Speech by

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WORKCOVER QUEENSLAND AMENDMENT BILL

Mr SANTORO (Clayfield—LP) (11.39 a.m.): It may come as no surprise to members opposite that the Opposition will be strenuously opposing the WorkCover Queensland Amendment Bill 1999. We will be doing so for many reasons, including—

that it will fundamentally undermine the recovery of the workers compensation system from the financial coma in which the coalition found it when it assumed Government in February of 1996; and

because it also represents—indeed, it is the sublime manifestation of—the crooked motives which underpin the modus operandi of the Labor Party not only in this Parliament but in the Parliaments of the rest of Australia.

In fact, this Bill represents much of what is bad about the Labor Party and Labor Party Governments in this State, including—

the reckless abandonment of prudent and financial practices in the administration of Government departments and instrumentalities such as WorkCover Queensland;

the total capitulation to the whims and demands of its friends and supporters, including the anti-business and vested interests that drive the union movement of this State;

the unravelling of the pro-business achievements of the coalition Governments because of Labor's fundamental lack of support for business, particularly small business; and

the unrelenting Labor instinct to extract revenge from those whom it believes are not politically on side.

We on this side of the House reject this approach to policy and legislative reform as one that is fundamentally flawed, un-Australian and one which militates against the best interests of those whom we are meant to be representing in this place. We are meant to represent all Queenslanders. I want to stress at this point that we seek to represent the people who want to hold their current jobs and the people who are trying to get into the job market. Throughout this debate members on this side of the House will never stop stressing the anti-small business, anti-employment, and anti-business confidence attitude that underlines this Bill. The 5% unemployment target, which the Premier and members opposite continually say they want to achieve, is being hopelessly compromised by this first major piece of anti-business legislation introduced by this Minister on behalf of his Government. Because of this, we will be opposing the Bill before us today and will divide the House on the more objectionable amendments which are contained within it.

In order to appreciate the full extent and consequences of the amendments before us it is important to understand and put on the parliamentary record how we have arrived at where we are today. It is important that we outline precisely for the sake of the accurate record how a once very proud and effective workers compensation scheme was gutted by the Goss Labor Government. It was investigated and inquired into by one of Queensland's most successful business people—appointed to do so by a courageous coalition Government—and very quickly reformed. The reforms were so obviously successful that today Queensland can boast of a scheme which is again rapidly heading towards an actuarially healthy situation.

It is a very desirable and healthy situation which unfortunately will be very heavily compromised by the implementation of the amendments to the WorkCover Queensland Act

which we are considering today. When the coalition came to Government the dogs were barking about the dismal and dilapidated state of the workers compensation system in this State. In Opposition we forced the then responsible—or should I say irresponsible—Minister, the member for Mount Coot-tha, to admit that the Workers Compensation Fund was actuarially over $100m in deficit. That figure was subsequently found by Kennedy and the actuaries to be woefully underestimated.

However, upon coming to Government the coalition was none the wiser about the real state of the fund. This was the result of the Goss Government's and its Ministers' adherence to the practice of telling the political Opposition, the Parliament, and through these two institutions, the people of Queensland absolutely nothing about the real state of the workers compensation system of this State.

To overcome this lack of factually based information and in order to receive independent policy advice as to how to fix the increasingly obvious problems, the coalition Government commissioned the respected and successful Queensland businessman, Jim Kennedy, to undertake his now famous inquiry into the workers compensation system of Queensland. I could dedicate this entire contribution to an outline of the Kennedy inquiry's findings and recommendations. However, I wish to focus on two of his major findings as they relate to the financial state of the workers compensation system of Queensland and the reasons for the financial state of the fund as it was at the end of January 1996.

One of the most alarming findings of the Kennedy inquiry was the cannibalistic effect which the compo culture, as he defined the practices within the workers compensation system which were prevalent at that time, was having on the financial viability of the fund. Kennedy found that all players within the workers compensation system were responsible—some more than others—for the creation and the proliferation of the compo culture. To describe such a culture I will quote directly from the Kennedy report. It makes for very interesting reading and clearly demonstrates that the Beattie Labor Government, and the Minister opposite, have learnt nothing from the tragic consequences of the excesses which were allowed to exist within the workers compensation system by the Goss Labor Government. Kennedy had this to say about the compo culture—

