Speech by

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MEMBER FOR GLADSTONE

Hansard 15 April 1999

WORKCOVER QUEENSLAND AMENDMENT BILL

Mrs LIZ CUNNINGHAM (Gladstone—IND) (8.30 p.m.): During the term of the previous Parliament, the most difficult legislation that I had to deal with for a number of reasons was a Bill that dealt with the review of WorkCover. The provisions of that legislation related to people at a time when they were most vulnerable—when they had been injured at work. In that debate, I made the following opening comment—

> "The matter of access to a fair and compassionate workers' compensation scheme is a central pillar for a caring society."

My position and my views on that matter have not changed.

The objects of the workers compensation legislation were outlined as, firstly, to provide an injury insurance system which maintains balance between benefit adequacy for injured workers and premium levels for employers; secondly, to provide adequate and suitable cover for workers who suffer injury in the workplace and for dependants of workers whose death results from such injury; thirdly, to make provision for employers and injured workers to participate in an effective return to work program or rehabilitation; fourthly, to provide flexible insurance arrangements suited to the particular needs of industry; and fifthly, to protect the interests of employers in relation to claims for damages because of injury to a worker.

I still believe that the workers compensation scheme must be fair and balanced not only to ensure an accessible and fair regime of compensation for the worker but also to be affordable for the employer, because one without the other just will not work. At the time we were debating the previous legislation, there were a couple of pivotal issues about which I expressed concern and, thankfully, they have obviously been at the centre of the review by the current Minister. I would like to thank the Minister for giving me access to his advisers for the clarification of elements of the Bill that have arisen to date.

The two issues in the previous Bill that were excluded but had been discussed were common law and journey claims. Thankfully, workers retained access to both of those elements. However, at that time one of the abiding concerns was a concern that I had about the definition of "injury" and the definition of "worker". I felt that one particular benefit of the change in the definition of "worker" was that it specifically drew a line in the sand and said that only PAYE people were covered. It made it very clear. It made it an easy principle to advertise. If people were not PAYE workers, then they needed to have a look at their workers compensation cover. However, concern was expressed to me about PPS employees. I can only assume from the notes and the information that I have received that that is one area that the Minister has reviewed and is proposing to include in the legislation as it currently stands.

The two points of view presented at the last review of WorkCover were polarised. The Kennedy report had extensively reviewed and made recommendations on workers compensation. I received a lot of letters about this matter that fell into two streams. One stream said, "Please will you support all of the Kennedy recommendations", and they were almost without exception letters from employers. Again, almost without exception, those who opposed the changes were employees.

The other issue that arose at the time of the last review was that it was too early to be able to gauge clearly the impact on the fund of the 20% irrevocable choice that had been introduced by the Goss Government. The actuaries had said that it was too early to tell what the impact would be. We

had this polarised view of the Government of the day saying that unless significant changes were made to workers compensation law the fund would become completely insolvent, and then we had the non-Government people of the day saying that the fund was quite able to continue as it was then and that no changes were necessary.

So at the time a decision had to be made as to where change could occur. One of the questions that I asked the then Minister, Mr Santoro, was that, because of the amendments in his Bill that eventually became law, if in the medium term there was a significant turnaround in the fund to a credit balance or if the circumstances eventuated that the definition of "injury" in particular created unacceptable problems for injured workers—when the situation of the Workers Compensation Fund became clear—would the Minister be willing to revisit those issues. At the time, Mr Santoro indicated that he would. Again, I asked: particularly if significant disadvantage is being faced by workers under the definition of "injury", would the Minister revisit the legislation and revise the definition so that the fundamental tenet of workers compensation, that is, to give safety and protection to injured workers and their families, would be maintained?

The review did not occur before the election in 1998. However, I express my appreciation to the Minister today for reviewing it. I am not going to get into any arguments about motivation or anything else. The fact is that, because of the wide, sweeping changes that were brought in—and I was part of it and I do not resile from it—there was a need to ensure that it was reviewed so that the depth of change could be gauged after a sufficient time to ensure that the fund received the benefit that it was purported to be going to receive and, more importantly, that injured workers were not unnecessarily or unacceptably disadvantaged or excluded from the scheme.

