

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2012

Second Reading

Resumed from 21 March.

The PRESIDENT: The question is that the bill be read a second time.

Hon Simon O'Brien: Aye—sorry.

The PRESIDENT: Is the minister right?

Hon Simon O'Brien: Sorry; I was getting ahead of myself, Mr President.

The PRESIDENT: I think the minister was—just a little. I call the Deputy Leader of the Opposition.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [3.24 pm]: I share the minister's enthusiasm for the passage of the Workers' Compensation and Injury Management Amendment Bill 2012 swiftly through this chamber, so I do not intend talking at length today.

This is a very important bill because it picks up some loopholes that arose out of some workers' compensation and injury management legislation that was passed by this chamber last year. This bill sets in place, as I understand it, some interim arrangements to deal with the matters that arose from those loopholes in the other legislation, and it clarifies the common law insurance requirements under the Workers' Compensation and Injury Management Act 1981. The bill that we dealt with last year introduced a new mandatory requirement for employers to hold compulsory insurance against their common law liabilities for injured workers. The new common law insurance obligation came into effect on 1 October 2011. As I understand it, with the passage of this legislation, which is essentially mopping up those issues that came about, this bill will be retrospective to that date, so it is as though nothing actually went wrong with the first legislation. I am not saying it was anyone's fault. I understand that there was broad discussion on the legislation that was passed last year amongst the various interest groups, and I imagine that everyone thought they had crossed all their t's and dotted all their i's. However, as happens on some occasions, sometimes things are missed, and it only came about after the passage of the legislation, as I understand it, that some of the insurance companies or some of the self-insured employers became aware of the gaps that existed as a result of the passage of that legislation. Obviously, with an eye to saving a dollar and addressing those issues, they wanted those gaps filled. So that is what this bill will do.

It is not a terribly complex bill. It has three parts. A lot of it deals with modifying language so that there is uniformity of language. When we go to the latter parts of the bill, we see that some transitional arrangements are put in place, and there are some new definitions. I will come back to those definitions, because we had quite an interesting discussion during the briefing about the language used in those definitions. I will come back and put some questions to the minister about those particular definitions that have been put into this bill. I am sure he has already been given a heads-up by his advisers about what I will be asking him to do. I asked them to tell the minister, so I am hoping he is ready for it.

Hon Simon O'Brien: They certainly did.

Hon KATE DOUST: Good. I thank the minister.

Although that extensive consultation happened, these gaps came up. The bill that we are dealing with will not have any detrimental impact upon any worker in this state, as I understand it; it will simply clear up those difficulties. It is as though nothing else happened; it all just rolls on. We like those types of bills. It is a shame we do not have a few more of them.

This bill applies specifically to that group of workers called "deemed workers". This is an unusual term that we do not always hear about. I am going to give a couple of examples because, minister, I want to be quite clear in my own mind that I understand who this group of workers is. I took it as being those people who do not have a direct employment relationship with the principal employer. Therefore, it may very well be somebody who comes on site to perform a particular task. They might be employed by a contractor. An example I can think of might be, say, a window cleaner who goes to do a job at a particular site. They are not employed by the principal employer; they are employed by a contractor, but they actually go on site. Although the principal employer provides a common law liability, they do not actually, and never have in the past, provided workers' compensation protection for that particular group of workers. As I understand it, when the legislation was passed last year, it was this group of workers for whom this difficulty arose. Unless this issue is resolved, the principal employer will have to pick up the additional cost of providing workers' compensation insurance for that group of workers. When we think about it, although we go in and out of workplaces, we do not always think about these other types of workers. From my experience in the retail sector, quite often I would find people coming into a supermarket who were employed not by that supermarket—be it Coles, Woolworths, IGA or whatever—but by a

contractor. They may have been people who provide samples of a product or people who come in to do a stock fill. We often see them when we shop on a Saturday. These people are not direct employees but are deemed employees. Deemed workers may be people who come into offices who perform tasks, such as couriers and other types of workers. We can even think about here in Parliament. A lot of renovation work happened over the recent break and we saw painters, electricians and others come on-site who probably fit into this category, I would imagine, of being a deemed employee; although they are performing tasks here they are not actually a direct employee of Parliament and therefore would be picked up under the terms of this type of legislation. Am I heading down the right path, minister?

Hon Simon O'Brien: Absolutely.