> "There is a significant and growing 'compo culture' in Queensland which must be fought and eliminated. It is severely damaging. This is a major area of concern to many employers, as well as staff of the Board. In some industries and in some towns, the ready willingness of some employees together with compliant doctors and lawyers to 'work the system' is well known and treated almost as a worker's right. Such fraud casts aspersions on genuinely injured workers and costs industry and the Workers' Compensation Board millions of dollars annually and instils cynicism and anger among employers. Employers lose their premium bonus credits, are forced to forgo all their rights to challenge the reasonableness or necessity of a claim by the employer's worker under the 'no fault' scheme, are forced to pay substantial premiums, yet have few opportunities to challenge the 'compo culture' because of the way workers' compensation is operated in Queensland.
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> There are 'compo lawyers' who aggressively trawl the workplace for injured workers and encourage them to take out sometimes dubious or speculative common law actions on a 'no win no fee' basis. Under the guise of educating workers about their legal rights they hold workers' compensation seminars and even stand outside factories touting and handing out pamphlets promoting their services. Such activities reinforce the 'compo culture' and promote and encourage speculative and fraudulent claims, particularly in difficult to diagnose cases, such as stress, soft tissue and back injuries.
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> There are medical practitioners in our towns and cities who have the dubious distinction of being known as 'compo doctors' because of their ready willingness to write Workers' Compensation certificates for time off, with no contact with the employer concerned, or considering alternative duties or speedy rehabilitation.
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> There are also employers who wilfully abuse the system by avoiding payment of premiums or the correct level of premiums. More stringent effort needs to be made towards prevention and detection and prosecution of employer fraud."

I digress to stress what a fair review the Kennedy review was. Mr Kennedy fingered everyone in his report. He covered employees who indulge in fraud, employers, lawyers, doctors and all the other parties who, in combination of their activities, led to the creation of the compo culture. Mr Kennedy went on to say—

> "These are particularly a problem in certain industries where there is a fine line between an employee and a sub-contractor. The only way to stop this is to define an eligible employee as a worker who is subject to the PAYE system. Sub-contractors and other self-employed workers can then either insure with the Board or take out private insurance. Certainty, as to who and what is covered and who and what isn't covered, in any insurance scheme, is essential.

Moreover, in Queensland there are some employers who have a shocking workplace health and safety record and year after year have claims in excess of their premiums. These employers allow unsafe workplace conditions to prevail, despite previous accidents and injuries. The Workplace Health and Safety Division of the department should target these employers, inspect them regularly and prosecute them for blatant breaches. There is insufficient evidence of enthusiasm for this task or that it actually is happening, despite assurances from Workplace Health and Safety that it is done.

There are workers who claim time off, and sometimes large damages, for workplace injuries which have actually occurred on the sporting field or in the home; or which have occurred years earlier; or who abuse the compensation system in other ways. Bad backs and stress are the latest 'fads' to make compensation claims. Many are genuine, many are not. This must be addressed."

So there members have it. That is what Kennedy found out about the compo culture and that is what he reported very directly within his now famous report. This Bill alters the fundamental features of the scheme that we put in place as a result of the adoption of those recommendations from the Kennedy inquiry. Indeed, they revert to what they were prior to the Kennedy inquiry—to what they were under the Goss Labor Government. That is almost a cast-iron guarantee for the return of the compo culture in Queensland bigger and better than before. However, I will speak more about that later, as will other members on this side of the House.

The impact of the compo culture on the financial viability of the scheme was most dramatic. Again, one can do no better than to quote directly from the Kennedy report to understand just how financially detrimental this impact was and just how culpable the Goss Labor Government was for it. In fact, the findings of political culpability are a sad indictment on how Labor did and still does business in this State. In his report, Kennedy concluded that the workers compensation system of Queensland faced the prospect of an unfunded liability reaching $290m as at 30 June 1996—up from the estimated unfunded liability as at 30 June 1995 of $114m. Clearly, this illustrates what an impact Labor policies were having and do, in fact, have on a workers compensation scheme, particularly that of this State. In other words, through his inquiry Kennedy established beyond all doubt that the workers compensation system of this State was in serious financial trouble. In fact, one of Australia's best known actuaries told the inquiry that the fund was "out of control" mainly as a result of deteriorating common law experience over quite a period.

According to the inquiry's findings, the problems were—

> "Developing much earlier than has been acknowledged, were capable of recognition much earlier than has been publicly admitted and were capable of being resolved much sooner."

It is a tragic shame that the Goss Labor Government did not address the emerging issues which, as the actuaries and Kennedy said, were developing much earlier than had been acknowledged, were capable of recognition much earlier than had been publicly admitted and were capable of being resolved much sooner.

Mr Kennedy spent considerable time establishing the background to the financial position of the fund, because there were still groups that fancifully believed the changes brought in by the Goss Labor Government in January 1996 would have redressed the serious underfunding. Mr Kennedy concluded that, clearly, that was not the case. It is important that I stress that he concluded that that was not the case because, undoubtedly, speakers opposite will say that the amendments of 1 January 1996 were working. The Kennedy report indicated that the changes made by the previous Government were "insufficient" and, under the heading "Political Influence", Mr Kennedy referred to evidence to the inquiry regarding "inappropriate decisions, made on at least three occasions in the early 1990s with regard to premium levels and benefits setting" and found that these decisions "account for much of today's current level of underfunding". He found that political influence has had an impact "over many years" and said that if financial viability was to be restored, political considerations must take a "back seat". Of course, when Kennedy talked about political interference, political considerations and underfunding, he was referring to the experience and practice that was evident under the Goss Labor Government.

