Speech by

Mrs LIZ CUNNINGHAM

MEMBER FOR GLADSTONE

Hansard 18 October 2001

WORKCOVER QUEENSLAND AMENDMENT BILL

Mrs LIZ CUNNINGHAM (Gladstone—Ind) (2.56 p.m.): I rise to speak to this bill and, in doing so, I commend the minister for it. From my experience, and it is certainly not from the position of minister, WorkCover is one of the most difficult areas to balance—balancing the needs of injured people, the need for the fund to survive, and the need for employers to be able to afford the premiums. That is quite a significant balancing act, and I understand in part some of the conflicting constraints that the minister faces. A couple of years ago I spent many hours trying to find a balance in my own mind between the same things. It really is a very, very difficult area.

At the time that some of those changes were made, the fund was in a dire financial situation. It is imperative that the workers compensation fund survive. It is imperative that workers retain access to common law, albeit with the 20 per cent threshold that Premier Goss introduced. It is imperative that the premiums are affordable to employers.

I think in great measure the fund came under stress when the 'no win, no pay' solicitors started touting for business. It placed an additional strain on workers compensation that in previous years had not existed. Those workers who, clearly, were injured at work pursued their workers compensation entitlements, but that certainly was not touted on TV and through other media as it is now. So it is a very difficult balance to maintain.

A number of solicitors from my area have contacted me and expressed concern about some of the WorkCover processes. In common with many members, injured workers have come into my office to discuss with me hold-ups in the process with WorkCover, difficulties understanding the process, or difficulties accepting that they had been through the WorkCover process and the medical tribunal had finally decided that their injury was not work related and, therefore, they were not entitled to any assistance. I think that all members have experienced such people coming to see them. We understand that, when those people are financially stressed at the time that they come in to see us and they have the letter from the medical tribunal to say that they are not eligible for any assistance, it really is shattering for them. So it is an area that I find personally as well as professionally quite challenging.

I want to read into *Hansard* part of a letter that I received from a solicitor in my electorate. I sent a copy of this bill to a number of people to get some feedback on it. The letter states—

... whilst the roll back of the contributory negligence provisions are commendable, the essential draconian features relating to who can claim and the pre-court proceedings remain almost entirely intact.

The unaltered fundamental features which I find appalling and in some way offensive are:

1. s.253-267 The determination of who can and who cannot claim damages remains in WorkCovers hands not the courts and there is no avenue for judicial review. This power has been widely abused; in one reported case, a WorkCover employee even ignored the view of a WorkCover doctor in denying the right to a claim! If damages claims are going to be restricted, there remains a need for an independent review of who fulfils the claimant criteria.
2. s.280 The format for the pre court proceedings claims process is almost unchanged. The old criticisms therefore remain: the process adds substantial cost which the claimant almost entirely bears and delays court proceedings by about a minimum 9 months thereby delaying the claimant's rightful recovery by 9 months.
3. s.285 The time within which WorkCover is required to respond to the claim with it's attitude remains 6 months. There is no need for it to be any more than 2 months.

The most condemning aspect of the entire damages claims regime is that it hasn't improved access to justice or practice in the arena for any party and has increased employer costs of compliance. It has significantly diminished claimant's recoveries.

I received this letter only yesterday, 17 October. Therefore I have not had a chance to speak with the minister about the comments. I know that they come from the perspective of the legal profession, which has a slightly differing perspective in relation to the balance that has to be maintained in WorkCover. I certainly would be interested in the minister's response to this, not necessarily in his summing up but subsequently if necessary.

As others have said, it is critical that premiums remain affordable to Queensland employers. Irrespective of the scheme that we have in place, it has to be funded and the primary funding for workers compensation comes from these premiums. A number of employers have already come to my office to say that the premiums have risen substantially in their area and they do not believe that the risk indicates or requires that rise. I have found it difficult, as I am sure others have, to track the real reason for the premium rises, particularly in some of the low-risk employment areas. Why can't the premium reflect that individual employer's track record? It may be a high-risk area of work, but if an employer has a very good safety record, that should in some way be reflected in a reduced premium.

The bill also increases the statutory lump sum benefits. I am more than happy to support improvements to workers' entitlements predicated on the fact that the minister's second reading speech states that there has been actuarial work done on the cost of those increases and that the fund can, in the long term, sustain that increased cost. It is on that basis that I support the bill. If, in the future, it is going to put at risk the viability of the fund altogether, we will be in a situation where the clock has to be wound back and quite harsh measures have to be put in place to ensure that WorkCover, as such, can remain in place in our state. It is essential that it does. Therefore, the increase in statutory lump sum benefits, particularly for those people with substantial injuries, is welcome.

Access to common law is one of the issues on which there was quite a lot of heated debate back in 1997, both publicly and privately. There were suggestions that access to common law was going to be removed. Other states were cited as examples of why access to common law had to be substantially reduced. As it turned out, that did not have to occur at all. Access to common law is a fundamental right for workers. It is a fundamental judicial right for us as individuals, not only in this state but in this nation. Premier Goss introduced the 20 per cent threshold. That was a saving measure as far as the financing of the fund was concerned. It is intended that it remain in place, and I reiterate my view and the view of the minister that access to common law is sacrosanct.

