Speech by

MIKE REYNOLDS

MEMBER FOR TOWNSVILLE

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WORKCOVER QUEENSLAND AMENDMENT BILL

Mr REYNOLDS (Townsville—ALP) (12.17 p.m.): This Bill is part of the reform package aimed at restoring equity and balance to the Queensland workers compensation system. It is with a great deal of pride that I rise today to support the Bill. A number of proposed changes have been incorporated in this WorkCover legislation and I will outline those first of all.

The improvements that have been put forward by the Minister in his second-reading speech are substantive improvements for the workers of this State. In saying that, I point out that three years ago I held the position of convenor of the Townsville Workers Rights Coalition, which was a coalition of professional groups, including medical specialists, lawyers, workers and the trade union movement who were aggrieved about the changes that were being proposed at that time by the National/Liberal Party coalition.

Today this Bill substantively addresses many of those concerns, because the 1997 amendments moved by then Minister Santoro were horrendous for the workers of this State. Every member of Parliament knows, having heard from workers aggrieved about the WorkCover provisions coming through their offices, that there is a great deal of frustration, because at the end of the day the law is the law. These changes will go a long way towards balancing the needs of workers and employers in this State.

The changes that have been proposed in this Bill today include changes to the definition of "injury"; changes to stress, in terms of psychiatric and psychological disorders; changes to journey claims; a change to the definition of "worker", a very important change; changes to premium rates and costs; key changes to self-insurance, self-rating, reviews and appeals, including medical assessment tribunals; and changes to premium compliance. All of these provisions are important ones for the workers of Queensland. I congratulate the Minister, Paul Braddy, on bringing these changes into the Parliament in the early phase of the Beattie Labor Government.

I will now comment on the contributory negligence provisions of the current Act. The Minister, in his second-reading speech, stated that he is concerned about the possible unfair impact on damages awards resulting from the current contributory negligence provisions. I share his concerns. He went on to say that the arbitrary and mandatory reduction of at least 25% in awards for each negligent action by the worker potentially means that, if a worker contributes even in a minor way to his or her accident, the worker could be left with nothing.

The Minister has also stated that while he is concerned about what could happen unfairly to workers' damages awards as a result of the contributory negligence reductions, the Government is not currently in a position to make substantial changes. This is particularly so as there has been no experience yet to evaluate the impact of the changes, as no matters have been brought before the courts under the coalition's provision. Actuarial advice is that it would be artificial at this time to attempt to quantify the cost of changing the coalition's contributory negligence provisions to remove the mandatory reductions of at least 25% contributory negligence. The Minister went on to say that common law issues are extremely complex and that the effects of changes need to be fully evaluated in terms of impact and costs.

The Minister has stated clearly and on the public record that, within the first six months of its next term of Government, Labor will review the additional workers compensation common law provisions introduced by the coalition in the WorkCover Queensland Act 1996. In the interim, this

Government will closely monitor and evaluate the impact of these provisions as experience comes to hand. I look forward to working with the Minister to ensure that the contributory negligence provisions are evaluated at the earliest possible time.

I emphasise the need for a change from the disastrous and inept policies of the National/Liberal coalition that have had a major effect on the workers of this State. The Santoro amendments to the Act, which were formally introduced in February 1997, represented an attack on the rights of injured workers, using draconian measures the likes of which had 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 have reported over the last two years 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 outcomes.

Since February 1997, when that legislation was introduced, 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. 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 has very limited rights of appeal against such a decision. It should be the role of the common law courts to determine the 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 be a PAYE taxpayer. This restriction excludes many workers who, for a variety of work reasons, are not PAYE taxpayers—for example, fishermen, construction workers and shearers, who are commonly on RPS and PPS tax systems.

Mr Knuth: Painters.

Mr REYNOLDS: And painters; that is exactly right. The tactics that have been 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 the coalition's legislation have worked. That is what we are remedying in this House today. 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. There are not many of them here— just the two of them in the House today. That shows their interest in the Bill before the House. 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 the injured workers for whose benefit the Act was originally introduced many decades ago.

I am glad that the member for Mulgrave is here to hear what I am about to say, because it relates to his recent election to this place. In November of last year the Opposition Leader said in this House that the issue we are debating today was one of the very big issues the Opposition would campaign on in the Mulgrave by-election. It went ahead and campaigned in the Mulgrave by-election. What happened? The coalition was overwhelmingly defeated, because the last two or three years of the operation of this Act have shown the coalition up for what it is. It is anti-worker. It is anti anyone in the community who requires some form of social justice.

For a moment I will talk about the self-insurance provisions of this Bill. As part of its consultation process in formulating the WorkCover Queensland Amendment Bill 1999, the Government has undertaken considerable consultation with individual self-insurers and the self-insurers association. The Government acknowledges that companies that have already self-insured have incurred significant establishment costs and therefore cannot justify reversing self-insurance. However, the Government is also concerned that there are insufficient safeguards within the current system to ensure that workers and employers operating within self-insurance schemes are securely protected. Protection for workers can only be achieved if a self-insurer's workplace injury costs are kept to a minimum. This reduces the self-insurer's costs and therefore the risk to its ongoing viability.