So there members have it: an outline of the horrible mess which was the workers compensation scheme of this State in 1996—a mess created by Labor's ineptitude, political rather than prudential decision making and of course, pandering to the vested interests that it represents in this place and in other forums within this State, particularly the vested interests of the anti-business, particularly the anti-small business, union puppeteers.

Of course, Kennedy found only the beginning of it. The then coalition Government and I, as the responsible Minister, asked the independent actuaries who had been employed by the Goss Labor Government to report again at the end of the financial year 1995-96, which was several months after Kennedy had collected the

financial data upon which he based his findings. The report of the actuaries again confirmed in a most definitive manner what Kennedy had found, that being that the Workers Compensation Fund of this State was out of control.

The actuaries' advice for the financial year 1995-96 needs to be viewed against some of the reaction that was forthcoming to Kennedy's findings as they related to the scheme up to 31 January 1996. Following my tabling of the Kennedy report in the Parliament on 10 July 1996, groups opposed to the Government implementing the recommendations unreasonably suggested that Commissioner Kennedy got it wrong and overreacted. Based on claims data to 31 January 1996, the actuaries—that is the actuaries who advised Kennedy in terms of what was included in the Kennedy report— projected an optimistic deficit of $143m and a pessimistic deficit of $290m, with the probable deficit being $220m as at 30 June 1996. That was the actuarial advice to Kennedy towards the conclusion of his inquiry.

At the time, Mr Kennedy said—

> "Reaction by the Government should be predicated on the pessimistic estimate of an unfunded liability of $290m."

So Kennedy predicated that notice be taken of his finding that the actuarial deficit was likely to be at the higher end and he quantified that at $290m. At that stage, a number of groups, including the Law Society, pointed to that recommendation and suggested that the hard decisions need not—and I stress, they recommended that they need not—be made on the basis that the lesser figure was more appropriate. So members can see why the then Government and I as the Minister wanted to receive further actuarial advice to include the experience as at the end of June 1996.

In early September, after we had received that actuarial advice, I informed the House of that latest advice, which showed clearly that things were getting worse rather than better. The independent actuaries updated their projection based on a further five months' claims data to 30 July 1996 to a pessimistic figure of $441m with the probable projected unfunded liability being $323m. That last figure, that is, $323m, was greater than the one Commissioner Kennedy recommended that the coalition Government adopt, and which opponents of the rescue package— which was being recommended by Kennedy and which it was the intention of the then Government, now the Opposition, to implement—branded as extreme.

Importantly, the actuaries concluded that the 1 January 1996 changes introduced by Labor were totally inadequate to address the problems that were confronting the fund. This was due to the basic flaw in the Goss Government's assumption when it made its botched attempt to fix the problem. When Labor said that it would fix the problem within five years, it assumed that the increase in common law claims from 1993-94 to 1994-95 was a one off. However, based on actual claims data—not projected, not estimated, but actual claims data—to 30 June 1996, the number of claims initiated over the 1995-96 year had risen a further 37%. Clearly, the key assumption underlying the reforms of the Labor Party, which came into effect on 1 January 1996, was an absolute dud according to the actuaries and according to actual claims and the experience of other workers compensation systems.

Furthermore, the average common law payout had grown from $83,300 in 1995 to $97,000 in 1996. It must be noted that this increase of 16% affected the actuarial provision for all claims that were then in the system. This increase alone had led to a $95m hike in the actuarial provision to 30 June 1996. That all added up to proof that Labor's 1 January 1996 changes to workers compensation were totally inadequate for returning the fund to a surplus. In fact, the actuaries stated that the levy imposed by Labor to fix the problem within five years would take at least three times that long or, in other words, more than 15 years to work. In other words, if we were to rely on the levy alone—the levy, which was part of the Labor fix—it would have had to have been kept on for at least three times longer in order to fix the problem.

When the coalition took over Government, the fund was at least $323m in deficit. According to the actuaries, in order to fix the problem, the Labor Government's solution of placing the burden on the employers would increase the levy to 37%, instead of the 10% levy that it had introduced, or at least extend the duration of the levy by at least three times. We were left with a real problem and we had to fix it, and fix it we did.

Other speakers on this side of the House will talk about the financial success of the reforms that we put in place. It is important that I touch on that briefly, but I will not go into any great depth about what is contained in the annual reports and other actuarial advice that may be available to the people of Queensland—although not very readily, I might add. I place on the record the results of the implementation of the major coalition reforms to the workers compensation system. According to the 1997-98 annual report, the net asset position for 1997-98 of $43m and a solvency margin of 2.2% is clearly a vast improvement on the $126m deficit that existed in 1996-97. Of course, that is way down on the minimum $323m deficit that Kennedy and, subsequent to the release of the Kennedy report, the actuary concluded existed. The report clearly underlines the success of the coalition's reform to the scheme. Even in the short period that we were in Government, the scheme was brought into the black and had a net asset position of $43m and a positive solvency margin. We transformed a

scheme that was almost bankrupt. One could not say that it was bankrupt, because that suggests that it was absolutely useless. However, if that scheme was closed down, in an actuarial sense one would have to find at least $323m, and up to $400m, to bail it out.

