Speech by

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WORKERS' COMPENSATION AND REHABILITATION AND OTHER ACTS AMENDMENT BILL

Mr ROWELL (Hinchinbrook—NPA) (8.19 p.m.): I rise to speak to the Workers' Compensation Rehabilitation and Other Acts Amendment Bill 2004 that is presently before the parliament. I understand that the purpose of the amendments is to bring the requirements of the Queensland workplace health and safety legislation in line with that of other states. However, we need to be assured that this has been done in accordance with the best interests of Queensland. That is extremely important.

Under the six years of the Goss government—from 1989 to 1995—the Queensland workers compensation fund was allowed to descend into a tenuous financial situation. When the Borbidge government came to power in 1996, it commissioned an inquiry into workers compensation and related matters to be completed by Commissioner Jim Kennedy. The Kennedy report, published in 1996, revealed that the fund had a shortfall of some $290 million. I would like to go through some of the executive summary of that report. The workers compensation system in Queensland is far too important for the welfare of working men and women and the protection of employees to be allowed to fail.

Therefore, to ensure the viability of the system, proper and strong action must be taken immediately to: ensure the continuing rights of injured workers to adequate statutory benefits on a no-fault basis and continuing access to common law for moderately or seriously injured workers where employer negligence can be clearly proven in a court of law—it is not all on the side of the employer, we are very concerned about issues in relation to employees; develop a more efficient and focused commercial approach to administering and operating the system; restore the workers compensation fund to full funding whilst ensuring that Queensland remains a low-tax state; prepare to meet the challenges to state owned monopolies of the national competition policy; adopt more effective methods of controlling abuses to the workers compensation system; protect the continuing rights of employers under a fair, equitable and affordable insurance scheme; clarify and enact relevant legislation, particularly defining negligence, contributory negligence, workplace injury, pre-court procedures and who is and who is not covered; and limit common law claims to workers with work related impairment, WRI, in excess of 15 per cent. Those points were all important in terms of getting the fund back and certainly in making sure that both employers and employees were involved in a fair and equitable system.

The Kennedy report made a total of 79 recommendations designed to restore the fund's viability and effectiveness, including that the Workers Compensation Board of Queensland be replaced with a new organisation, WorkCover Queensland. The Queensland WorkCover Act 1996 was subsequently introduced, repealing all previous workers compensation legislation.

It is quite interesting to note that in this current successful balance WorkCover Queensland published in October 2004 material which shows that nearly all the elements that were brought into the legislation as a result of the Kennedy report have been ticked off. While that report was written in 1996, I believe that much of it is still very relevant and very important in ensuring that we have a very successful workers compensation arrangement for both employers and employees.

The purpose of the changes was to bring about financial reform to create a change in the culture surrounding workers compensation claims, to ensure the continued existence of a reasonably costed workers compensation scheme for Queenslanders and to enable decisions by WorkCover to be made without political influence. In the years since 1996, the Queensland workers compensation organisation was brought back to a financially viable situation.

In 2003, the Queensland Workers Compensation Rehabilitation Act was introduced repealing the Queensland WorkCover Act 1996. The present bill introduces a number of further amendments to this act. At present, WorkCover appears to be operating well based upon figures from the past financial year. Settlement out of court of common law claims amounted to an annual figure of $223.4 million, whilst those settled in court amounted to only $1.8 million. It is hoped that the proposed amendments will improve the capacity of the organisation to continue its high level of performance.

As per the WorkCover annual report 2003-04, the work sector most subjected to work injuries is the manufacturing sector, which experienced 20,214 injuries during 2003-04, constituting about 36 per cent of all reported injuries. This is followed by the health and community services sector and the construction industry. Therefore, it is clear that certain industry sectors are more prone to variations required of workers compensation insurance than others. We must recognise that, despite all attempts to reduce accident levels, some industries have high associated risks.

I would like to go through the variations of some of those risks with reference to the premium of $100. The scientific research group takes up only 0.0683 per cent, market research is 0.270, business and professional associations are 0.344, the horticultural industry is 2.097, the sheep, beef and cattle industries are 5.299, and mining underground is 3.0 and open-cut is 1.5. Some wide variations are occurring within a range of industries that require cover. The fact that those premiums are at the levels that they are demonstrates the risk that is involved in those industries.

