



Speech by

**MIKE REYNOLDS**

**MEMBER FOR TOWNSVILLE**

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### **WORKCOVER QUEENSLAND ACT**

**Mr REYNOLDS** (Townsville—ALP) (7.14 p.m.): Tonight I rise to speak about the draconian implications of the WorkCover Queensland Act of 1996. The Santoro amendments to the Act, which were formally introduced in February 1997, represent an attack on the rights of injured workers, using draconian measures the likes of which have not been seen before in remedial legislation.

The structure of the Act, particularly in relation to access to damages provisions, is unnecessarily complex, convoluted and circuitous. It contains many hidden traps for injured workers seeking just compensation for serious injury. Lawyers acting for injured workers report great difficulty in their attempts to interpret the statutory provisions into a coherent format so that they can advise their clients with certainty as to legal action outcomes.

Since February 1997 there have been many instances of seriously injured workers being denied access to common law rights because of the general limitations on persons entitled to seek damages, provided for by section 253 of the Act. It seems that if a doctor employed by WorkCover assesses the injured worker and decides that the worker's symptoms are not related to a workplace accident, then the worker has no right to sue and very limited rights of appeal against such a decision. It should be the role of the common law courts to determine this issue, not someone employed by WorkCover who makes such a fundamental decision.

There have been problems in determining who is a worker for the purposes of the Act. The present definition requires that a worker must be a PAYE taxpayer. This restriction excludes many workers who, for a variety of work reasons, are not PAYE taxpayers—for example fishermen and shearers, who are commonly on RPS and PPS tax systems.

The 1997 Act was supposed to save injured workers legal costs. The reality is that, because of the complexity of the Act and the need to take numerous prelitigation steps, legal costs have necessarily risen, to the detriment of injured workers and the workers compensation scheme. Many injured workers who would otherwise have a good common law claim have been so intimidated by the potential cost consequences of the Act's provisions that they are electing to take meagre payouts offered by WorkCover rather than risk having costs awarded against them or not being awarded the legal costs of their actions. This is a scandal. It amounts to statutory standover tactics being used against injured workers who already have enough to worry about with their injuries.

The provisions relating to the reduction of damages because of contributory negligence by injured workers is another example of legal thuggery. The provisions are oppressive, draconian, unnecessary and an attempt to bluff and terrorise injured workers into settling for inadequate amounts.

The tactics promoted by the Santoro legislation have resulted in a substantial number of injured workers being unjustly deterred from bringing their rightful common law claims. The greatly reduced number of actions which have been commenced under the Act's provisions are testimony to the fact that the fear tactics engendered by this legislation have worked. The tactics may have worked, but in their wake they have left hardship and heartbreak in the lives of injured workers and their poverty-stricken families. The architects of the Santoro amendments should hang their heads in shame.

Many practitioners in the field of workers compensation have expressed the view that the 1996 Goss amendments were more than adequate to redress the problems of the scheme. The Santoro amendments have gone too far and have been to the advantage of employers only and not to injured

workers for whose benefit the Act was originally introduced. The Opposition Leader said in this House last week that this is one of the very issues the Opposition would campaign on in the Mulgrave by-election. I say to the Opposition Leader: go ahead. This is an issue the Labor Party will fight very strongly on.

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