Speech by

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Hansard 31 May 2000

MOTOR ACCIDENT INSURANCE AMENDMENT BILL

Dr WATSON (Moggill—LP) (Leader of the Liberal Party) (11.34 a.m.): I rise to speak on the Motor Accident Insurance Amendment Bill. In doing so, I inform the House that the Opposition will not be opposing the Bill. As I have indicated to the Treasurer, I have a number of concerns with some of the aspects of this Bill. I will raise these matters during this second-reading speech and during the Committee stage. Knowing the Treasurer as I do, I suspect that he probably has similar concerns with respect to certain aspects of the Bill.

I would like to thank the Treasurer for his cooperation earlier in the process when he provided me with a copy of the review of compulsory third-party insurance which was undertaken by the appropriate committee. Even though the review occurred some time ago, I appreciated the early receipt of it from the Treasurer's office. It was helpful in assisting my overall understanding of the issue.

The Queensland compulsory third-party motor vehicle insurance scheme has operated under the principles of common law since about 1936. This Bill comes before the House as a result of a rather extensive review process. Firstly, a paper was issued for discussion purposes. That was followed by a report which allowed those concerned to respond to the recommendations.

As the Treasurer said in his second-reading speech, the purpose of the review was to examine the operations of the scheme and to assess the Government's involvement in the whole process. I would like to refer to a few aspects of that process.

One of the major recommendations of the review was that an affordability index would be created as a mechanism for judging the fairness of any third-party premium. Clause 5 of the Bill defines the affordability index as 45% of average weekly earnings. The ABS report of February this year referred to a survey of average weekly earnings in Queensland. The average weekly earnings of a full-time working male is $698.60. The premium allowed under 45% of average weekly earnings for Class 1 vehicles, as defined in the regulations, is about $315. There have been some recent changes and I believe it could increase by about $2 in the near future.

I discussed some aspects of this Bill with the commissioner and Treasury staff. It was recommended that the premium for a Class 1 vehicle should be $286. In effect, this means that the premium could rise by about another $30 before the Treasurer is required to make a decision on the structure of the premium-setting process. Whether or not that occurs in the future will depend on the costs associated with third-party insurance and changes in average weekly earnings.

The affordability index is somewhat arbitrary in the sense that a figure of 45% has been chosen. I do not know that there is any particular rationale in choosing that figure. No logical argument has been advanced for choosing 45% rather than 50%, or whatever. It seems to me that the real issue of affordability depends upon the choices available to those who are going to have to take out compulsory third-party insurance. Matters to be taken into consideration would include the availability of public transport. Such issues will affect the necessity of people having to own private vehicles, thus necessitating their taking out third-party insurance.

I find that the affordability index is somewhat outside the premium-setting process. It is used as a mechanism for judging the outcome of the premium-setting process. However, the premium-setting

process has quite significant and appropriate constraints imposed upon it. When one goes through the premium-setting process it is not clear why the affordability index should be considered.

For example, in the third-party process there have to be actuarial evaluations of the cost structure and an understanding of accidents—information about their severity and a prediction of the number of claims that are likely to be made in the future. That actuarial process is to make sure that the third-party process and the funds available are financially sound. It seems to me that, for people who are going to be covered by third-party insurance, financial soundness and the ability of the companies to meet payments when they fall due is a particularly important aspect. Given that the premium-setting process involves limits by which the companies will be able to set their premiums—and I will come back to that in a moment—it is not clear to me what happens if the higher limit suddenly goes above the affordability index. Although that may trigger a review, it still seems to me that the overriding concern should be that the companies who are supplying the third-party insurance are financially viable.

So on the one hand we have a process that has to be financially sound to provide the insurance coverage that motorists deserve, yet on the other hand we have this affordability index, which I regard as exogenous to that process and, in essence, a somewhat arbitrary setting. I am sure that the review committee, the Government and the Treasurer are committed to trying to ensure affordability—that the people who are going to own cars and drive them can afford to pay the premiums, which is a laudable objective—but the issue of financial soundness is also a laudable objective.

