.

New subdivision 17A —

Mr W.J. JOHNSTON: I move —

Page 434, after line 15 — To insert —

Subdivision 17A — *Workers Compensation and Injury Management Act 2023* amended

703A. Act amended

This Subdivision amends the *Workers Compensation and Injury Management Act 2023*.

703B. Section 66 amended

(1) In section 66(1) delete the definition of ***registrar (MIARB)***.

(2) In section 66(1) insert in alphabetical order:

registrar (MIRT) means the registrar of the Mental Impairment Review Tribunal established by the *Criminal Law (Mental Impairment) Act 2023*;

(3) In section 66(5) delete "registrar (MIARB)" and insert:

registrar (MIRT)

This is a consequential amendment relating to the amendment to clause 2 in light of the assent of the Criminal Law (Mental Impairment) Act 2023, which repeals an act and changes a provision referred to in the Workers Compensation and Injury Management Bill. It makes amendments to section 66 of the act by amending section 66(1), deleting the definition of "registrar (MIARB)" and inserting "registrar (MIRT)"—this means the registrar of the Mental Impairment Review Tribunal established by the Criminal Law (Mental Impairment) Act 2023—and section 66(5), deleting "registrar (MIARB)" and inserting "registrar (MIRT)".

New subdivision put and passed.

Clauses 704 to 706 put and passed.

Title put and passed.

Reconsideration in Detail — Motion

On motion by **Mr W.J. Johnston (Minister for Industrial Relations)**, resolved —

That the bill be reconsidered in detail for the purpose only of considering the Minister for Industrial Relations' amendment to clause 2 as listed on the notice paper.

Reconsideration in Detail

Clause 2: Commencement —

Mr W.J. JOHNSTON: I move —

Page 2, after line 12 — To insert —

(ba) Part 15 Division 3 Subdivision 17A —

(i) if the *Criminal Law (Mental Impairment) Act 2023* section 188 comes into operation on or before assent day — when section 66 of this Act comes into operation; or

(ii) otherwise — when the *Criminal Law (Mental Impairment) Act 2023* section 188 comes into operation;

Amendment put and passed.

Clause, as amended, put and passed.

The ACTING SPEAKER (Ms R.S. Stephens): That concludes reconsideration in detail.