The two issues that have remained in my mind, and which have been addressed in this Bill, are the definition of "worker" and the definition of "injury". The proposal is to return to the legislation the definitions of both of those terms as they appeared in the previous Labor Government's legislation. Under the coalition Government, those terms were changed quite significantly. One of the issues that arose with the definition of "worker" was when employers insured only a small proportion of their work force and then switched names to make sure that whichever employee got hurt was actually covered by their insurance. That was not legal. In relation to the definition of "injury", the difficulty had been how to gauge the repair or non-repair of things such as back injuries and how to assess stress injuries. I wondered what change or what new safeguards the Minister has introduced, in restoring these definitions of "worker" and "injury", to protect the system from abuse. I refer to abuse by both employers and employees; I am not differentiating between one or the other.

I have some questions in relation to a couple of the clauses of the Bill. Bruce England is the Gladstone manager of WorkCover. I have always found it a delight to work with Bruce. That does not mean that he can always fix up the problems that I take to him, but he is always very helpful and very approachable. A number of issues in central Queensland are causing problems, and I think that is because of our distance from medical facilities. They relate to things such as access to acupuncturists. Recently, a man was off work and his own doctor had prescribed acupuncture for him. The closest WorkCover approved acupuncturist is in Mackay. There is a local acupuncturist who, although certified, is not certified for WorkCover purposes. This man went to see that acupuncturist for treatment. WorkCover would not cover that man for those visits to that acupuncturist, but it would have paid for him to travel to Mackay three times a week to have the acupuncture and then travel back. There is a lack of efficiency there and an unnecessary added cost. I wondered whether there could be a review of what is defined as an accepted acupuncturist, particularly in regional areas.

I will ask for a couple of points of clarification, although I am aware of the time. Clause 5 changes the definition of "worker" so that a worker is not just a PAYE taxpayer. I checked with the Minister's advisers and was told that the definition still does not cover a deckhand who is working on a boat for a percentage of the catch. I was attracted to the PAYE line in the sand because it was clear-cut, it was easily advertised and the information was very clear. Even under the proposed amendment, there will still be a lot of situations, such as deckhands who work for a percentage of the catch, that are not covered by the legislation. How will the community be informed clearly so that people can understand whether or not they are covered under the proposed new definition? It is critical that people know whether or not they are covered. I have heard of a couple of instances of young fellows having been hurt on boats. They assumed that they were covered by workers compensation, but they were not because they were working for a percentage of the catch. They worked away merrily until they were hurt.

Another question that I have asked is: how will compliance be policed? One of the basic reasons for the previous change to a PAYE-only system was the policing issue. What new measures will be instituted to ensure compliance?

The legislation will also change the meaning of "injury". Those two changes in definition are the major issues that concern the shadow Minister. Under the legislation, the definition of "injury" will be

changed so that a "major contributing factor" becomes a "significant contributing factor". The Explanatory Notes did not provide a lot of detail on the basic reasoning for that change. I am sure that there is some quantitative information and that there were instances where people could have justifiably claimed workers compensation, that is, that they were genuinely injured at work but would have slipped through the gap because of that previous change in definition. I would be interested in the rationale for the change back to this definition. I would like to know how that will be safeguarded from abuse.

I am thankful that the aggravation issue has been changed back again. On a number of occasions in my office people have raised instances where a genuine WorkCover injury was incurred but it was incurred some years previously. In those cases, the people concerned had great difficulty in proving WorkCover liability because of the change in cover for an aggravated injury.

Clause 11 of the Bill relates to injuries that happen during particular journeys. As I said earlier, the previous Government had intended to drop journey claims altogether, which was quite untenable. For example, training nurses leave Gladstone and travel to Biloela, do their training session and return. That is effectively a work journey. Under the proposals of the previous Government, those nurses would not have been covered. Journeys remained from boundary to boundary. The Act as it currently stands states that a journey has to be conducted by the shortest convenient route.

