Speech by

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WORKERS' COMPENSATION AND REHABILITATION AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (12.14 pm): I rise today to speak to the Workers' Compensation and Rehabilitation Amendment Bill, a bill that has two major concerns for me—one relating to the self-insured employers and the other to small business which has no choice with regard to self-insurance but has to subscribe to WorkCover. My first serious reservation is with regard to the unfair situation self-insured employers will continue to be put in when workers compensation is applied for. This bill has been prepared to address implications arising from the Queensland Court of Appeal decision, as mentioned by other members, of Australia Meat Holdings Pty Ltd v Douglas and Others.

The bill aims to reaffirm that an employer or any other person other than the worker or their representative has no entitlement to be present or heard before a Medical Assessment Tribunal. The Justices of Appeal in the Meat Holdings case noted that the legal position has had to change since 1996 when the statutory monopoly of the state as the insurer of claims for industrial injuries to workers was brought to an end and employers were allowed to become self-insurers of their liability for damages arising from injuries sustained by their own employees. The 1996 act also conferred on the employer a statutory immunity against action for damages at common law that survived until it was removed by a tribunal decision favourably assessing an employee's injury as satisfying the act. It is important, though, to note what Justice Mason of the High Court has said—

Any statutory power must be exercised fairly, in accordance with procedures that are fair to the individual considered in the light of the statutory requirements, the interests of the individual, and interests and purposes, whether public or private, which the statute seeks to advance or protect or permits to be taken into account as legitimate considerations.

Let us revert back to what our 1996 workers compensation act sought to advance. I refer to the explanatory notes of the legislation in bill form which state—

The Bill effects a total rewrite of workers' compensation legislation in Queensland in a modern drafting style and is structured in a way to simplify administration of the legislation. Key elements of the Bill are designed to, amongst other things, strengthen employer and worker obligations in a number of areas, ensure workers and employers participate in effective rehabilitation and return to work programs and provide modern and more flexible insurance arrangements for Queensland employers. Accordingly, the Act seeks to strengthen, as it would for workers, the obligations of employers.

I concede that the providing of an opportunity to all employers in tribunal hearings would be a costly exercise. It would be administratively costly as well as financially. I also note that self-insured employers are not particularly keen to pursue a right to be involved as it could add thousands of dollars to the cost of a hearing and make the process more lengthy. But what should be recognised is that this bill should provide the opportunity to employers to be involved in circumstances that warrant it. Discretionary inclusion is what this bill should be trying to achieve to find true balance between the interests of workers and employers.

This leads me to the disadvantage that small business has been put under. This House needs to address situations where an employer who has not had the chance to present their side of the story wears the amount of a successful claim by an employee in the form of increased premiums for the next three

years. For example, if an employee receives a $50,000 settlement, the employer has to deal with a premium that reflects a third or up to a third of that settlement for each of the next three years. The financial and often emotional burden that these ongoing and often significantly large premiums can have on small business owners is crippling. With regard to small business, the workers compensation scheme is not dealing with insurance anymore; they have a prepayment schedule. I know of at least one small business, a florist, on the Gold Coast who had to shut up shop for good because it could not afford to continue running after a workers compensation claim was awarded to a contractor who was injured whilst delivering flowers and then the compensation was claimed back in high premiums. Small businesses are stuck with WorkCover and the resulting premiums. Unlike big business, small businesses have no provision to go elsewhere for insurance and to a more competitive insurer.

Mr Shine interjected.

Mr LANGBROEK: It is cheaper, member for Toowoomba North, because the employer is the one who has to pay what the person gets paid. They pay it back in a premium over the next three years, so it is not really insurance. As I said, small businesses have no provision to go to a more competitive insurer. They are trapped into paying this third of a successful claim for three years.

I want to read to the House a letter—

Mr Barton: Are you supporting this bill or opposing it?

Mr LANGBROEK: We are supporting the bill, but we are entitled to have reservations. I want to refer to the House—

Mr Barton: That's the opposite to what you're saying.

Mr LANGBROEK: We support it, but I want to read to the House a letter that I received from a constituent of mine who has a plumbing company on the Gold Coast. I am going to read that, because it relates to a significant matter that deals with this particular issue of WorkCover compensation. The plumbing company wrote to me and stated that they had paid between $18,000 and $24,000 in premiums. The letter states—

Only ... when we had a major claim were we made aware that it is not an insurance policy per se but a pre-payment schedule. Therefore, if your claim is high then the employer has to pay a vast percentage of the difference. In our case, the claim was $198,000.00 to the employee and we had to repay approximately $150,000.00 over three years plus the annual calculation.

The employee who lived in Broadbeach went to a doctor in Upper Beechmont who was not his regular doctor. We were then informed by the employee after the doctor's visit that he had hurt himself on two job sites ... His claims included what he was doing and which job sites he was apparently on. We discovered, through our records that he was not even on one of those sites ... On the other site ... We obtained statutory declarations from the Project Supervisor and the Backhoe Operator that stated their scope of works that were in contradiction to the employees's claims.

This employee had another job dragging go-carts around in the evening but that employer didn't have a WorkCover policy.

The letter goes on to state—

WorkCover were contacted immediately after the employee initially made his claim of injury to us. The organisation was made aware of all the aforementioned events and documentation of proof of an invalid claim. (As we and others involved saw it).

The case was taken to Civil Court and WorkCover decided to settle without consulting us ... and settled on an amount of $198,000.00 with the employee. This apparently settled the following January and we were never consulted or kept up to date with the proceedings. We only became aware of our now incredible debt when we received our assessment the following September.

Another thing we have noticed is that when employees go to the doctors a WorkCover claim is given no matter what the circumstances. In one case we knew about an employee's injury on a Saturday (while not at work) and when he went to the doctors on the Monday he came back with a WorkCover claim form. Obviously, we did not acknowledge it but at the same time reported this to WorkCover.

That is quite an interesting anecdote from a small businessperson who believes that there are issues relating to WorkCover that should be addressed by the minister. I raised this matter two years ago at an estimates committee hearing but at the time the minister said that he did not think there were any issues.

In conclusion, the trapping of employers into an unfair legislative WorkCover scheme is demonstrated by the inability for small business to engage with more competitive insurers. Small business should be afforded this opportunity when the workers compensation process can blatantly ignore its business, which is indeed small and possibly unable to deal with large compensation payouts. Those small businesses are not buying insurance; they are just getting part of the prepayment schedule.