Mr Hamill: Always, always.

Dr WATSON: It is always a laudable objective. I am uncertain about the construction of this affordability index. It is so arbitrary. What happens when those two things conflict? It would seem to me that the Government would want the scheme to be financially sound, particularly when it is compared with what I said was an arbitrary affordability index. I understand the concept. I understand what the Treasurer is trying to achieve but, in a practical way, I am not quite sure what it means in the final analysis. What would happen if the upper limit was above the affordability index? Other than triggering a review, it is not quite clear to me what would happen. For example, I do not think that the Government would sacrifice the financial viability of the companies and the funding process. It might restrict further people's ability to access that limit. That is my concern, and it was something that I discussed with the commissioner. As I said, I read the report and I understand what they are trying to get at, but the affordability index is still somewhat exogenous to the compulsory third-party premium process and the companies. I find it difficult to see precisely where it would go if there were a problem.

The second point that I want to make relates to clause 10 of the Bill, which refers to the premium. First of all, the premium goes to the insurer, and it consists of the statutory insurance scheme levy, the hospital and emergency services levy, the Nominal Defendant levy and the administration fee. Those elements also have to be taken into account. Basically, they are Government-imposed levies. It would seem to me that, if the final premium is dependent upon Government policy decisions and if Government policy decisions have been made with regard to particular aspects that drive the premium outside the range of the affordability index, it could then trigger issues not only with respect to the insurance companies but also with respect to Government policy. One then could have a potential conflict between Government policy being set in each of these three or four areas and this somewhat arbitrary, exogenous affordability index.

When the report from the Insurance Commissioner is given to the Treasurer, he has to lay the report before the House as soon as practicable after receiving it. I am a little bit concerned that there is no statutory time in which that has to be done. At the moment, I think that it is a maximum of two months. I have some difficulty with the phrase "as soon as practicable" if Parliament does not sit for some time.

Mr Hamill: It can always be given to the Speaker.

Dr WATSON: If the intention is that when the report is received it goes to the Speaker, then there is not any problem. If "as soon as practicable" is interpreted to be as soon as Parliament resumes, then I find that not acceptable.

I am concerned about a number of matters with respect to clause 32, which contains proposed new sections 55A through to 55F. I discussed these issues with the Treasurer's staff and I notice in the Alert Digest that they were picked up by the parliamentary committee. I will mention them now, and refer again to a couple of them during the Committee stage. I draw the Parliament's attention to a couple of them that cause me more concern than others. Proposed new section 55A in clause 32—which has been mentioned by the Scrutiny of Legislation Committee—refers to the capped awards to be three times the average weekly earnings. By the way, I understand that all of these subsections to this new section inserted by this clause are trying to make sure that the premiums are kept affordable in the sense that they restrict the number and the amount of the claims that can be made on the funds. However, in terms of proposed new section 55A, I think that the Treasurer runs the risk of introducing some anomalies into the system, and some individuals may feel quite put out about that.

Although three times average weekly earnings probably covers the bulk of the population—and I am sure the standard deviation is—

Mr Hamill: For whom are you pleading?

Dr WATSON: I am just saying that there are some potential anomalies that could be resolved by the court. For example, take a younger person who has put a lot of effort into his training. We have a number of such people here, but I will pick as an example somebody who is not a lawyer. I will pick as an example a young surgeon.

Mr Lucas: What have you got against lawyers?

Dr WATSON: Nothing; I just said that I will stay away from individuals here. I acknowledge that the member is an individual who put a lot of effort into his training. A young surgeon who has been through medical school does not usually earn a lot until he completes his fellowship. At the stage when he is going through the registrar process and so on, he does not have a particularly high income. For example, what if he has a car accident and loses his hands? It would destroy his potential future in his chosen field. But at that stage he will not be in a position, firstly, to have shown a history of high earnings, although the potential will be there, having just completed his fellowship. In addition, he will not even be in a position to go to an insurance company. One of the things mentioned in the review was that people on higher incomes should take out income protection insurance and should not be using the compulsory third-party process as a mechanism for receiving a higher income. My understanding of income protection insurance is that one has to have some sort of earnings history and not just a potential for earnings. In that situation, someone who might very well have made a major contribution to society in the longer term would have had his income potential cut short and yet he would have no redress.