Hon KATE DOUST: Good; I am glad I have that clear in my own mind. I get a bit confused; workers' compensation has always been a bit difficult for me. Hon Alison Xamon will probably share this view; as a former union official, it is a significant issue for people in the workplace and it is probably the most difficult area to work in. The language is complex. It is a complicated process for people to have to work through. It is a very emotionally heightened issue; people become very engaged and it can become the one driving issue in their life. Therefore, I have always found workers' compensation to be a very complicated and complex area. I was reminded of that when I looked at the language used in the legislation and the drafting of the bill. I will talk about that later as well. Therefore, a lot of this comes back to dealing with workers' compensation coverage for those people who are described as deemed workers. It is significant and important that those workers are being looked after in this legislation.

The Workers' Compensation and Injury Management Amendment Bill 2012 also prevents public liability insurers from declining liability on the grounds that the liability is one for which the employer was required to be insured under the act from 1 October last year. It also places a limit on common law liability. I understand that in the past, employers had a cap of about \$50 million for their insurance. When the legislation went through last year, the cap either was removed or had not been put back in place. This legislation provides a head of power for regulations to be made so that the cap can be put back in place. That also gets picked up in the transitional arrangements. Those regulations will set the minimum limit of \$50 million per event, which I understand is consistent with the standard set by the insurance industry. I understand also that that has been agreed with the insurance companies.

This bill deals with the terms of insurance and forms of policy. I understand that as part of the capacity to make regulations, WorkCover WA will be able to standardise insurance arrangements. It will be able to set the terms and conditions and to permit certain limits and exclusions in workers' compensation insurance policies. I understand, again from the briefing last week, that this has been agreed across the industry and with the stakeholders. I think that providing that standard and that uniformity across industry will make this a much better reform process for both workers and employers.

The bill also includes a savings provision to preserve terms, conditions and exclusions in current contracts of insurance to the extent that these comply with common law insurance amendments as proposed in the bill. These changes to the legislation clarify common law insurance requirements under the act and will provide certainty to employers, brokers and insurers. I also think the flow-on effect will benefit people working in workplaces. Therefore, this bill is a fairly straightforward and, I think, tight piece of legislation. A number of issues have been identified that this legislation seeks to remedy. It is an interim set of arrangements. I understand that a much larger review of workers' compensation legislation is being dealt with. I refer to a document from WorkCover that states that there are two phases for reforming Western Australia's workers' compensation system. The first phase was the legislation that was passed last year. The bill we are dealing with today is probably stage 1A, if we like. The next stage is the development of a new workers' compensation statute based on contemporary language and drafting conventions, and that work on stage 2 was to commence later in 2011. My question to the minister is: has that work commenced and what sort of time frame does he expect for that work to be completed so that we can look at a new piece of legislation for workers' compensation?

I am particularly attracted to the fact that in this document, WorkCover talked about using contemporary language because, as I said earlier, the language in these types of bills is extremely convoluted. I made that point to the advisers last week. I must say that the advisers were very good and gave a very comprehensive briefing on this bill. I think that we get into a real trap with this type of legislation, which workers, employers and other groups have to deal with, in that we tie ourselves up in knots with language and it becomes too difficult to understand, which brings me to the point that I was going to raise about the definitions in the bill.

The definition of damages that has been provided in the bill, as I understand it, is meant to clarify the use of the word "damages" for insurance purposes. That is on page 3 of the bill. There are four separate paragraphs in that definition that deal with various types of damages that can apply. I read through them and the language is quite complicated. I thought that it really is a shame that anyone cannot open a piece of legislation and just read it and

understand what it means without having to seek legal advice. I asked what it really meant and the advisers responded that they had sought extensive legal advice from a range of people to explain what the definitions in the bill actually mean. I thought that that did not really help me because I want to know what the definitions mean. I asked the advisers to tell the minister that it would be very helpful for readers' guidance in the future, I suppose, to be able to go back and look at *Hansard* and read what the government intended to do. If the minister can provide in his reply a plain English explanation of each of these four categories of definition under the term "damages", that would be very useful. I hope that the minister has been given the appropriate advice and not more legalese because I think that would make it a lot easier to understand.

Hon Simon O'Brien: What they've tried to do is specify and expand upon the current very brief definition of damages. That was just the legal eagles advising that.

Hon KATE DOUST: It just seems odd that when the drafting happens and the advisers cannot answer the question, they say that they sought advice from a range of lawyers—I do not know whether that includes the State Solicitor's Office—and other people to explain what these terms mean. Therefore, I hope that the minister will be able to break it down a bit further so that when someone reads *Hansard*, they can say, "Yes, that's what the government intended and that's what it means".

