Speech by

JULIE ATTWOOD

MEMBER FOR MOUNT OMMANEY

Hansard 14 April 1999

WORKCOVER QUEENSLAND AMENDMENT BILL

Mrs ATTWOOD (Mount Ommaney—ALP) (4.45 p.m.): It is great to see this Government come up with a workers compensation reform that is fair to workers and employers. I have received a great deal of positive feedback from constituents in my electorate of Mount Ommaney in anticipation of the WorkCover Queensland Amendment Bill.

One of the key reforms contained in the WorkCover Queensland Amendment Bill 1999 relates to the definition of "injury". This reform addresses the current imbalance in the system resulting from the current definition of "injury", which is the harshest and most restrictive of any Australian jurisdiction. The current definition, which requires that employment must be "the major significant factor causing the injury", has excluded some injured workers from receiving the compensation to which they should be entitled. Take, for example, the case of a person who suffered from a repetitive strain injury in a previous job and, because of the nature of the work in the current position, the injury has started to flare up again. This is particularly the case in relation to an aggravation of a pre-existing injury or disease.

A case file review undertaken by the Department of Employment, Training and Industrial Relations showed a 67% increase in the rate of rejections for work-related aggravations of pre-existing injuries. The intent of the new provision is to broaden the definition of "injury" to require that employment be a "significant contributing factor" to the injury as well as arising out of, or in the course of, employment. This will still require a strong link between employment and the injury. In other words, the injury must be more than a minimal or coincidental work-related component before it becomes compensatable.

For an aggravation of a pre-existing injury, disease or medical condition, the legislation will clearly define that the aggravation is compensatable to the extent of the aggravation only. This Government believes that while this change will improve fairness, it can only do so if implemented consistently.

Honourable members will recall that the Government intended introducing legislative guidelines to assist with the interpretation of this provision. However, it became apparent during the drafting that, to ensure clarity, the provision would be very detailed and complex. Consequently, it is more appropriate to have the guidelines included in administrative documents containing, for example, the nature of and particular tasks involved in the employment, the likelihood of the aggravation occurring despite employment, the existence of any pre-existing/predisposing factors in relation to the aggravation of the injury or disease, and the activities of the worker not related to employment.

In addition, the Government will request the WorkCover board to undertake the systematic training of claims officers to ensure consistent decision making. It will also request WorkCover to require self-insurers to do the same. These measures will assist with improving the quality, timeliness and consistency of decision making by WorkCover and self-insurers.

The second major reform in relation to the definition of "injury" involves journey claims. As society dictates that people have to work, it is simply a matter of fairness that workers be compensated should they be injured on their way to or from work. This is a fundamental policy of this Government which will ensure that fairness and social justice prevails. In today's society, a large number of households have either an only parent or both parents working. This means that, in many instances, working men and women do not take the shortest route to work as they are required to take children to

school and child care. The existing legislation may not cater for this need as it specifically excludes compensation for injuries arising where a worker did not take the shortest convenient route. The proposed removal of the "shortest convenient route" provision means that the Act now meets the needs of contemporary society.

We have also removed the exclusion from compensation to those who are judged to have either partly or wholly placed themselves at risk of injury during the journey. This provision effectively disqualifies a person from compensation if they contribute in any way, even by way of inattention, to the injury. Inattention—which can be nothing more than a loss of concentration—affects everyone at some stage and, whilst not condoned, it should not be the substantial factor in determining whether a worker should receive compensation. The proposed reforms do not mean that a worker will have access to compensation for any journey claim.

Existing provisions that exclude compensation for injuries incurred during a journey that involved a substantial delay, or substantial interruption or substantial deviation, will remain, as will exclusions based on contraventions of certain sections of the Traffic Act or the Criminal Code. These provisions are considered sufficient to protect employers against claims that are incurred beyond what would be reasonably expected in a journey to and from work. Administrative guidelines will be an important part of this amendment and will provide consistent decisions.

The Government has also turned its attention to inadequacies in relation to stress claims. The existing provision means that claim managers and the courts may consider whether a reasonable person in exactly the same employment would have sustained the same stress disorder, and also make some assessment of the person's susceptibility to psychological or psychiatric disorders. These assessments are not only extremely difficult to make but also, due to human nature, will never be uniform. The removal of the "reasonable person" and "ordinary susceptibility tests" for psychological and psychiatric injuries is a reasonable balance between providing compensation to workers who suffer stress disorders and protecting employers from claims that may arise from a worker who might not want to accept a fair and sound management decision.

It is proposed that these three key areas of reform—the definition of injury, stress and journey claims—commence from 1 July 1999. These reforms illustrate this Government's commitment to a workers compensation system that balances the rights of injured workers with the rights of employers—a system that reflects contemporary work practices and a system that can only benefit the Queensland community as a whole. I congratulate the Minister, the Honourable Paul Braddy, on his commitment to the workers of Queensland and on making these changes a reality.