Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Tuesday, 18 May 2010

WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (2.37 pm): I present a bill for an act to amend the Workers' Compensation and Rehabilitation Act 2003, the Workers' Compensation and Rehabilitation Regulation 2003, the Workplace Health and Safety Act 1995 and the Civil Liability Regulation 2003 for particular purposes. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill [2223].
Tabled paper: Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill, explanatory notes [2224].

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (2.37 pm): I move—

That the bill be now read a second time.

The bill before the House implements important reforms to further strengthen the performance of the Queensland government's workers compensation scheme. Labor governments in Queensland have a long and proud history of protecting workers from injury in the workplace and for providing compensation for those who find themselves in this unfortunate situation.

In 1916, the Labor government, led by TJ Ryan, introduced Queensland's first compulsory workers compensation scheme for non-government employers which extended to almost all workers in the state rather than just the manual workers who had previously been covered. This Labor government continues to protect workers and their families by ensuring that the workers compensation scheme that has been such an important part of the protections provided to workers continues to deliver significant benefits for all injured workers in Queensland.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2010 follows the business review of WorkCover Queensland presented to me on 18 November 2009 by the WorkCover board. The independent business review of WorkCover Queensland by Deloitte identified possible solutions to ensure WorkCover's financial position. The review identified a number of issues that were impacting on WorkCover's financial position. These impacts have also affected other schemes in operation in Australia.

WorkCover was not immune to the global financial crisis, and two consecutive years of significant negative investment returns had made its impact. The independent review found that WorkCover was experiencing an increasing number of claims and claims costs, particularly common law claims. It also found that premium income was not keeping pace with claims growth. These factors resulted in a loss of $381 million before tax in 2007-08 followed by a loss of $894 million in 2008-09, totalling an accumulated operating deficit of $1.3 billion before tax which has been absorbed by investment reserves. The management and performance of WorkCover Queensland had been strong for so long that, despite these losses, the scheme remained fully funded at 30 June 2009 with a positive funding ratio of 127 per cent.

As I mentioned earlier, the global financial crisis has had a very significant impact on virtually all governments, businesses and the community generally. While WorkCover did not escape this crisis, its continued stable performance contrasted with that of other Australian workers compensation schemes that did not fare as well through the global financial crisis. Victoria's workers compensation scheme had a funding ratio of 97 per cent at 30 June 2009 and posted a $1.254 billion operating deficit for 2008-09, while in South Australia unfunded liabilities grew to $1.059 billion. The Bligh Labor government is proud of its track record in, and commitment to, balancing good benefits for injured workers with affordable premiums for employers.

While it was clear from the business review of WorkCover Queensland that action needed to be taken to ensure the solvency of the scheme, the government was not prepared to consider significant changes without careful consultation with scheme stakeholders. A discussion paper was released on 23 February 2010 which invited public comment by 24 March 2010. It outlined a number of possible proposals aimed at ensuring the continued financial health of the workers compensation scheme. A stakeholder reference group was established comprising representatives of employers, unions and the legal profession to consider the submissions and provide advice to me. The reference group, which I chaired, met on four occasions over a six-week period. Sixty written submissions were received in response to the discussion paper from employers, self-insurers, unions, workers, lawyers and health professionals. It was reassuring to note that none of the submissions received suggested a change to the fundamental nature of the Queensland scheme—that is, a short tail scheme with access to common law proceedings.

Three themes were consistently raised by stakeholders: first, the need for a much stronger focus on rehabilitation and return-to-work outcomes; second, concern that WorkCover accepts claims too easily and settles common law claims for sums that are too high, a claim strongly denied by WorkCover and, no doubt, anyone who has had claims refused in the past; and, third, concerns regarding the transparency of the scheme, including institutional arrangements involving the timely release of information to stakeholders. To address the veracity or otherwise of these concerns, the government intends to undertake an independent structural review of institutional and working arrangements in Queensland's workers compensation scheme. The government is committed to ensuring that the Queensland scheme remains the best and fairest in Australia.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2010 will see the workers compensation common law damages arrangements, including liability, quantum and some contributory negligence provisions, harmonised with the Civil Liability Act 2003. The liability and contributory negligence provisions in the Civil Liability Act 2003 have been incorporated into the bill, with modifications to take account of the workplace context. For example, voluntary assumption of risk will not apply because the courts have recognised that it is inappropriate in an employment context. The mandatory reduction in damages of at least 25 per cent for a person whose intoxication contributed to their injury, reflecting section 47 of the Civil Liability Act 2003, is included in the bill. However, a provision equivalent to section 48 of the Civil Liability Act 2003, which has mandatory reductions in damages for anyone injured by someone they knew or should have known was intoxicated, is not included in the bill because injured workers could unfairly lose damages, even if an employer did not manage alcohol or drug related issues at the workplace.