There is also a new definition of "deemed worker". That is another issue we raised during the briefing. I know that it is not necessarily covered in this bill—I am sure this will be raised in more detail by others—but we have a changing type of workplace in our state; indeed, the nature of the work performed and the types of workers who are employed are changing. We talk about the need for a big influx of people into our state for work. That is a significant issue, but there are problems with how occupational health and safety and workers' compensation issues are managed. I will touch on that issue briefly because it is not really the issue that I want to talk about. I imagine that the issues that would put further pressure on our workers' compensation system in the future would include incidents or injuries that happen to workers who have language barriers or cultural issues. I hope that in the minister's review of the workers' compensation legislation those types of broader issues might be canvassed. I imagine that insurers, brokers and employers also will be trying to work out how they will deal with those issues in the future.

The matter I want to raise in relation to the changing type of worker is workers who go offshore—that is, workers who leave our state to fly in, fly out work, even though their principal employer is here. They are employed in this state, but their work is done in another place, be it New Guinea, Africa, Indonesia, Singapore or Malaysia. I understand that thousands of people fly in and out of our state on a daily basis for work at mine sites or other places. That will be a significant issue. I appreciate that they are covered by their employer here, but an associated issue would be medical costs. Again, I hope that in the broader review consideration is given to how the changing nature of workplaces is dealt with. When the act was put in place in 1981, I do not think there was any genuine understanding of how dramatically the workplace would change in 30 or 40 years. I do not think the legislation that is in place now necessarily has the capacity to cope with that changing nature of work. They are interesting areas to look at. I am sure the stakeholders that the government will deal with throughout the review process will also have some interesting input and views on how those types of situations should be managed.

I do not have a lot more to say on this bill, because, as I said, it was explained fairly clearly. There is no dispute about the legislation; it is really just tidying up a gap. I know that the stakeholders, in particular UnionsWA, which I spoke to this morning, are very keen for this legislation to go through. While I am touching on that matter, I had the opportunity, along with a number of my colleagues in this chamber, to attend the workers memorial that was held at Solidarity Park last Friday. The memorial is acknowledged on 28 April every year. It is a significant date when we acknowledge those workers who tragically did not come home from work. I understand that in the past 12 months, we have lost 13 people who died on the job in Western Australia. It was a very moving service. It was quite heartbreaking to listen to the stories of those families and how they are dealing with the deaths of their loved ones. I raise that matter because it is very important that we have in place good health and safety practices and also very good workers' compensation insurance so that when people are injured or, in a worst-case scenario, pass away, they or their families, depending on the circumstances, are looked after. I again thank UnionsWA for organising that memorial. I am not too sure whether the minister or any of his staff were there.

Hon Simon O'Brien: I sent a tribute, yes.

Hon KATE DOUST: It is certainly a very moving and worthwhile event to participate in.

One other issue that was raised with me is probably not within the scope of the bill. I had a look at the *Hansard* from the last time this legislation was debated. The minister may recall that there was an issue about pleural plaques. I know there was an amendment to a schedule to include that term, but there was also some consideration about looking at the issue more broadly at a later stage. I just want to know whether there has been

any further discussion about that issue between the minister's office and the Asbestos Diseases Society, because I know it has an ongoing concern.

Hon Simon O'Brien: Do you have a *Hansard* reference that you might be able to give me, please?

Hon KATE DOUST: It is on page 13 of the *Hansard* of Wednesday, 17 August 2011. It is the minister's second reading reply. I am happy to provide him with that copy.

I just want to know whether any further work has been done on that issue. It has been put to me that people who have those types of issues still have concerns that the amendment that was put through last year might not be providing support or assistance and that they still have to reach a higher benchmark to take up their issue. I know that Mr Vojakovic is expressing a keenness to meet with the minister directly to talk about the specific issues associated with that terminology, because he is of the view that perhaps what they were trying to get at with the amendments that they proposed at the time was not explained clearly to the minister. I said that I would raise that issue and would provide the minister with the extract from *Hansard*. I hope that the minister can provide that response to Mr Vojakovic.

