Speech by

# KERRY SHINE

## MEMBER FOR TOOWOOMBA NORTH

Hansard 18 October 2001

### WORKCOVER QUEENSLAND AMENDMENT BILL

**Mr SHINE** (Toowoomba North—ALP) (3.54 p.m.): At the outset I express my disappointment at some comments made by members opposite, particularly the member for Callide. There seems to be a misunderstanding about the fundamental purpose of this bill in relation to contributory negligence, and there seems to be a lack of any understanding of the concept of contributory negligence despite some extensive comments made about it earlier today.

Even further disturbing is the fact that there was a suggestion by the member for Callide that if workers deliberately injure themselves and make a claim, they will be compensated—one suspects in full. The point is that since the Ryan government brought into being the workers compensation scheme in 1915 workers have always had to prove negligence on the part of the employer. I have been involved in quite a number of cases over the last 30 years in which, unfortunately, from time to time one's client was not able to prove negligence, the case was lost and the cost had to be paid to the defendant insurer, in this case WorkCover Queensland. That is a tragic result, I can assure members, because these cases are never brought on lightly by any responsible lawyers acting on behalf of injured workers.

The point is that if a worker cannot prove total negligence or negligence to the degree of 100 per cent on the part of the employer, his or her damages will be reduced by the extent of his or her own contributory negligence. That still applies—and has always applied—other than when the amendments introduced by the Borbidge government applied. In that case, they were so draconian as to impose restrictions on workers and limitations on courts which were quite akin to mandatory sentencing in the criminal law and totally unacceptable.

So I express my disappointment at either the inability of some members opposite to understand what we are discussing today or, alternatively, an attempt at deliberately misleading or misconstruing the situation. I was very anxious about saying a few words with respect to this bill because of the association that I have had with injured workers over many, many years, but I feel that I am certainly qualified to have an understanding of what injured workers go through in their attempts to obtain some form of justice and redress.

As I said, these rights to bring actions for this type of damage and injury go back to 1915. As far as I am aware, an uninhibited right was exercised by workers right up until the mid-1990s, when the Goss government had to address the funding problems that the then workers compensation scheme was experiencing. But I stress that, at every stage along the way prior to the mid-1990s, at all times the injured worker had to prove negligence on the part of the employer.

Honourable members may recall that when these funding problems arose there were strong moves afoot on both sides of the House to do away with the scheme entirely, that is, the scheme of access to common law. The same result, tragically, has applied in Victoria and elsewhere in Australia, and there were strong pushes here for that to take place in Queensland, as well. At the end of the day the Goss government, doing its best to control the financial situation of the fund, brought in certain procedural fetters, including the obligation on a worker to make an election to take an offer from WorkCover or alternatively to go to court—the money or the box type of situation. I must say that those moves that I referred to earlier to do away with the right of workers to apply for redress at court—at common law—were the inspiration that personally drove me to attempt to do something about it. I felt that the best course of action that I could take was to be part of the political process. It was the final

straw, if you like, and factor that caused me to join the Australian Labor Party. So the bill today brings back to me fond memories of that event, in regard to which, of course, I have no regrets.

I am glad to say that I did join at that time because, unfortunately, when the Goss government was defeated it was succeeded by the Borbidge government. As we have heard today from several speakers, draconian measures were introduced by that government, and by the former member for Clayfield in particular. This bill goes a long way—as did some reforms a year or so ago—to restoring workers' rights to go to court for justice, albeit after having to go through a still fairly onerous and demanding pre-court procedure. That right to go to court is no more or less than the right of anyone else to do so for any other reason. Surely few people, if any, in this House with any understanding of the concept of fairness or a fair go could raise any real objection to the concept of an injured worker having the same basic rights as anybody else to have access to the courts for justice.

Another preliminary point that I want to raise is the current attitude of WorkCover and the way in which it handles pre-court procedures. From a practitioner's point of view, in the past, along with many others, I experienced a lot of problems. I am happy to say to this House that, from a practitioner's point of view as opposed to a member of the government, over the past 12 months or so the attitude of WorkCover in trying to reach fair settlements, to earnestly and properly negotiate, has been outstanding and they deserve commendation in this place from me.