At present, in Queensland there is a shortage of tradesmen. This problem needs to be addressed continually by the Queensland government, which needs to look at how it resources and channels efforts into training. A sense of security in the event of injury should be provided to those choosing to take up trade based occupations, particularly those with a high risk.

There also needs to be recognition of employers providing jobs and the substantial financial risks involved. In many cases, the small business employer is performing a similar task under the same conditions as the employee. It is not in the employer's interests to be creating hazardous conditions for themselves and their employees.

High injury rates in the building industry are also evident in the premium statistics published by WorkCover for 2003-04. While the industry accelerated with low interest rates and consequential activities in home building and a range of investment opportunities, there is a shortage of skilled tradesmen to meet the present demand, which is likely to increase as a result of many new facilities on the drawing board.

When we look at the $100 premium in the building industries, the component which carpentry takes is 6.4 per cent. For heavy engineering plant construction, it is 4.15. For building structure—and we are talking about concrete workers, roofing and bricklayers—is 5.046, which is quite high. I think that demonstrates these particular groups which are so necessary in the construction industry have had to have higher premium rates to ensure that we cover those workers in those industries. I do not think it is the result of negligence of the employers. It is the nature of their particular business that attracts these higher premium rates.

Instead of dealing with issues resulting in these occupations appearing to be less attractive to school leavers, greater emphasis has been placed on tertiary studies rather than ensuring that the trades are adequately serviced. Younger generations are now more interested in university courses leading to better paid and less physical professions. I think that is something we have to recognise when we are talking to young people about their future occupations. If we are going to continue to push them into tertiary level education—and we have not got the necessary tradesmen which are so vital for so many projects and so many industries in Queensland—we are going to have major problems. This is resulting now in increased prices for a range of trade professionals and in many cases a shortage in country and regional areas. I have no doubt the situation is the same here in Brisbane.

The proposed amendments appear likely to enhance the level of workers compensation cover provided in Queensland. There are a few issues that I would like to have clarified by the minister in his summing up and one of these includes the replacement of chapter 5, part 10, which concerns no right to particular damages under the amendments to the Workers' Compensation and Rehabilitation Act 2003. This section is to clarify the circumstances in which a court is prevented from awarding a worker damages for the value of the cost of domestic, nursing and caring services where these services have been provided to a worker by a member of the worker's family, household or friend. It is also said to confirm the original intention that awards for damages for future paid domestic, nursing and caring services are unable to be made if a worker has been in receipt of the services gratuitously in the past. I think there is a general principle behind what is proposed as far as gratuitous payments are concerned. From my interpretation of

these changes, compensation will be considered only for gratuitous service that is provided to a more serious injured worker. So it has to get to a very serious situation where compensation through the courts or through workers compensation will be considered for workers who are very seriously injured.

In the instance of paid services, damages can be awarded so long as these services were not provided to the worker prior to the injury. I would appreciate the minister clarifying the reasoning behind not awarding damages to injured workers who are provided with paid services prior to their injury being suffered. Did this arise specifically from the Griffiths v. Kerkemeyer case? In my interpretation, this might be referring to people who were already receiving some form of government assistance or care not related to the latter work related injury. I strongly question the purpose of section 107E(4) (a), which states that the authority board must have regard to whether or not an employee belongs to an industrial award prior to considering the amount payable under the industrial instrument. Does this mean that, where an employee is injured but has not joined the industrial award for a particular occupation or workplace, the amount awarded to the worker may be a potentially lesser amount?

I am pleased to see that the Labor government is finally recognising the necessity for a Queensland workers compensation organisation to retain its financial solvency. Of course, this is a requirement of the Australian Prudential Regulatory Authority. I note that clause 61 amends the legislative requirement for WorkCover to maintain its capital adequacy. I also note, however, that the detail will appear in legislation. The new section 453(b) refers to the capital adequacy as required under a regulation. As per the 2003-04 financial report, WorkCover ‘is fully funded if assets exceed liabilities by at least 20 per cent of the outstanding claims provision at the end of the financial year' exceeding the minimum benchmark set by the Australian Prudential Regulatory Authority, or APRA, which I understand is five per cent. Under section 453 of the act, assets are required to exceed liabilities by only 15 per cent.