We needed to fix the problem and fix the problem we did. Within the constraints that faced the coalition Government, namely a hung Parliament and outright opposition from those who were massively benefiting from the compo culture, the process of reform was commenced. Mr Kennedy presented to the new Government a cohesive package of 79 recommendations that were arrived at after one of the most in-depth and comprehensive inquiries ever conducted in the State. That process was one of the most consultative in terms of the groups and individuals who were meaningfully—and I repeat, "meaningfully"— consulted and briefed. They included employers, unions, lawyers, doctors, the insurance industry, individual workers with injury experiences, and the list could go on and on. That list would put to absolute shame the lack of consultation that has been displayed by this Government in terms of the amendments that we are considering here today. That record is so shameful that not even members of the board other than the chairman were aware of the Minister's intentions until he placed on the table of this Parliament his initial paper and, subsequently, the amendments. I will say more about that if time permits.

Shortly after I tabled the report in the Parliament, Cabinet approved the appointment of the implementation task force to oversee the development and implementation of the recommendations detailed in the Kennedy report. In fact, Mr Kennedy recommended the establishment of such a task force in chapter 13 of his report. The task force's role was an interim one only. Members of the task force worked in conjunction with the Workers Compensation Board over three to four months, until such time as the relevant legislation was passed by the Parliament creating WorkCover Queensland, and the new WorkCover Queensland board was appointed. The task force played a key role in the corporatisation of the existing board into a Government owned corporation, as well as the drafting of legislation relating to all the recommendations of the Kennedy report that the coalition Government was able to bring into the Parliament with reasonable confidence that it would receive its support.

The introduction and passage of the WorkCover Queensland Bill saw the effective implementation of 73 of the 79 recommendations of the Kennedy inquiry. The majority of Mr Kennedy's recommendations were incorporated in the Bill as they appeared in the report. However, the implementation process identified the need for some modifications. This was envisaged by Commissioner Kennedy when he recommended that a task force be given the onerous job of converting his recommendations into legislation. In addition, the drafting process at the time highlighted some issues causing operational difficulties and amendments were made to address those issues. Again, I stress that those changes were made by the implementation task force only after very extensive consultation with all of the relevant stakeholders. Over a period of about three to four months during this implementation process, massive consultation occurred which was appreciated by all the parties that were consulted. Major input and amendment occurred as a result of that consultation.

The major provisions of the coalition's WorkCover Queensland Bill 1996 included a new definition of "worker" that eliminated the confusion that, for many years, clouded the understanding by employers and employees about their obligations and coverage under the legislation. That confusion resulted in the failure by some employers to correctly declare wages for premium purposes. The definition of "injury" was changed from one requiring that employment be a significant contributing factor to injury to one requiring employment to be the major significant contributing factor causing injury. The new definition excluded those injuries that have only a minimal work-related component. The new definition required the link between employment and injury to be stronger. It was intended to ensure that employers are only held liable to the extent that their employment of the worker contributed to the injury or aggravation or acceleration of a pre-existing non-work related condition.

The merit bonus system was replaced by an experience-based premium rating system. The new rating system applied an industry rate that is adjusted by the employer's claims experience. As a result, prevention incentives were strengthened, with the impact of improved performance directly reflected in the premium to be paid. The introduction of provisions also allowed larger employers to self-insure within their own system, or within their own pool within the central system, provided adequate eligibility criteria are met. The Bill also provided for self-rating.

Provision was also made in the Bill for the modification of journey claims, which were modified quite dramatically. For example, cover is no longer provided for injuries occurring in the home, where the worker was under the influence of alcohol or drugs, where the worker failed to take reasonable care for the worker's own safety or where the worker contravened the Traffic Act if the contravention is the major significant factor causing the injury.

Changes to the law with respect to common law damages awards to strengthen workers' obligations for their own safety in employment

were also made. For the first time, a definition of "contributory negligence" was included in Queensland's workers compensation legislation. This was intended to place a more equal share of the responsibility on employees to take appropriate steps to ensure their own health and safety at the workplace and to complement existing responsibilities that were placed on employers. Also there was a strengthening of measures to ensure that fraud against the workers compensation scheme can be more effectively targeted and minimised.

These are only a few of the major policy initiatives that were included in the courageous and imaginative WorkCover Queensland Bill 1996. The implementation of those provisions saw the destruction of the compo culture. I stress particularly for the sake of honourable members opposite: tampering with these reforms by the Government—in some cases, they are being totally dismantled—will pave the way for the eventual and very strong re-emergence of the compo culture. It will then be up to a future coalition Government to again fix the problems that the re-emergence of that very strong compo culture will create for the workers compensation system of the State, and particularly for those people who operate in it.