Mr Lucas: The courts do that all the time. They assess people's future earning capacity.

Dr WATSON: I understand that, but my understanding of this is that it is restricted to three times average weekly earnings. I might be wrong. My understanding is that people can still go to court. But under clause 55A damages are capped at three times average weekly earnings. If it is the case that people can get around that provision, that is fine; that is precisely what should happen. I agree with the honourable member who interjected; the courts are the appropriate place to resolve these matters, and they do look at potential future earnings. But it is of concern that the amount is capped at three times average weekly earnings, because there will be individuals who are on the threshold. In all probability they would have earned a higher income in the future. However, their future earnings potential is cut short, for example, because they lose a limb in an accident. In such situations there ought to be a mechanism to allow that to be assessed. The Treasurer may want to answer this question at the Committee stage.

Other issues have also been highlighted. Proposed new subsection 55D addresses damages for gratuitous services. I understand the issue that is trying to be addressed. If someone is contributing gratuitous services to another person and that person is involved in a car accident and requires even greater services, the gratuitous services that are already being received should not be included by the claimant in the claim. I understand the reason for that, but it may also lead to some unfortunate outcomes. For example, unless I have misinterpreted this, it seems that, if a claimant involved in a car accident has been contributing gratuitous services to a member of the family who was not in the immediate household, there will be a problem with their claiming those gratuitous services. A substantial number of people may be caught. For example, a person not in the immediate household of a claimant, say a grandmother or a cousin, might be receiving services as part of an extended household. The definition of "household" may create problems. Perhaps a broader definition would overcome some of those issues.

Under this regime, panels of specialists will be established to evaluate medical claims before the courts made by claimants. Again, I understand the rationale for this, but it is another restriction on choice. People can go outside of this system, but they will incur the financial costs associated with that. An incentive system is set up such that there is a financial incentive for claimants to use the panel. Given that the panel members are to be paid by the insurance companies and so on, over time this would perhaps raise questions about the independence of panel members. The financial incentive is against the claimant proceeding outside of the system. However, once this system is set up, over the longer term one might say that the broader incentives are not necessarily biased in favour of the claimants. Again, I understand the rationale; it is an attempt to try to make sure that claims are reasonable so that the whole thing remains affordable. But that comes at a cost to individual claimants and, in some cases, those costs may, with the effluxion of time, become greater for claimants than is obvious at the moment.

As I said, the Scrutiny of Legislation Committee has outlined its concerns in the Alert Digest. I picked out a couple of issues that were of greater concern to me. It has to be understood that each of those restrictions, which are applied in the name of affordability and making sure that the compulsory

third-party process—the premiums and the insurance structure—remains affordable, comes at a significant cost to the flexibility that claimants have. At the moment, the final cost is not immediately obvious. There are also other aspects about which I could speak.

As I said at the beginning, the Opposition believes that this process should be given a chance to be successful. Having said that and having said that we will not be opposing the Bill and that we understand some of the issues driving it, I do not think the Parliament should be under any misapprehension that we are not concerned about how some of these things will operate. As I said earlier, I would be surprised if the Treasurer does not share some of those concerns. It behoves this Parliament to make sure that those concerns do not blow out in the future to become major concerns. We should all understand that by adopting this process we restrict individual rights in particular circumstances. As I said at the beginning, the index of affordability has been set arbitrarily. We should be careful that, in the name of affordability, we do not cause some individual rights to be so severely disadvantaged as to be a problem for people. I will follow up these issues at the Committee stage.