There is another matter that I want to raise in relation to workers' compensation. The advisers very helpfully gave me a general factsheet on workers' compensation in WA, which I thought was very handy as I tried to get my mind around it once again. I looked through the document and found a section about injury management. It indicates that all employers must have an injury management system, which is a written description of the steps to be taken when there is an injury in the workplace. I have a fairly simple question. How do we know that an employer has an injury management system in place on-site? Does WorkCover check every workplace and look for it? Is it part of a reporting requirement that employers have to say that they have this system and that these are the steps that have to be taken? It is a good system to have. I just want to know whether employers are providing an injury management system in their workplaces and how it is being checked or monitored.

Those are just a few questions that I thought I would take the opportunity to canvass while we are talking about workers' compensation. It is a very important system that we have in place. The advisers gave a very thorough explanation last week of what this legislation is about. We are very pleased to support the bill. It is good that these issues have been identified and that appropriate legislation will be put in place to close those loopholes. It is also very sensible that retrospectivity will be applied and that there will be no difficulties for any worker as a result of this change. We are very pleased to support the bill and hope that it passes through this chamber very quickly.

HON ALISON XAMON (East Metropolitan) [3.50 pm]: I rise on behalf of the Greens (WA) to indicate that we will also be giving our support to the Workers' Compensation and Injury Management Amendment Bill 2012, and also to note that we recognise that it is important that this bill is passed fairly swiftly in order to address the issues that were raised in the second reading speech.

The purpose of this bill is to address some unintended consequences that arose as a result of the legislative reform that was passed last year by all parties in this chamber. We understand that the anomalies that have arisen did not come to people's attention until the bill was assessed by insurance companies and brokers themselves. It is very interesting that the bill had gone through, I am aware, quite extensive consultation with people who are professionals in this area, yet so complex were the implications that it could not be foreseen at that point that it would have the outcomes that it has had. I note that we can probably always rely on the insurance industry to be able to recognise when there are changes that may mean that they will not have to pay out the amount that they might otherwise be obligated to pay out, and also to identify when there will be potential impacts on premiums. As a result of that, we have this bill in front of us, which is intended to address these anomalies.

I want to remind members that when these legislative changes went through the house last time, there was unanimous support for the policy intent of the bill; that is, to ensure that workers who are injured on the job, but who find that their employer has not done the right thing and has not taken out the necessary insurance, are still able to access the statutory workers' compensation scheme. That is a sound policy decision. It was a good policy decision to make. Some terrible stories were relayed in this place about individuals who have been caught out through these provisions and who were unable to pursue their unscrupulous employers through common law damages because their employer had simply shut up shop and moved elsewhere. This bill is designed to ensure that that situation cannot emerge again. That is obviously something that the Greens are very supportive of and recognise is a good step forward for our workers' compensation scheme.

However, the concern has been raised that the legislation may go further than was initially intended and may deal also with people who are defined in this bill as a "deemed worker"; that is, people who do not have a straightforward employment relationship with their employer. Hon Kate Doust did a good job of summarising the sorts of people who could be considered to be deemed workers. The concern is that, as a consequence of making these changes, these people may be denied public liability insurance on the basis that they are potentially

entitled to workers' compensation insurance. That is obviously not a positive thing. However, it is also important to ensure that we do not limit the access of deemed workers to public liability insurance. That is primarily because public liability is easier to get than workers' compensation. The process for getting workers' compensation is very rigorous. There is a threshold that needs to be realised before people can receive payments. I have not gone through the workers' compensation system, but I have certainly represented workers who have, and I know how arduous and distressing that process can be. So we should not do anything that may limit the ability of people to pursue public liability when it may not be in their interests to pursue workers' compensation legislation.

It is also important to ensure that we do not put onerous, expensive and unnecessary obligations on employers in relation to the level of insurance that they require. If employers need to get workers' compensation insurance, they should get it; if they need to get public liability insurance, they should get that as well. But it would be sound to look at capping the amount for which people can be liable, otherwise people may end up spending all their money on insurance. Also, if a certain insurance category is not required, it is important that we do not place that obligation on all employers, because excessive insurance requirements are not to the benefit of anybody.

However, I do remain concerned—I raised this in the briefing with the advisers—that the class of workers whom we are now defining as deemed workers may find themselves in a similar situation to the one that was described in the debate last year, whereby they are not eligible for insurance. I am talking about a deemed worker who is injured on a work site, but whose employer has neither workers' compensation nor public liability insurance and who, instead of paying out the rightful entitlements to the injured worker, simply folds up his business and starts it up again somewhere else. I am still concerned that these workers may fall through the cracks. I do not have a ready solution for that. I recognise that we are potentially talking about a very small number of workers. A deemed worker would have to be very unlucky to be dealing with an unscrupulous employer who has failed to get the necessary insurances and then decides to do a runner. But it does happen—I do not think we should be naive about that—and for those people the impacts can be absolutely devastating, not only for themselves, but also for their families. We need to look at how we can institute a statutory scheme that will ensure that every worker who is injured on a work site is able to receive some sort of statutory cover, regardless of their employment relationship. As I have said, I do not have a solution to that. But it would be good to get some indication from the minister about possible remedies for these workers apart from their potential to make a common law claim.