It is those major amendments and their detrimental effects that I now wish to consider in some detail. Because of time constraints, I can consider only three or four major amendments. However, the remaining 20 to 25 speakers from this side of the Chamber will go into far greater detail as to how these changes will impact on the workers compensation system, in particular on employers and small businesses. Opposition speakers will explain how the changes being made to this legislation—successful coalition legislation—and the changes to the industrial relations legislation of this State will have detrimental effects on the viability of small business and its willingness and ability to invest and create jobs, and how this, in turn, will have a detrimental impact on the job target of the Government. I cannot stress enough the point that, although it will be good for us politically to be able to point out the gross policy failures of this Government, it will be very bad for all of the people trying to find jobs. What I am saying will come to pass over the next two to four years. Queenslanders will be much the wiser but much worse off as a result of the experience that will commence when this Bill is passed through the House some time tomorrow.

If there is one thing that annoys and antagonises the business community, it is the lack of certainty in Government legislation that impinges on them. Change for the sake of change heaps additional work and expense on business. When that change is clouded with uncertainty, business loses confidence in the system and, of course, uncertainty in the workers compensation system helps to breed the compo culture which Kennedy found to be so destructive.

I now wish to analyse in some detail the major amendments within the WorkCover Queensland Amendment Bill that I believe will wind back the clock in terms of the definition of "worker". The change made in the definition of "worker" in this legislation is a classic example of how not to do things. Clearly, the definition of "worker" in the 1990 Act was unsatisfactory. It lacked clarity and certainty. It exposed the business community to risk in determining whether certain classes of workers were covered by the Act and consequently whether a premium should be paid for them. If the employer's assessment was wrong, the employer was exposed to penalties for understated wages. The definition of "worker" in the Bill before the Parliament today takes it back to the maligned and unworkable definition of 1990. That was Labor's definition, and it is to be Labor's definition again after this Bill is passed through the Parliament.

The matter of coverage by or access to a workers compensation system is of fundamental importance. As the heads of workers compensation authorities in Australia said in their interim report to the Labour Ministers council in May 1996—

> "One of the important design principles should be the attainment of maximum clarity so that, as far as is possible, people are able to determine their rights and obligations in advance."

Queensland opted for certainty and clarity of definition in the 1996 WorkCover Queensland Act introduced by the coalition Government. The Act described a "worker", with some exceptions, as an individual who works under a contract of service and is a PAYE taxpayer. The current definition is clear and precise. Employers know whom they have to include in their wages declaration. Contractors and others have extended their insurance with private insurance companies to cover activities in workplaces. Contracts have been made with certainty, because each party knows who has to provide insurance cover. These contracts exist presently—a point which should be heeded by the Minister. WorkCover knows who has access to the scheme and who can claim benefits.

The changes to the Act in 1996 followed Kennedy's extensive review of access to the workers compensation scheme. The business community, the unions, the lawyers and anybody else who wanted to have their say had their say. As I stated previously, consultation was wide and varied. I stress again that that is very different from the lack of consultation on this Bill. Jim Kennedy stated quite emphatically—

> "The definition of a worker for the purpose of workers' compensation in

Queensland has created considerable difficulty as summarised by the Housing Industry Association submission."

I chose to quote from that submission in particular, because it is one of the industry sectors that will be very much affected by this pro-union and anti-small business Bill. The submission went on to state—

> "The definition of worker has no resemblance to any other contractor/employee in common use, e.g. the taxation in the building industry between PAYE employees and Prescribed Payments System (PPS) contractors. Unfortunately many contractors and sub-contractors wrongly assume that if they are a contractor for taxation purposes then they are also a contractor for Workers Compensation. This causes great confusion."

Jim Kennedy continued—

> "An approach which can be considered is based on the fact that the majority of people in employer/employee traditional arrangements are PAYE tax payers. Most people who work outside of a PAYE tax paying arrangement do so by choice for the purposes of other benefits that accrue to themselves."

Before I continue with the quote, I wish to point out that I know members opposite will put forward some extreme cases where some contractors chose for whatever reason not to cover themselves and were subsequently injured severely. I know of one such case in which a worker died as a result of an accident. Those people who choose to be contractors and not PAYE workers enjoy considerable additional benefits, particularly taxation benefits, as a result of those workplace arrangements which they choose to enter into. Mr Kennedy concluded—

> "On balance, this approach has the most merit, and it is proposed that the necessary consultation and analysis be completed for this to be adopted, including the proposal to advertise it extensively, so that all workers would be aware of who was covered and who wasn't and what steps could be taken to obtain cover by (non-PAYE) contractors who chose to do so."

Having drawn attention to that, we now have the spectacle of this Government discarding a definition which has clarity and precision, a definition devised out of a wide-ranging and consultative inquiry. The Minister has no regard or concern for the disruption to business or the cost that he is imposing on business merely to please the Government's mates. The Minister could be forgiven if he was substituting something better; clearly, he is not. Without any meaningful consultation with the business community—and it has been screaming about this from the rooftops—and after taking the advice, it seems, only of his union and lawyer friends, he opts for turning back the clock to the old, discarded, maligned and unworkable definition in the 1990 Goss Labor Government Act.