I would like to touch on the amendments to the act as they relate to being fully costed and not imposing any increase in employer premiums. The bill has given legislative effect to the government's WorkCover Queensland—Leading Australia Policy 2001. The bill has achieved the government's aim of introducing under that policy—

> A responsible and integrated workers' compensation package to give seriously injured workers and their dependants greater compensation without increasing employer premiums.

As I have said, the government's policy includes a commitment to maintaining common law rights, to improving the common law pre-proceedings processes, and to reducing legal costs as a result. In its second term the Beattie government has committed to introducing a package of reforms that deliver even greater benefits to workers whilst still maintaining low and competitive premiums for employers.

The bill, encompassing these reforms, will increase statutory benefits for workers to ensure that seriously injured workers and their dependants receive greater compensation in the following ways: by increasing the lump sum benefit on the death of a worker to $250,000; increasing the maximum statutory benefit able to be received by an injured worker to $150,000; increasing the amount available for dependants of those fatally injured; and improving the criteria to access statutory gratuitous care. In addition, the reforms will maintain full common law access, including the 20 per cent threshold test referred to by the honourable member for Gregory, while reducing legal costs for those less seriously injured and improve the common law pre-proceedings processes to ensure that claims are resolved earlier. It will repeal the unjust contributory negligence and mitigating loss provisions—which I described previously, quite fairly, I think, as draconian and which were introduced by the previous coalition government—and will allow the courts to have discretion to make awards for costs, interest on damages and loss of consortium. Returning to the courts, I think their discretion on costs is something to be applauded and is illustrative of this government's commitment to the concept of justice.

These improvements in statutory benefits and amendments to common law arrangements represent a modest package of improvements and have been costed by WorkCover's actuaries. They have confirmed that the WorkCover scheme will accommodate any increased cost brought about by these changes and that it will not threaten its fully funded position. WorkCover's actuaries have also confirmed that the proposed changes will not result in any increase in the average premium employer rate. That is great news for employers, especially when we consider that the Queensland Labor government has already reduced the average premium from 2.145 per cent to 1.55 per cent since it came to office in 1998. The government, now in its second term, is committed to maintaining these record low premiums for employers. These amendments have been made possible due to WorkCover's strong financial performance in recent years.

I also commend the WorkCover board for its role in achieving full funding status and statutory solvency in June 2000. I look forward to seeing a similar result in WorkCover's annual report later this year. The turnaround in WorkCover Queensland's position has been achieved by sound investment resulting in positive investment returns as well as professional financial and operational management by the WorkCover Queensland board.

The introduction of the WorkCover Queensland Amendment Bill demonstrates that WorkCover's return to full funding has not been at the expense of injured workers' entitlements. In addition to amendments introduced by the bill, this government has made a number of improvements to Queensland's workers compensation scheme since it came to office in 1998. In 1999, the government restored fair and equitable access to workers compensation for all workers, not just those who are PAYE taxpayers. At the same time, the government amended the definition of 'injury' to provide that employment must be 'a significant contributing factor' causing the injury. For technical reasons, this

amendment repealed the coalition's unjust and harsh requirement that employment be the 'major significant factor' causing the injury. I assure members that the effect of that change in itself was most significant.

In summary, this Labor government is providing more Queensland workers with entitlement to workers compensation as well as continuing to improve its services. This is being achieved at a time when other authorities around the country are struggling financially and limiting worker access to compensation, as I mentioned, particularly in the case of Victoria. Undoubtedly, this package is great news for both Queensland workers and employers. Employers will continue to reap the financial benefits of the lowest premiums in Australia and injured workers and their dependants will now receive fair and equitable compensation without having to resort to lengthy expensive common law proceedings.

I heartily congratulate the minister on the introduction of this bill. I also wish to reiterate my support and congratulations to the WorkCover board for what they have been able to do in the management of that fund. I recognise that none of these fair, just, necessary and obvious reforms can be made unless the fund is funded properly and is actuarially sound. To ensure that that happens is dependent upon the skill and application of the people on that board. I extend to them my heartiest congratulations.