Why is it necessary to introduce an amendment to the regulation when section 453 of the act clearly stipulates that WorkCover must maintain minimum solvency of 15 per cent? The current act allows for maintaining a minimum solvency level of at least 15 per cent. The amendment now has changed this requirement to maintain a capital adequacy requiring that assets be held of a value that is equal or greater than the total value of the liabilities. This means that any percentage over the minimum solvency rate can be adjusted by regulation provided, as I understand it, that it exceeds the five per cent set down by APRA. Why has this occurred? Why not err on the side of providing adequate funds to maintain 15 per cent, which is in the act now?

Clause 89 of the bill, which amends schedule 6 of the act—definitions—adds ‘superannuation contribution' to the list of definitions and changes section (b) of the definition of ‘wages' to state—

‘wages' means the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include—

(b) superannuation contributions, for deciding the amount of compensation payable to a worker under chapter 3 or 4 ...

A worker awarded compensation for injury received will not receive the benefit of the current nine per cent wage superannuation contribution. The minister is asked to note that the act previously required the payment of a ‘contribution by an employer to a scheme for superannuation benefits for a worker, other than the contribution made from money payable to the worker'. Employers are now required to pay the nine per cent of an employee's wage to a superannuation fund under the Commonwealth Superannuation Guarantee (Administration) Act 1992.

The minister mentioned in his second reading speech that this will be beneficial to employers who conduct businesses in more than one jurisdiction. It is intended that it will be less likely to make errors in the calculation of their workers compensation premium and will allow the employers to have simplified administrative arrangements. I have some concern as to how these figures will blow out the premium base immediately and in the future. Can the minister provide an indication of what the likely outcomes will be of the premiums once adjusted to the new premium rates?

Contained within the amendments to the Workers' Compensation and Rehabilitation Act 2003 is an amendment clarifying that the compensation an employee must pay in the excess period is ‘weekly compensation'. As I understand it, further details on this amendment are going to emerge in a regulation, but to ensure businesses know exactly what this means and what impact this may have on the costs they incur it is important for the minister to explain this in more detail in his summing up or when he goes through the clauses.

It would be irresponsible of the government to slip this in through a regulation without first going into some detail on this change and what it might entail during the debate on the legislation.

Another reform to the bill is the reduction in the time an insurer has to make a decision on a claim for workers compensation to 40 days for injuries other than psychiatric and psychological claims and fatalities. This is another positive amendment. However, in consulting on this bill were there any concerns on the need to also reduce the time period for people who have psychiatric or psychological claims? It is very understandable that these claims are more complex to work through but, at the same stage, people who have submitted these claims would also desire a quick resolution.

Clause 100 is also quite interesting. It appears to remove the requirement in the regulation for a workplace to be registered, stating that the term ‘registrable workplaces' will be omitted. This is a major plus. I understand that there will be some gain of about $6.8 million or $7 million as a result of this. I would hope that would be fed back into the benefits that will be derived from doing exactly that. I understand that inspectors are obligated to inspect a particular workplace. If there are matters on which they can provide advice on what needs to be done at that time, I am sure that it would result in considerable saving of costs to those people involved in that workplace.

Clause 8 redefines ‘excess period' for which an employer is liable, as set out in section 65 of the act. Where previously it was four days, the excess period now commences on the day of the worker's entitlement, as set out under part 7 of the act, and ceases when an amount of weekly compensation is exceeded under the act’s regulation.

Whilst the introduction of the codes of practice, in order to clarify the obligations and responsibilities of all parties involved in the workers compensation process, appears to be an improvement in terms of clarifying the obligations of insurers, I question the accuracy of clause 62 of the bill as it amends section 486B(1) of the act. The proposed wording is as follows—

Unless otherwise stated in a code of practice, the code of practice does not state all that an insurer must do, or must not do, to perform its functions, exercise its powers and meet its obligations under this Act.

Generally speaking, an act refers to the implementation of a statutory instrument, and the instrument generally includes the specific detail and requirements not included within the broader provision of an act or a regulation. This has the advantage of enabling a code to be changed without having to amend the relevant legislation. Therefore, if the minister wishes to be embodied with the power to implement a useful code of practice, that code should cover all relevant provisions within the legislation.

I note that clause 64 amends section 545 of the act providing Q-Comp, as the regulatory body, with the power to review decisions made by WorkCover considered to be reviewable under the act. This section also amends the relevant criteria for reviewable decisions. Clause 68, which amends section 548A, enables non-reviewable decisions to be referred to the Industrial Commission in addition to a Magistrates Court as per the act. However, these new powers to be awarded to Q-Comp are very substantial. The overturning of decisions is generally undertaken by an independent body, and it would be preferable if Q-Comp was not a government appointed group of people but a purely independent body.