I have a question for the minister about the contributory negligence provisions. It may be that the answer is in the bill and I have missed it. Those provisions were introduced in 1997 on this rational: there had been so many instances where, under workplace health and safety, employers had made available to workers appropriate safety gear. It may have been long-sleeved shirts, but the main example given to me—not only by the minister of the day but also by employers—was that employers would issue workers with steel-capped boots and the workers would refuse to wear them. They might come to work in sneakers or Dunlop—

Mr Cummins: Volleys.

Mrs LIZ CUNNINGHAM: Yes, Dunlop Volleys. They would sustain a foot injury. The contributory negligence provisions were intended to cover situations where an employer genuinely attempted to provide safety gear to the workers and the workers themselves refused to use it. There were one or two exceptions where workers were told that they had to wear steel-capped boots on roofs and things like that when only Dunlop Volleys and the like really work. I am not talking about that situation. I am talking about on the ground where steel-capped boots were essential, the workers did not wear them and they were injured.

The contributory negligence provisions were intended to cover the employer who said, 'We tried to do the right thing, the worker refused to wear the gear, they sustained an injury. They contributed to the degree of injury.' I would be interested to hear from the minister how that contributory negligence issue will now be addressed. It appears from the notes that it is just a removal of the reverse of the onus of proof, but I would be interested in his confirmation of that. Previous speakers have already talked about compensation for companionship, loss of earnings, et cetera.

Something that I have already mentioned but I would like to touch on a little further is the frustration that workers—and I am not talking about the ones who are trying to rort the system—genuinely believe that their medical issue or injury was work-related. They have been through the process of going to two or three doctors, often obtaining conflicting reports. They finally get shoved through the Medical Assessment Tribunal. Although a number of doctors for WorkCover do not even see the injured worker, they provide the report that is the basis on which the tribunal makes its decision. Such workers usually come to my office as frustrated as hornets and I do not blame them.

Because of the way the act is written, the Medical Assessment Tribunal is the final arbiter. The theory is good. I understand that there has to be somewhere where the process has to stop. However, I wonder what we do for injured workers who have long-term residual damage, such as knee damage or damage to their legs, that will deteriorate over time. If the tribunal has said that the injury is not work

related, they are still left to cope with a diminished work opportunity because of an injury that they firmly believe was contributed to by the workplace. Whilst I understand that the bill does not extend or remove the finality of the Medical Assessment Tribunal, I would be interested in hearing of any measures that are available to assist those needy workers.

I note from the minister's second reading speech that the WorkCover board has approved these amendments. As I said earlier, I am also aware of the fact that actuarial assessment has been done on the proposals.

In the WorkCover bill, in both these amendments and in the parent bill, a number of statutory time frames are imposed not only on workers and employers but also on WorkCover itself. It is my belief that those statutory time frames should not be used as the general time frame in which WorkCover can do its job.

I am aware of one case at the moment where a worker has been suffering from an injury for a couple of years, and my file on him is about an inch thick now. I will be kind and say that WorkCover has been slow or tardy in dealing with the issues relating to this worker. They acknowledge that normal practice is that as soon as they get a notice from the solicitor, they engage an assessor who prepares a report on the injury. In this instance, they did not engage the assessor. They have acknowledged that it was 'an oversight'. When I challenged them on the fact that this oversight has meant that the worker will have to wait longer to get some financial assistance, the person at WorkCover said, 'But we're within our time frames,' and they are. They still have time to work through that three-month period.

However, I do not believe the statutory time frames were intended to be the times in which to work. We should still get this done as quickly as possible, whether it be WorkCover, the employer or the employee. Whilst it is essential that we have maximum time frames, for example, the three months for compulsory conferencing, I believe WorkCover should be working on achieving as brief a turnaround time as is possible so as to assist the comfort of the injured worker and also their financial stability.

The only other issue that I wanted to comment on and commend the minister on is the amendment to section 254, which specifically talks about truncating the process where a worker has a terminal condition. I know of a number of people—and I am sure other members do, too—who have lodged workers compensation claims and their employer has intentionally extended the period for the processing of that claim knowing that the highest potential exists that the worker will be dead before the claim is finally processed. I would hope this is not a ploy that employers adopt intentionally. However, the frequency of that occurring indicates that, particularly for the major corporates, it is a management tool that is used to reduce their liability. I commend the minister for recognising that in this bill. It acknowledges the need to truncate the process to ensure that as quickly as possible a solution can be found for workers who have a terminal illness. We will see more and more of that in relation to asbestos-related disease afflicted people, miners dusted from underground mines and in respect of so many other people whose work-related illness has given them a limited life span.

Again, I commend the minister to the extent that with WorkCover it is very difficult to balance the responsibilities to injured workers, employers and to the fund. I believe that these changes, provided they can be adequately financed, not in the short term but in the long term, will go a long way towards giving relief to workers. I look forward to the passage of the bill.