When I was being briefed on that Act in Bill form, on quite a number of occasions the case was raised of people whose journey involved leaving their work, stopping off at the pub, having a few beers and then going home. Those people were winning court cases. Because that was their habit, it became the shortest convenient route—it was convenient to stop at the pub. How will that situation be contained? The legislation refers to the "shortest convenient route" and is intended to include journeys to drop children off at school or child care and pick them up again, which is very valid. Most people would say that in families where both parents work, that is the only way that the family can function. If the legislation includes only those sorts of stops or journeys to pick up the mail, for example, that is fine. However, as I said, over the years the situation deteriorated to include stops at the pub.

I believe that my concern relating to clause 15 will be addressed by an amendment that will be moved by the Minister. When I read the Bill, I was very concerned about the fact that self-insurers were going to be held liable for incidents that occurred prior to their becoming self-insurers. I was concerned that even though they were paying premiums to WorkCover pre-1996, once they became self-insurers they were going to be asked to carry the liability of incidents that would have occurred when they were paying premiums to WorkCover. That is a concern. I note that the Minister has negotiated with some of the major employers, and the Local Government Association is one that I have had contact with. I guess that those negotiations and the amendments that the Minister will move go some way to addressing those concerns.

However, I am concerned about the fact that IBNR and common law claims which have still not been settled remain. It will take a very specific formula to pick up all the probabilities to ensure that a new self-insurer is not covering a risk or paying for a risk that they really should not because it was incurred while WorkCover was effectively the insurer.

Another concern that has been expressed to me relates to the proposal to increase the requirement for a self-insurance group from 500 to 2,000. I do not understand the rationale for that and one has not been given. Have there been problems with groups of 500? Is there an insufficient resource or revenue base? Have they found that actuarially they are not sound at that size? Is 2,000 a better size as far as an insurance scheme is concerned or is it merely to reduce the number of groups that would be eligible to self-insure and therefore, by default, keep more people in the WorkCover scheme?

Clause 20 proposes the introduction of a transitional surcharge. I query whether that surcharge will be greater or less than the current surcharge that is being paid.

I have already touched on how the IBNR assessment will be made. The Minister's advisers have told me that a group, including the actuaries, worked on the last documentation for WorkCover and that there are actuaries for the Local Government Association of Queensland and other self-insurers. I am sure that they will be able to do it because they are number smiths, but I am intrigued at how they will call up all of the possible factors, all of the possible IBNR situations and all the contingent liability situations to ensure that both parties, whether it is WorkCover or the self-insurer, are not needlessly or unfairly disadvantaged.

I congratulate the Minister for the change outlined in clause 31. As I have said, a lot of new things were instituted in the WorkCover Bill 1996, some of which needed some time to develop so that we could see whether or not they advantaged or disadvantaged people. I can only assume that some disadvantage has become evident, because clause 31 extends the period within which applications for workers compensation can occur. A retrospective 28 days has been included in the legislation. Previously, if a person applied post 28 days and the application was approved, they received payment from the date of application. The Bill backdates that payment up to 28 days. A family that would be

quite financially stressed at such a time would value that financial assistance. On their behalf, I thank the Minister for that change to the legislation.

Clause 32 of the Bill relates to the decision about the application for compensation. The last WorkCover Bill, which is now the Act, gave a lot of attention to tightening up time frames. This Bill proposes to change the time from three months to six months, and that happens in a couple of instances. From memory, the reasons that were given for the tightening up were to get people to respond to their situation and to get the paperwork flowing. There was an administrative benefit as well. Did those time frames turn out to be too tight? Were people disadvantaged by it? Will the extension from three months to six months disadvantage either the workers—and I cannot see that occurring—or the fund in any way?

The Minister is establishing a WorkCover Review Council. I would be interested to know whether the establishment and running costs for the WorkCover Review Council have been determined. At times there has been frustration on the part of WorkCover recipients who have disagreed vehemently with the findings of a medical assessment tribunal. They are frustrated because they are then left with nowhere to go. The advice that I received from the Minister's advisers was that the WorkCover Review Council will not interfere with the medical assessment tribunal. The tribunal will still be the last point, but what they will be able to do is——

Time expired.