I am also interested to hear further from the minister about what measures are being taken to pursue noncompliant employers. Frankly, we would not need to have this legislation if all employers met their obligations and paid their insurance. I am aware that there is a push from industry to have noncompliant employers dealt with quite harshly, because if employers can get out of paying insurance, they can undercut or under-tender other more reputable employers. But what they are doing in that instance is simply shifting the burden onto the taxpayer, or, worse, onto the injured worker, who has no recourse but to live with that. So I am interested to hear more about what, if anything, is being done to address the issue of noncompliant employers. I, for one, would be happy to see increased penalties for noncompliance. I would also be happy to see some sort of education program for employers on their obligation to ensure that they have appropriate levels of insurance. I am aware that a number of small operators may be oblivious of the fact that they simply have not met their insurance obligations. However, when people get injured and do not have recourse, the consequences are very serious. It is therefore very important that we give priority to making sure that people do the right thing.

I share Hon Kate Doust's concerns about the other issues that relate to fly in, fly out workers and I want to make sure that they get resolved. I realise that this legislation had to be dealt with very quickly and that because it has retrospective provisions, which I support, it was all the more important to deal with just the immediate issues that have arisen. However, we are talking about a potentially significant number of workers who need to have their workers' compensation entitlements clarified, particularly for when they go overseas. This matter needs to be remedied pretty urgently. I will be very interested to hear from the minister about the government's time frames for prioritising that and whether it is likely to come up at the next round of workers' compensation reforms or sooner, or if it is not intended to come up at all. I will be disappointed if that is the case because I believe it needs to be addressed.

I again indicate that the Greens support this legislation. We still support the original policy intent of what was attempted to be achieved last year, which was to make sure that workers who are injured at work and whose employer is uninsured will not suffer as a result. I want to make sure that deemed workers can access some sort of entitlement if they happen to also work for an uninsured employer who has not done the right thing. I am also interested to hear more about what is being done to ensure that all employers are meeting their legal obligations to ensure that they have the necessary insurance in place to protect workers who are injured at their work site.

HON MAX TRENORDEN (Agricultural) [4.02 pm]: The National Party also supports the Workers' Compensation and Injury Management Amendment Bill 2012, although I would like to make some comments about it. For the purposes of *Hansard*, I refer to the Workers' Compensation and Injury Management Act 1981, as amended. Section 160, which is one of the sections to be amend by this bill, reads —

- (1) Subject to this Act, every employer shall obtain from an approved insurance office and shall keep current a policy of insurance for —
- (b) the full amount of the employer's liability to pay damages to any worker employed by the employer in respect of a compensable injury for which the employer is liable.

That is pretty clear, I would have thought, so why are we getting this rubbish into this house? I have been a member of Parliament for a number of years in both houses. Why must we have bills rewritten in this way? I am not picking on the minister; what I am saying is that bills take some time to construct. They go through a substantial process in which these types of matters are meant to be ironed out. I am no lawyer—I see a lawyer looking at me right now—but I would have thought that that clause was pretty clear; the employer has to provide the insurance for the full amount of the full liability. That amendment went through both houses. It was passed by the Assembly and by us and now we have to redo the whole process. Unfortunately, this is happening far too often. There was a time—I will stand on my soapbox and talk like Moses—when ministers were sent out of the chambers with their heads hanging in shame if these types of things occurred. I do not think it is right for us to just accept that a mistake has been made and that the legislation needs to be amended. Life is not that easy; these are very serious matters. In the second reading speech, the minister quite rightly pointed out —

An unintended consequence in the drafting of amendments to section 160(1)(b) has resulted in an obligation on insurers to provide common law cover without any limit.

That is what the clause says. Further —

An unlimited common law liability has significant reinsurance and pricing impacts on workers' compensation insurers and therefore presents an uninsurable risk for workers' compensation insurers.