The definition included in the Bill reverts to the declaration that all people working under a contract of service are workers. Mr Deputy Speaker, you might think that that was simple. However, that is not so. Some of the case precedents on which judgments have to be based are those of the High Court. Every case has to be examined on its own facts against the precedents. The Government's own paper acknowledges the difficulties encountered with this definition in a changing work force. On page 2 of the paper released by the Minister in early March it is stated—

> "Since the first workers' compensation legislation came into effect, Queensland has experienced enormous industrial and social change. For example, technology has seen many jobs replaced; the work force is becoming more transient; an increasing number of positions are becoming temporary, under contracts or placed through labour hire agencies; places of employment are shifting to include off-site locations such as the family home and workers are demanding more flexibility."

The Government tries to overcome some of the difficulties by deeming some persons to be workers and others not to be workers. This does not really remove the difficulties with the definition for employers or indeed some contractors. The real difficulties lie in determining with certainty whether many contracts are contracts of service or contracts for services. Most employers need professional help to determine those issues. Even WorkCover staff, or at least some of them, are lacking in knowledge to determine cases conclusively.

The Government tells us that it intends to overcome those problems also. The Minister's paper states that the legislation will include guidelines that will assist decision makers in determining whether a contract of service exists. I ask the question: where are the guidelines? Obviously, the draftsmen advised against including such material in the legislation. I say to the Minister and his advisers that that was obviously done for very good reason. To overcome this deficiency, the Minister now states that administrative guidelines will be developed by his department and WorkCover. Regardless of what is produced, the difficulty will continue to exist. Employers are asking how they will apply broad-brush guidelines to individual cases. The fact that these cases still reach the courts is testimony to the difficulties that even lawyers find in applying the mass of case law to individual cases. That is one of the very big problems with this old, now new, back to the future Labor Party definition of "worker". This ill-advised move will

cause great hurt to the business community, not to mention additional expense—something it believes is grossly underestimated in the figures placed before the Parliament and in the Minister's position paper.

The Minister seems to have become mesmerised by his obsession to fund these new "workers" coming into the scheme by an innovative levy system. Such a scheme was considered by Kennedy in his inquiry. The significant advantage which Kennedy saw in the scheme was that it would successfully collect premiums in a more equitable way in the building and construction industries. The disadvantages that he saw were compliance difficulties with those employers operating across industry boundaries, unfairness to sole employed people and also, of course, the potential for exploitation. Kennedy did not recommend such a proposal for obvious reasons.

To these disadvantages I would add two more very significant ones. A levy system has no regard for workplace safety. Employers with good safety records subsidise the bad ones. That clearly, I am sure, on the assessment of all honourable members in this place—even those members opposite—must be a bad system if the good workplace health and safety record of a particular employer is not considered when, for example, premium calculations are being devised. Also, a levy system sits very uneasily with the experience-based rating system. There is no way to adjust the premiums of the good and the bad employers. It is being proposed that the building and construction industries be written out of the experience-based rating systems. I think that this is absolutely a bad move.

Some broad details have been announced as to the structure of the levy scheme for the building and construction industries. However, the practical details still remain undisclosed, and this is causing a great amount of concern. Whatever the Minister and the Government produce, I do not think that it will keep the industry happy. If it keeps certain sections of the building and construction industries happy, other sections of the industry will be very unhappy.

The department's documents and the Minister's speech are deafening in their silence as to what will happen to other industries which engage a large proportion of contractors, subcontractors and others who utilise PPS payments. The Minister will have a real job on his hands as he tries to tidy up his inept amendments to the definition of "worker". The practitioners of the Queensland compo culture must be rubbing their hands with glee.

I wish to turn now to the changes that are being made to the definition of "injury", because this is the other major change that will again fuel the compo culture to greater heights than that which existed before Kennedy undertook his inquiry. The coalition's WorkCover Queensland Bill of 1996 introduced a new definition of "injury". The new definition required employment to be the major significant factor causing the injury. The new definition strengthened the link between employment and the injury. Experience with the then current definition had shown that, in some cases where aggravation of a pre-existing injury had occurred from a minimal work incident, compensation had been paid for extended periods relating to the underlying condition rather than the work-caused component—I stress: the work-caused component.

The new definition was intended to ensure that employers are held liable only for an injury where their employment of the worker was the major significant factor causing the injury and in the case of an injury which consists of an aggravation or acceleration of a pre-existing non-work related condition where the employment was the major significant factor causing the aggravation. The decision as to whether a worker had suffered an injury as defined in the Act became an administrative decision based on the available medical evidence.

However, because the previous coalition Government and all of its Ministers—including me—were fair, we also included safeguards for workers. The WorkCover Queensland Bill provided for an internal dispute resolution process whereby a worker may apply to have a decision regarding his or her injury reviewed. The Bill also provided for injured workers to have the right of appeal to a court if aggrieved by the review decision made by WorkCover. So before honourable members start jumping up and down and saying that this new definition of "injury" was unfair, I point out that the review mechanisms to protect genuinely aggrieved workers in relation to their concept and understanding of "injury" and what caused it were well and truly taken into consideration.