Determining whether or not injuries have occurred is also becoming increasingly difficult. It was reported in the media this year that ‘stressed out office workers' were reporting ever-increasing rates of injury. According to the *Courier-Mail* on 5 March 2004, there is growing evidence of stress resulting in physical pain, tension headaches and chronic muscular exhaustion as reported by the Australian Council of Trade Unions. This seems to be of some concern. The article indicated that approximately 4,000 new musculoskeletal injuries are reported per week, and these are believed to result from stress in the work environment. In genuine cases these work injuries worsen if the stress is not dealt with or if the worker feels that they must work on regardless. It must be difficult to determine which such workers compensation claims have merit and which claims are not substantiated or could not be substantiated. Given the alarming rate at which such injuries are increasing, let us hope that the minister has included within the amendments set out in the proposed bill a way of determining the accuracy of such work stress questionable related claims given these facts.

Too many stories have been reported about workers who have received large amounts of compensation for doubtful or minor injuries and other workers who have received injuries which directly affect their capacity to earn a living and who have been rewarded very little in the way of compensation. For example, a case was reported in the *Sunday Mail* in June this year where a worker received $10,600 for a sprained finger whilst another worker received $4,800 for back injuries which prevented him from earning a living for himself and his family for a 12-month period.

There are also amendments to the meaning of electrical equipment and extra low voltage equipment with hazardous areas and activities of an electrical worker clarifying certain work activities. There are still inequities and anomalies in the present system which need to be addressed, and it is hoped that this bill will have the capacity to do so.

I would now like to turn to the amendments which have been presented by the minister on the Workers' Compensation and Rehabilitation and Other Acts Amendment Bill on Boxing Day trading hours in Brisbane. The minister will introduce amendments—and I have seen them come through—in the bill to force major supermarkets and department related chains in Brisbane to close on Boxing Day. With Boxing Day falling on Sunday this year, workers could be required to work any day between Sunday, 26 December and Monday, 3 January without any consecutive days off during this Christmas-New Year period. Without the change, people on a Sunday roster would be forced to work and not receive the public holiday rate given that Boxing Day falls on a Sunday. Small stores such as newsagencies, chemists, bakeries and corner stores will be allowed to remain open, as I understand it. The minister can correct me if I have the

wrong interpretation of it. The amendments will apply only to Boxing Day this year; it is not intended that they are going to continue.

This decision came after concerns were expressed by the Shop, Distributive and Allied Employees Association. Traders on tourist strips such as the Gold Coast and the Sunshine Coast will be allowed to remain open. This is consistent with a decision by the New South Wales government to allow traders along the coastal strip like Tweed Heads to trade on Boxing Day. Under the amendments, full-time employees in those shopping centres on the Gold Coast and the Sunshine Coast will be free to decide whether they work on Boxing Day or not. This decision will not affect shopping centres' trading hours in regional tourist centres including Cairns, Townsville, Whitsunday and Hervey Bay.

The state government has the power to make a decision on trading hours only in the south-east corner. Any decision to narrow trading hours in the regions would be made by the Industrial Relations Commission. I have a concern about this. The question must be asked why this issue was not identified months, if not years, ago rather than being rushed in at two minutes to midnight. It has allowed only limited consultation with those affected by the implications of this rushed amendment.

As far as the bill is concerned generally, I cannot see many problems with it. It has addressed many issues quite reasonably. However, I am concerned about a couple of aspects and they can be dealt with during the consideration in detail. I am concerned about this Boxing Day trading hour amendment because of the lack of consultation. I do not know why, when the department has all these officers, something could not have been done about it before because I am certain that some people will be affected. A government has to make decisions like this. It will wear the flak for it, whichever way, and that is something it just has to bear.

One thing those on this side of politics have a great deal of concern about is letting people know in a reasonable amount of time, particularly when it is not a critical issue that suddenly loomed up. This is an issue that could have been, but was not, foreshadowed a long time ago. However, it has come up all of a sudden. As far as the staff are concerned, our consultation with them has been quite good. We have had a good amount of time to go through the bill and check out many aspects of it. There may be a few little points that need ironing out during the consideration in detail. Having said that, one stumbling block has arisen, unfortunately, and it could have been avoided if somebody had taken the trouble to look at it some time ago.