I agree with that statement. If legislation is put in place that says someone has to insure for a limit, who will determine what the limit is? When it is left up to the insurance industry to do that, the current circumstances will prevail. How is it that whoever drafted this bill made this mistake? I would like to repeat on behalf of this chamber and the other place that these mistakes should be explained. Why are we spending the time of this chamber—I must admit that I am adding to it—to rectify something in that section of the act? The other agencies might be slightly different. That section seems simple and open. Why are we doing this, and why are we doing it regularly? There is no option, as the Labor Party and the Greens (WA) indicated, but to support the legislation, and we support it too. We can see the unintended consequence, but the amendment also does a little more than that. It has been often argued, and I agree, that regulations will be used to nail down matters of contract and standard employer indemnity policies. That is the sensible thing to do because it allows the legislation to be easily amended and for it to operate more easily. I am not having a direct shot at the minister but I am saying that the Assembly, the minister's office and I missed this. That is the fact of the matter. However, we rely on draftspeople to know what they are doing. We should not just shrug our shoulders and say, "This happened", and move on to the next item. It is just not good enough.

HON NICK GOIRAN (South Metropolitan) [4.07 pm]: I rise to support the Workers' Compensation and Injury Management Amendment Bill 2012 and am pleased to do so following Hon Max Trenorden's contribution. I have to say at the outset that in some respects I concur with his comments and think that this is something that all members should take into account. Perhaps it is an example of why we might use the committee system for what I think some members have referred to today as complex legislation.

Hon Kate Doust: There is only one group holding us back from using the committee system, and you are sitting there.

Hon NICK GOIRAN: Be that as it may, it is good that this matter has been picked up in a timely fashion. The bill that is the cause of this issue was before us only some six months or so ago. Perhaps, unlike Hon Max Trenorden, I do not share the concern that the change we are proposing today will result in some workers being underinsured, if that was the intention of the member's contribution.

Hon Max Trenorden: No, I have no problems in that area, nor does the National Party, I might add.

Hon NICK GOIRAN: I am pleased to hear that, honourable member. I think that the reason the member holds that view, as I do, is partly that \$50 million is a pretty big claim. I am not aware of any claims that have exceeded that threshold. Common law damages in Western Australia are severely restricted at the best of times.

Although there may well be circumstances when something in that order might be appropriate, we have nothing like the American-type system of damages whereby people get into that territory.

I do not have any concerns about the bill before us. I hope the minister will be willing to entertain my contribution this afternoon. It is a good opportunity for us to consider the impact of the bill that we passed six months ago and to consider whether those reforms have been positive or otherwise. I want to bring to the attention of the house some interesting feedback that I have received about the new conciliation service and the new arbitration service.

I will start with the conciliation service. Having reverted to a similar arrangement that WorkCover had in place previously, which was predominantly a backloaded system, a significant number of disputed claims have been resolved at the early stage. At first blush, this would appear ideal. However, it remains of concern that it is often not the dispute that is being resolved but the entire claim. I raise the following issues. Firstly, are the common law rights of workers adequately considered? Secondly, should this be the role of the conciliation officer settling the entire claim rather than just the dispute that is before them? Thirdly, is the conciliation officer in a position to adequately consider the entire claim, including the common law rights of the worker? If the answer to any of those questions is no, there is cause for serious concern. It needs to be noted that the conciliation officers are not required to be legally trained, nor are many of the registered agents who appear before them. Very little documentation regarding the claim is required to be before the conciliation officer at that stage.

I pause at this point to support the comments made by Hon Kate Doust earlier this afternoon that this is a complex area. People should be under no illusion that this is a simple and straightforward system. It never has been; it has always been complex. Although some hold the view that legal practitioners are on a scale something below used car salesmen and the like, when people are injured in the workforce and they require compensation and they realise for the first time how complex the system is, they suddenly hold a different view about legal practitioners in the state. When we have such a complex system and when people are settling their common law rights, which is over and above the dispute that is before the conciliation officer, we need to exercise some caution as to who is advising them in those circumstances.