In relation to the definition of "injury" regarding psychiatric or psychological conditions better known as stress, provisions were strengthened in response to an increasing number of claims where reasonable management action, for example remedial action regarding a worker's poor work performance, had been the stimulus for a claim. Honourable members may be interested in being reminded that between the 1990-91 and 1995-96 financial years the number of new statutory claims for stress increased by 410%, from 423 claims in 1990-91 to 2,158 claims in 1995-96. Over the same period, the number of new common law claims for stress increased by 1,800%, from seven claims in 1990-91 to 133 in the year 1995-96. If we had not stepped in, God knows how high those figures would have been today.

Two amendments in particular as they relate to the definition of "injury" will greatly reduce the capacity of employers and the system to manage what will now become a burgeoning level of stress claims. The first and most important amendment

is the change of the definition of "injury" from employment being "the major significant factor causing the injury" to employment being "a significant contributing factor to the injury". As I stated above, this change will noticeably alter the ability to reject or cease claims where aggravation of a pre-existing condition applies. In the case of stress claims, the aggravation may be a normal consequence of work where a person has an underlying psychiatric illness of some kind.

The second change is the removal of the "reasonable person" or "ordinary susceptibility" tests in the current legislation. These tests were always difficult concepts to apply; I am the first to admit that. However, it is likely that, if a claim was being determined by a court and these tests were being argued, then the beneficial nature of court decisions would likely result in these tests being of little value. These changes will make control of stress claims more difficult and therefore more costly when impacting through the experience-based premium rating system.

Just as it does with the definition of "worker", the amendment Bill before us reverts the definition of "injury" back to that which existed prior to Kennedy. With this comes the reintroduction of the potential for abuse, fraud and, from a business—particularly small business—point of view, spiralling costs, including those increases generated by a new wave of common law claims and activities. The changes to the definition of "worker" and the changes to the definition of "injury" that I have talked about in some detail which revert those two definitions to precisely what they were under the Goss Labor Government—which were introduced in 1990 by Goss Labor and changed by us in 1996—will lead to the re-emergence of the compo culture and increasing cost burdens on the workers compensation system that in the end have to be passed on to the major stakeholder in the scheme, that is, the people——

Mr Sullivan: You haven't said anything about the injured workers, have you?

Mr SANTORO: This is the only interjection that I will take from the honourable member for Chermside because I want those people reading the parliamentary record to see just how little attention he has paid to what I have said about injured workers and about the safeguards that we put in place. The people who read this debate need to be made aware of just how little regard the member for Chermside has for what is said in this Parliament. He interjects from a position of great ignorance based either on a lack of attention to what is being said or on a deliberate distortion of the facts as they were outlined in this place.

I now turn my attention to journey claims. The changes to the journey claims provisions will have a detrimental impact on the cost structure of the workers compensation system, in addition to the detrimental impacts I have already mentioned. I am happy to acknowledge that the important existing control elements for journey claims, including some introduced as a result of the Kennedy recommendations, are to be retained. I commend the Minister for not caving in to union pressure in relation to that very emotive part of the coalition's WorkCover legislation.

However two tests, relating to the shortest convenient route and denial of compensation for those who voluntarily subject themselves to risk of injury, are being removed. I think that is a bad move. The removal of these tests does weaken control provisions for journey claims, although the Government would likely argue that the legislative guidelines for interpretation of other provisions will assist in the unreasonable control of journey claims. It is difficult to see how the legislative guidelines outlined in the Bill will assist in control of journey claims of an exceptional nature. The guidelines seem to simply outline the parameters to be considered in making a decision on a claim.

The change proposed in the area of journey claims responds to the emotional position of the union movement and must be regarded as a weakening of current journey claims control provisions. An emotional example always given is the dropping off of children at school while travelling to work. These claims are not rejected under the current criteria. I repeat for those members who have prepared speeches and undoubtedly will raise this issue: these claims are not rejected under current criteria. While these changes will not affect individual employers' premiums, since journey claims are not debited to an individual employer's policy the increased cost will be borne by the scheme through increased rates—again, a significant increase in costs for industry, businesses and small businessmen.

I turn to the issue of self-insurance and self-rating. In the amendment Bill currently before the House the Government proposes to introduce occupational health and safety performance standards, to increase the number of workers required for a self-insurance licence from 500 to 2,000 and to require self-insurance to assume liability for their trail of claims.

As other speakers on this side of the debate will point out in a very obvious way, the implementation of self-insurance provisions within the workers compensation system of this State has been a spectacular success. One only has to look at the record of performance at a local government level to appreciate this.

Statistics published by WorkCover demonstrate that from the outset LGW has either matched or exceeded the average performance levels for all self-insurers and, in fact, the performance levels for other people who operate within the workers compensation scheme of this State. This is a significant achievement, given the size and geographic spread of local government operations.