Under the bill, general damages, being damages for pain and suffering, will be capped at approximately $300,000. Damages for economic loss, being loss of future earnings, will be capped at three times Queensland ordinary time earnings for the purposes of calculating annual earnings. Queensland ordinary time earnings are currently $1,132.10 per week, being $58,869 per annum. Three times Queensland ordinary time earnings is $176,607. This amount will be the maximum annual earnings a court will be able to take into account when calculating loss of future earnings.

Another area of difference between the Civil Liability Act 2003 and the Workers' Compensation and Rehabilitation Act 2003, apart from the contributory negligence provisions, is the requirement for damages to be assessed in accordance with a set scale. To determine general damages, an injury scale value, or ISV, will be used to assess a worker's dominant injury. The ISV scale is the same as the scale set up in the Civil Liability Regulation 2003. The effect of the ISV is that it compresses claims at the lower end of the scale and benefits more seriously injured workers.

I now turn to the exclusion of damages for voluntary services provided to the injured worker such as care by a family member and damages for voluntarily services provided by the person which are provided for under the Civil Liability Act 2003 but not under the workers compensation legislation. It is proposed to consider these damages for inclusion as part of a further review of the scheme to be held in two years, by which time the effects of the global financial crisis should have diminished significantly and the impacts of implementation of the preferred option on common law claims lodgements will be known. Of course, injured workers will continue to receive fair benefits through the statutory scheme, which remains unchanged. However, as outlined previously, if an injured worker elects to pursue a common law claim, the worker will be subject to quantum and liability restrictions. In addition, a court will be able to award costs against a worker where a claim is not successful.

The Workers' Compensation and Rehabilitation Act 2003 currently allows cost orders only where the court awards more or less than a party's final written offer of damages. This has been interpreted by the courts to mean that, if the claim is dismissed, no costs are payable. This has led to the situation where a plaintiff who receives less than a defendant's final offer suffers costs consequences, yet a plaintiff who receives no damages because the claim is dismissed is not required to pay the other party's costs. The bill also provides that a plaintiff who loses a case outright can be ordered to pay WorkCover's costs.

The decision of the Queensland Court of Appeal in Bourk v Power Serve Pty Ltd & Anor [2008] QCA 225 affirmed that, if a worker is injured at work and there is a causal connection between the injury and work, the employer has breached its duty under the Workplace Health and Safety Act 1995. This has led to increasing numbers of common law claims based on the perception that strict liability attaches to an employer in common law proceedings if a work injury has occurred, regardless of fault. The bill amends the Workplace Health and Safety Act 1995 to remove any private civil right of action arising under the act—that is, a worker will not be able to rely on a breach of the Workplace Health and Safety Act 1995 to support their claim of common law negligence. This amendment will preclude retrospectively and prospectively only those claims where negligence under common law cannot be proved. The approach is justified on the basis that common law claims under the Workers' Compensation and Rehabilitation Act 2003 are generally lodged between one and three years after the injury. If the amendment only applied to injuries that occurred after the introduction of the bill into parliament, it will not address the growth in claims.

I have outlined the impact of the bill on injured workers' common law claims. I would now like to outline the impact on employers and others. The chairperson of the WorkCover Board has advised that, based on the policy proposals contained in this amendment bill, the board has set an average premium rate of $1.30 per $100 of wages for the 2010-11 premium year. Victoria and Western Australia have announced average premium rates for 2010-11. Victoria, the state with the next lowest employer premium costs, has recently announced an average premium rate of $1.34 per $100 of wages for 2010-11, which is 3.1 per cent more than the Queensland rate. Western Australia's average premium rate for 2010-11 is $1.497, which is 15.2 per cent higher than the Queensland rate. The average Queensland rate for 2010-11 also compares favourably with the current average premium rates of $1.69 for New South Wales, $3 for South Australia and $1.97 for Tasmania. By maintaining a scheme that is more than competitive with the other states and territories, Queensland is providing a platform to continue its economic strength as the global financial crisis abates.

The bill also increases the employer excess which is paid when a worker is injured from 65 per cent of Queensland ordinary times earnings, or $740 for most employers, to 100 per cent of Queensland ordinary times earnings, currently $1,132, or one week of compensation, whichever is the lesser amount. The increase in the employer excess will provide an incentive to employers to improve injury rates. The bill will also require third-party contributors to participate meaningfully in settlement negotiations through the exchange of relevant documents, providing estimates of costs and submitting mandatory final offers to reduce the duration of claims and legal fees. Contributors are parties that an insurer considers may share liability for an injury, such as a manufacturer of products containing asbestos.

Queensland continues to enjoy the most financially stable scheme in Australia. The proposed reforms should ensure the status quo is maintained. The government is committed to ensuring that the Queensland scheme remains the best and fairest in Australia. To ensure this objective, an overall effectiveness review of WorkCover's current and future financial position will be undertaken in two years time and completed by 31 December 2012. By this time, the full impact of the amendments I have outlined today will be known. I want to take this opportunity to thank the representatives of employers, workers, self-insurers and lawyers for their open and cooperative approach in ensuring the ongoing strength of Australia's best and fairest compensation scheme. I commend the bill to the House.