Once the conciliation process is underway, I understand that there is a fixed period of 56 days in which to conciliate before the parties can do one of the following if the dispute has not been resolved. First, they can apply for an extension of the conciliation process of up to 56 days. Second, they can make an application to go to arbitration. I no longer hold a practising certificate so I no longer have firsthand experience of what is happening in the system. I rely on my former colleagues to give me firsthand accounts of what is happening in the system. Over the past three years I have regularly taken the opportunity to meet with my former colleagues so I can understand what is happening in the courtroom, at WorkCover and in other places where legal practice occurs in this state. I am advised that very few of the applications for an extension for a further 56 days for the conciliation process are being granted. It would seem to me that that is contrary to the very spirit of conciliation and is in urgent need of an amendment. I liken it to the District Court requiring parties to go to trial without granting them a further pre-trial conference. Like a District Court trial, arbitration should be considered the last resort. Without intending to direct any criticism to the conciliation officers, I am advised that they tend not to mediate at the hearings and leave it largely up to the parties. This would mean that either they are lacking in training as mediators or, alternatively, they do not believe it is their role. Whatever the case, I believe that mediation should be at the forefront of any successful conciliation process. I hope that these comments on the conciliation process will be of some assistance to the minister and his team as they consider further reforms in the future.

I turn now to the arbitration service. I will make a shorter contribution in that regard because it is early days for the arbitration service, so I have had minimal feedback to date. However, one criticism has been that if the parties happen to reach a resolution during this process, the arbitrator, surprisingly, has no power to make appropriate orders in the circumstances. Again, if I use the District Court as an example, it would be like parties reaching a settlement prior to or at trial and the presiding judge not having the power to make appropriate orders. It would seem to me to be a no-brainer to have that very power made available to an arbitrator sooner rather than later. I would encourage an early review of the conciliation and arbitration services involving the stakeholders to consider the issues that I have raised this afternoon.

As to the other reforms, such as the removal of the age limit, the common law rights extending to workers of uninsured employers and the 30-day period in which to commence common law proceedings after electing, it is perhaps too soon for them to take effect. However, I am aware that the minister recently convened a stakeholders' group to begin the task of the phase two reforms. I commend him in that regard and encourage the speedy continuation of those phase two reforms so we will be in a position to consider the next segment of reforms in this important area. With those comments, I want to confirm my wholehearted support for the bill.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [4.17 pm] — in reply: I would like to thank a number of members for their thoughtful and constructive contributions to the second reading debate and for their ongoing interest in a matter that touches a great many lives in Western Australia. As Hon Nick Goiran has just reminded us, it can also be an area that is extremely complex and therefore difficult to negotiate. That echoed the sentiments of Hon Kate Doust in her opening remarks when she discussed matters relating to a possible rewrite of the relevant legislation to make it more plain English, amongst other things. Indeed, it was symptomatic of her request to me to clarify a couple of matters, which I shall do shortly.

I note with considerable satisfaction that the Workers' Compensation and Injury Management Amendment Bill 2012 has the very broad and unqualified support of all sides of the house. I thank the house in turn for that. This is part of a process of getting our workers' compensation and injury management legislation working as best we possibly can because we will accept no less. I think members would expect no less. That is why I am very grateful for their constructive support. With the recent legislation that I brought to this place and that was passed last year, we took some very significant steps in pursuit of the goal of having the best workers' compensation legislation that we could develop. There has been some reference to those things today, which is useful, because the Workers' Compensation and Injury Management Amendment Bill 2012 is only about some finetuning of the resulting act that we came up with last year.

In considering the finetuning that is necessary, it is pertinent, of course, to consider how the whole machinery is performing, so I was grateful for feedback from Hon Nick Goiran on a couple of matters, which I will come to shortly. I also think it gives us a context within which to consider the bill before the house at this time, and the provisions contained therein.

As Hon Kate Doust pointed out, this bill corrects some points that needed correcting. It is a fairly simple bill, and it seeks to clarify a number of matters as well as deal with one or two unforeseen circumstances. There is nothing wrong with that; that is what we should do when deficiencies are identified in legislation. We should seek to correct them, to make them the best they can be. In considering the point made by Hon Max Trenorden that he finds it regrettable that these changes are necessary, I ask him—and others of like mind, if there are any—to consider the following: when we legislate in this place, we do so to make existing legislation better, or to fill a gap in our existing legislation because matters need to be addressed. We have been doing that here for a heck of a long time; the Legislative Council has been legislating for 180 years in Western Australia and the Swan River Colony and I think, with the advent of the Barnett government, we are just about getting it right! Admittedly, there is also another place, but they are Johnny-come-latelys who have been around for only about 120-odd years, but they will learn!

