Speech by

Hon. P. BRADDY

MEMBER FOR KEDRON

Hansard 25 March 1999

WORKCOVER QUEENSLAND AMENDMENT BILL

Hon. P. J. BRADDY (Kedron—ALP) (Minister for Employment, Training and Industrial Relations) (11.29 a.m.): I move—

"That the Bill be now read a second time."

This Bill is part of a reform package aimed at restoring equity and balance to the Queensland workers compensation system. This Government believes that the workers compensation system must benefit the whole community. We cannot tolerate a system which discriminates against particular workers or employers, or has the hurdles so high that access to compensation is extremely difficult. We believe the system must be fair, balancing the rights of injured workers against the need for competitive and affordable premiums for employers while maintaining a secure and viable workers compensation system. Unfortunately, changes made to the system by the previous Government have upset that essential balance. The coalition's WorkCover Queensland Act 1996 has resulted in significant reductions in the rights of workers to compensation and added exposure to common law for some employers.

Prior to winning Government, Labor clearly stated its policy intention in relation to the definition of "injury" and "worker" and the maintenance of a viable public workers compensation system. The Government recently released its package of proposed reforms in the position paper Restoring the Balance. This was followed by a Queensland-wide information campaign and consultations with key stakeholders. I have considered the views of stakeholders in developing the final package, which now includes some additional changes to those proposed in the position paper.

I believe that it is a well-balanced outcome which will give more workers access to statutory no-fault benefits and common law damages. In addition, employer premiums will be reduced from 2.145% to 1.95%. This is the second lowest rate in the country. There were two particular concerns raised by stakeholders during the consultation process that I feel warrant specific mention: first, the need for fair treatment of workers within the workers compensation system and, second, the possible harsh effects of the common law changes introduced by the coalition in the WorkCover Queensland Act 1996.

As Minister, I support the fair treatment of both workers and employers, and the objects of the Act have been changed to reflect this. In relation to common law, I am concerned about the possible unfair impact on damages awards resulting from the current contributory negligence provisions. 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/her accident, the worker could be left with nothing. I understand that the Kennedy report recommended that a statutory definition of "contributory negligence" be included. However, the current provision goes beyond providing such a statutory definition and mandates defined contributory negligence reductions.

While I am very 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 their impact as no matters have been brought before the courts under the coalition's provisions. 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 "at least 25%" contributory negligence

reductions. Common law issues are extremely complex and the effects of any changes need to be fully evaluated in terms of impact and costs.

Having said that, I want to state clearly and on the public record that, within the first six months of the 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. By this time sufficient experience should be available for a comprehensive analysis to be undertaken.

This package is part of a well-planned and structured process to reform Queensland's workers compensation system. This Bill introduces the first step in this process. From 1 July this year, workers' access to compensation will improve. From 1 July 2000 more workers will have access to compensation, and in the year 2001, the next phase commences. Such an approach is financially prudent and nothing short of what is expected from a responsible Government. I can assure the House that the changes being introduced to the WorkCover system are financially sound.

In line with this Government's philosophy of openness and accountability, I have arranged for an actuarial briefing of key stakeholders on the costings of the proposed reforms on 31 March 1999. The projected cost of the package has been actuarially estimated to be in the range of $17.35m to $20.25m per annum, which will be more than offset by improved premium collection compliance.

While not included in this Bill, compliance must be mentioned as it is a fundamental part of the workers compensation package. Poor compliance means that some employers are paying artificially high premiums because others are not paying their fair share, and worker benefits are held at levels that reflect premium income. Two key strategies are being developed to address non-compliance. The first is an internal WorkCover strategy, while the second is the proposed activity-based premium collection model for the building and construction industry. This is an Australia first proposal, which will be further developed in consultation with the industry.

I turn now to the highlights of this Bill. The Bill contains a number of amendments to the WorkCover Queensland Act 1996 which will improve access for workers. This is balanced against reduced premiums for employers and the need to continue the growth of the workers compensation scheme to full funding. The definition of "injury" will change so that workers will be compensated if the injury arises out of or in the course of employment if the employment is a significant contributing factor to the injury. This means that a strong link between injury and employment will still need to exist before an injury is compensable. It is proposed that this will be the case for all injuries occurring on or after 1 July 1999.

The current definition, which requires that employment must be "the major significant factor causing the injury", has proven to be harsh as it excludes some workers from receiving the compensation they should be entitled to. This has particularly been the case for work-related aggravations. The definition of "injury" will therefore also clarify that an aggravation of a pre-existing injury, disease or medical condition, regardless of whether the original injury was work-related or not, will be compensable to the extent of the aggravation only.

The definition of "worker" will be changed so that all people who work under a contract of service, regardless of their tax paying status, will be eligible for workers compensation. To assist decision makers in determining whether a contract of service exists, administrative guidelines will be developed by the department and WorkCover Queensland. For further clarification, the schedule to the Bill contains provisions that declare certain groups as workers or employers. Under the existing definition of "worker", significant groups of workers, such as those paying tax under PPS while working under a contract of service, are excluded from compensation. They must seek their own personal injury insurance at their own cost.

The legislation also lends itself to unscrupulous employers forcing workers into PPS tax arrangements so they do not have to pay workers compensation premiums. Employers can also be exposed to common law damages for negligence for those workers who have been excluded from coverage. This was not the case prior to the WorkCover Queensland Act. The amended definition of "worker" will address these difficulties. This amendment will apply to all injuries occurring on or after 1 July 2000. Similarly, employers' premiums will be assessed on the basis of the revised definition of "worker" after this time.