It is also most significant that a sector such as local government, so often criticised for its lack of commitment to proactive workers compensation management, has been able to match the performance of major corporate self-insurers, generally seen as best practice pacesetters. To date, LGW has processed approximately 1,300 claims, with only 3.6% of these claims being rejected. It is understood that this is significantly lower than WorkCover's rejection rate.

Claim decisions are not only of a higher quality but also are being made quicker than ever before. WorkCover's benchmark for self-insurers is that the average decision time for all claims must be less than 21 days. The average decision time across all self-insurers is currently 14 days. WorkCover's statistics also show that LGW had a lower average time lost per claim than the average of all other self-insurers.

In view of this fine record, members on all sides of the House will understand why the almost two dozen major companies which have taken out self-insurance, as well as the Local Government Association, objected to the changes proposed by the Government. However it would seem that, subsequent to discussions between the LGQ, various individual councils and the Queensland Workers Compensation Self-Insurers Association, the Government has agreed to make amendments to its amendments, which has led to the following revised arrangements being put in place.

From 1 July 1999, self-insurers will not have to pay the surcharge. Self-insurers will have three years from 3 March 1999 or the date of renewal of the self-insurance licence, whichever is the latter, to comply with the OHS criteria. Self-insurers will be required to meet OHS guidelines; however, the WorkCover Board will consider a formal report from the Division of Workplace Health and Safety in this regard as part of the self-insurance licensing criteria. The final decision will rest with the WorkCover Board.

The OHS guidelines will be amended to ensure that only outstanding improvement notices and convictions for breaches of the Workplace Health and Safety Act 1999 will be considered as part of Stage 1 assessments. Pending prosecutions will not be considered.

In relation to outstanding claims liabilities—this was of major concern—the amendments to this amendment Bill will mean both WorkCover's and the self-insurers' actuaries undertaking an assessment of the tail claims. If agreement on the quantum is not reached, an independent actuary will be used as an arbiter. This actuary will be appointed by WorkCover Queensland for a three-year term. The appointment will be on the basis of a tender process, with the selection committee comprising representatives of both WorkCover Queensland and the QWCSIA. The amount of premium paid by the employer in previous years will not be taken into consideration in the calculation, and a meeting will occur between WorkCover's actuary and a representative group of the self-insurer's actuaries regarding the guidelines by which the actuarial calculation will be undertaken.

I said to the Minister's advisers yesterday that I would compliment the Minister on receiving, and receiving well, representations from those interest groups that I consulted. I say today that the Opposition commends the Government for listening to responsible arguments and for agreeing to the amendments which have been foreshadowed.

However, self-insurers still have some concerns, as does the Opposition, in relation to the following. There was no movement on the State's position in regard to the minimum number of employees to meet licence criteria. There was no movement on third party claims management. The request for the membership of the reference group for the appeals and review process to be extended to include a representative from the QWCSIA was denied. I ask the Minister to consider further amendments to those which he has foreshadowed and which I understand were circulated to me as I stood up to speak. I urge him to consider further amendments, because I believe that those further amendments would add great substance to the Bill, faulty and tenuous as it is in terms of its fairness and good application.

As I said, the other two dozen or more speakers on this side of the Chamber will elaborate on many other issues which I have not covered. Honourable members can see why the Opposition has severe concerns, despite those amendments that have been foreshadowed by the Minister in his amendment Bill, and they can see why we will be opposing this Bill.

I conclude by saying that this is only the first wave of workers compensation reform. One of the other speakers from this side of the House will analyse in some detail the workers compensation policy released by the Minister prior to the 1998 State election and will talk about those items which are not included in this particular Bill but which are part of the policy and which, as the Minister has foreshadowed, particularly in terms of common law, will be the subject of further amendment to the coalition's Act if the Labor Party wins the next election. I am not saying "when", but "if" it wins the next election. That will make for very interesting dialogue.

We need to look at what else the Government has in mind and what the Government has done, particularly in relation to the sacking of very capable people who were appointed by the coalition to the Workers Compensation Board, including chairman Frank Haly, Terry Bolger and Dr Jane Wilson. The Government has transformed that board from a board of expert businesspeople with very specific abilities to manage the workers compensation

business in a commercial and business manner. When we look at what is still to come, at the way the board is being made a representative board rather than a business expert board, and add that to the changes I have spoken about during the past hour, we can see why the Opposition cannot support the amendments contained in this Bill.

It will lead to the re-emergence of the compo culture. It will increase burdens on the people who will be paying totally for the administration of the workers compensation system—employers. It will destroy confidence. It will destroy incentive for them to invest and to employ. It is just bad news for Queensland. Because of that, we will be opposing this amendment Bill most strenuously.

We place the Government on notice that we will be constantly on its back in terms of the effect which these amendments will have on Queensland business and we will make sure that at the next election this is a top-of-mind issue which I am sure will reflect very badly on the Labor Party and the Government.

Time expired.