Hon Max Trenorden, of course, was a member of the other place, and I appreciate his bringing that experience to this place, incomplete though it may be. But I must defend those who were involved in the development of the bill that we dealt with last year, because I think that any criticism of alleged oversights is actually misplaced and quite unfair. I was in a position to observe at very great length the development of that bill, and I observed the conspicuous and conscientious effort that went into making sure that we had a product that was worthy of bringing into this place and that would add significantly to what was already on the statute book. I can personally vouch for the level of effort that went into getting it right, and I do so in pointing out that, in fact, very little actually needs to be tweaked in this bill, as Hon Kate Doust and others have pointed out. That is a symbol of some drafting success. It is not a bad or extraordinary thing for legislation to be amended after it has been tried in practice for its practicality; it is not unusual for unforeseen circumstances to arise. The point is that they are unforeseen, and in this case, the unforeseen circumstances that we are talking about—particularly in relation to the common law insurance limits—were unforeseen not only by the very good and competent people at WorkCover and by legislative and parliamentary counsel from various quarters, but also by the very many stakeholders in this industry, who were consulted at length and who were active supporters of the provisions that we have breathed life into. Whether it was the insurance companies or the myriad lawyers involved in these processes, no-one said, "Look, we might have a problem here". No-one twigged to it, so I am sorry if Hon Max Trenorden wants a head over this, because if we were to be fair, we would have to have quite a lot of people exhibited on pikes over Tower Bridge. The blame, if there were any to be apportioned, would fall across the entire industry, because everyone was happy with it. I hope Hon Max Trenorden does not want any heads; maybe I could find him one as a token or something, but I really do not think that that is required, so I have defended the honour, professionalism and capacity of those who were involved in creating the legislation.

Hon Kate Doust interjected.

Hon SIMON O'BRIEN: That is true; the other thing is that there are two houses of Parliament. One of them may not know better, but we do! But nobody here picked it up, either. Why? Because it is not an unreasonable provision; it sounds fine. I quote from section 160(1), which states, in part —

Subject to this Act, every employer shall obtain from an approved insurance office and shall keep current a policy of insurance for —

(a) the full amount of the employer's liability to pay compensation under this Act ...

That is what we set out to do. Amongst a whole range of other things in the previous legislation, we set out to make sure that there were no loose ends whereby someone might not be covered adequately by insurance and therefore, if they suffered a serious accident, injury or disease, would be left in a parlous state. That is what we set out to do in this respect. Everyone thought that that would do it, but there was an unforeseen circumstance. That is all right because we are going to correct it, and we are doing it with the enthusiasm of everyone in the house, including Hon Max Trenorden!

Hon Kate Doust asked me to address a couple of matters, and I will now turn to those. Firstly, there was some discussion—echoed by Hon Alison Xamon—about the definition of “deemed worker”, and a desire to make sure that everyone, whether they are a deemed worker or some other sort of worker, is covered by workers' compensation insurance.

Hon Alison Xamon: Or something.

Hon SIMON O'BRIEN: Or something to that effect. What I am trying to do, in response to Hon Kate Doust's request that I put something about this on the record in plain English so that people will know what it is about —

Hon Kate Doust: It's actually in reference to the definition of “damages”.

Hon SIMON O'BRIEN: I am going to come to that in a minute. We started off with the definition of “deemed worker”, and I want to respond to that in this way; it is a simple way to describe the outcome that we are pursuing, and I think that we are nearly there: it is to make sure that every worker, whether they have a direct employee–employer relationship with some insured party or whether they do not have that direct employee relationship but still need to be afforded insurance protection, can get that protection. That is what we are trying to do; we are trying to cover all bases. The previous incarnation of this legislation also tried to do that and, by and large, it did.

The gap was very, very small, but we had one or two cases—young Bryan Hedges comes to mind—in which someone in a deemed worker relationship suffered an injury in the workplace, and it transpired that the keeper of the premises where the incident occurred who should have held common law insurance did not have that insurance. Therefore, the worker in question and his family were very seriously and adversely impacted upon. That is the sort of extraordinary, though, thankfully, rare, situation that we are trying to make sure does not happen again. To do that, we brought in changes to legislation, with the agreement of the house, to make sure that everyone must be in possession of an insurance policy for common law liabilities so that they shall be covered. That is what we are trying to achieve—no more and no less. So the changes to definitions, the finetuning of definitions, is all about making sure that we have the bases covered. If necessary, in future it will evolve further, and if I identify a need for it to evolve further, I will come back to the house in due course with such a bill.

Hon Kate Doust also asked about the review of the legislation.

Debate interrupted, pursuant to standing orders.

[Continued on page 1706.]