While the Act has prudential and rehabilitation criteria, it is deficient in that it does not address the critical area of injury costs. This concern was shared by the WorkCover board, which recommended to the Government that strengthened licensing criteria be introduced. As a result, self-insurers will now be required to comply with new criteria on renewal of their self-insurance licence or on application for a new licence. Firstly, self-insurers will be required to meet occupational health and safety standards. It stands to reason that only the best performing companies—that is, those with proven excellent workplace safety records—should qualify for a licence.

Amendments to be proposed in Committee will provide for the Division of Workplace Health and Safety to submit a formal report to the WorkCover Queensland board on how the self-insurer fared in this regard. The WorkCover Queensland board will be required to consider this report in determining if a self-insurance licence is to be granted. In other words, the occupational health and safety criteria will be subject to the WorkCover board's consideration of the licence criteria and not subject to approval by the Division of Workplace Health and Safety only. A further amendment will alter the time frame for existing self-insurers to comply with occupational health and safety criteria to be three years from 3 March 1999 or renewal, whichever is the latter.

There has been some suggestion of inequity in requiring self-insurers to comply with occupational health and safety criteria when employers in the general scheme are not required to meet this criteria. The Government's response to this is that the employers in the general workers compensation pool are encouraged to improve their workplace health and safety performance through the premium rating system.

Self-insurers are not like other employers; they are insurers. They need to minimise workplace accidents to reduce their risks and claim costs. The Government is not imposing anything other than what other employers should be doing but merely asking self-insurers to demonstrate best practice in this regard. The changes proposed will ensure that self-insurers monitor their health and safety performance without imposing onerous obligation, as is the case in other States.

In relation to liability, self-insurers will assume responsibility for claims incurred prior to the self-insurance period. The current system allows for employers who want to self-insure to leave the liability for previous claims with WorkCover. Consequently, the general fund must meet this liability. The Government considers that this is inequitable and, therefore, proposes that self-insurers will now assume liability for all pre-existing claims as well as those incurred during the period of the self-insurance licence. The process and calculation for the tail of claims will be spelt out in the regulation. Agreement on these matters is being finalised with the self-insurers association. The process will be transparent, and the actuaries for self-insurers and WorkCover will be involved in the calculation and the process. The change also provides consistency for self-insurers, as it removes the requirement for employers to operate under two schemes and provides clarity which will reduce the number of disputes about who is responsible for the payment and management of a claim.

The requirement for self-insurers to assume the responsibility for past claims is not new and has been adopted by other Australian jurisdictions. The management of claims will only be undertaken by the self-insurer and cannot be transferred to a third party, except in certain circumstances, such as group classification self-insurers. One of the key advantages of self-insurance is that self-insurers accept greater ownership and responsibility for their claims and integrate their total risk management with their human resource management. This cannot be achieved where third-party claims managers are involved. The restriction on third-party claims management was a recommendation of the WorkCover board. It is also supported by the self-insurers association of Australia. Some people assert that third-party claims managers act as the umpire in claims decisions to reduce the likelihood of industrial disputation. However, as WorkCover already fulfils this role through the review unit, this argument, I believe, cannot be sustained.

Companies and group employers will be required to employ more than 2,000 employees in Queensland to qualify for a self-insurance licence. As I have stated, security and the protection of benefits for workers is one of the founding principles of Queensland's workers compensation system and one that this Government believes cannot be compromised. The Government considers that the risk to this security can be minimised by providing that only large companies, which have a greater capability of carrying the infrastructure and costs associated with maintaining a workers compensation system, be eligible for a self-insurance licence.

An amendment in Committee will propose that the surcharge for self-insurers be removed. The current Bill requires self-insurers to pay this until they take their tail of claims or full solvency is reached. The levy for self-insurers also will be reviewed by the WorkCover Board to ensure fair contribution levels. This levy has not been reviewed since its inception in 1997.

The timetable for introduction of the changes to the licensing criteria is as follows. All existing licences will remain in place. However, these licence holders will need to meet the strengthened criteria when renewing their licence, except for the increase in the number of workers and the occupational health and safety criteria, as discussed earlier. Applications received and currently being considered by WorkCover but not yet approved will be assessed for their initial licence on the existing criteria. However, third-party claims management will not be allowed. On renewal of these licences, the strengthened criteria will apply except for the increased number of workers. All new applications received after 2 March 1999 will be subject to the strengthened criteria.

There are very few principles that rate more highly than ensuring that injured workers are securely cared for and provided every assistance to help them return to work and to the financial

security they enjoyed before their injury. The Government believes that the new licensing requirements will protect these principles. I look forward to each of the legislative stages in this Bill coming to fruition for the betterment of Queensland workers. The current workplace provisions are iniquitous, they lack compassion and they are anti-worker. I commend the Bill to the House.