To complement the amendments to both the definitions of "injury" and "worker", I will request WorkCover to undertake comprehensive training of staff on how to fairly interpret the legislation and apply it consistently. WorkCover will also be requested to require self-insurers to do this. Administrative guidelines will be developed by the department and WorkCover to assist in this regard.

The third major aspect of the Bill is the strengthening of the criteria for self-insurers to include performance requirements in addition to the existing prudential requirements. The Bill provides for the relevant criteria to be met in full before WorkCover approves a self-insurance application. Self-insurers

will now be required to have an occupational health and safety certificate from the Division of Workplace Health and Safety accompanying their self-insurance application.

The revised objects of the Act also recognise the need for the workers compensation scheme to encourage improved workplace health and safety performance by employers. For employers in the general workers compensation pool, this is encouraged through the premium rating system. Similarly, employers moving to self-insurance will be required to demonstrate that they have proper and adequate occupational health and safety management systems to ensure that workplace accidents are minimised.

Self-insurers will also be required to assume total liability for all their workers' claims incurred prior to the issue of their self-insurance licence. This liability will be actuarially assessed and the self-insurer will receive payout by WorkCover Queensland. To ensure the payout is fair, while not specifically stated in the legislation WorkCover will consult the self-insurer on the amount. It must be recognised that self-insurers are insurers just like WorkCover and therefore take on all the associated risks and benefits.

A new applicant employer, single or group, will also need to have more than 2,000 workers in Queensland to meet the application criteria. As self-insurers are running an insurance business with liabilities, risks, claims management responsibilities, etc., the Government considers that employers need to be of such a size to carry the infrastructure and costs associated with running an insurance business.

The Bill also stipulates that self-insurers must manage their own claims and not allow them to be undertaken by a third party. There will be an exception for classification group employers or for emergency relief purposes. This reflects the current policy already being applied by the WorkCover Queensland Board. One of the key features of self-insurance is that it provides incentives for employers to provide better claims management as claims costs are borne directly by the self-insurer.

These new criteria will take effect from 3 March:

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.

Applications received and currently being considered by WorkCover but not yet approved will be assessed for their initial licence on the existing criteria. However they cannot take out third party claims management. On renewal of these licences, the strengthened criteria will apply except for the increased number of workers.

All new applications will be subject to all the strengthened criteria.

These amendments will improve security of benefits for workers and employers in self-insurance schemes. If injuries and their associated costs are not reduced, the risk to a self-insurer's ongoing viability and ability to provide benefits to workers increases.

The Bill will ensure that only those companies with a proven excellent workplace safety record qualify for a licence. This is consistent with this Government's long-term support for accident prevention strategies.

Another important part of the Bill is a provision for workers and employers to have decisions reviewed and appealed. In 1997 the Statutory Review Branch was introduced to provide a non-legalistic and more timely approach for dispute resolution, without removing the right to go to court. It also gave workers of self-insurers an opportunity to have disputes resolved without them having to take their employer to court. Prior to this there was no avenue of review available other than the court system.

Unfortunately, the Government has received ongoing criticism about the perceived lack of independence and transparency of the current review system. This Bill addresses these concerns by providing for:

changes to WorkCover's internal decision making processes;

an increase in the time for applying for review from 28 days to three months with the provision for extension;

WorkCover to establish a review unit separate from their commercial insurance functions; and

the establishment of the WorkCover Review Council.

The role of this council will be to monitor and evaluate the processes associated with the review unit and medical assessment tribunals and to report to the WorkCover Board on these. However the Review Council will have no powers to intervene in the day-to-day decision making of these bodies. This new process will apply to decisions made on or after 1 July 1999. As currently exists, an aggrieved person must go through the review process before proceeding to court. These changes will result in a more independent and transparent system for everyone.

Importantly, the package addresses premium issues for employers. The 10% surcharge on employer premiums will be abolished from 1 July 1999 under proposed amendments to the WorkCover Queensland regulation. However, the surcharge will remain at a reduced rate for self-insurers until they assume liability for all of their existing claims.

The dropping of the surcharge will ease the burden on employers, particularly in light of the increases in premiums some employers will face due to the transition to full experience-based rating introduced by the coalition Government. This increase in premiums some face is of course entirely as a result of the coalition's introduction of the experience based rating system and is in no way a consequence of the reforms being introduced by our Government.

The Bill will abolish self-rating. Self-rating creates an inequity for employers as it provides an opportunity for certain employers to lower their premiums at the expense of others. Registration for self-raters will cease from 1 July 1999 unless the self-rater chooses to apply for a self-insurance licence.

The WorkCover Queensland Board recommended a decrease in the level of solvency required for full funding from 30% to 20%. This is in addition to the 15% prudential margin. Following further advice from the State Actuary, the Government has accepted the recommendation, and proposed amendments to the WorkCover Queensland regulation will make provision for this.

The Bill also contains a number of other amendments which are administrative in nature and will clarify the intent of the existing legislation. An additional provision will provide a technical amendment which clarifies that the courts need to consider all evidence when determining the probability of future economic loss, not medical evidence only. This amendment does reflect the intent of the original wording of the Kennedy report.

This Bill goes a long way to addressing the inequities of the current system. The Bill will benefit both workers and employers and provide both with the benefits and protection they should be entitled to. It will give Queensland the best and fairest workers compensation system in Australia. I commend the Bill to the House.