Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

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WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (9.41 pm), in reply: I thank all honourable members in the House who have contributed in a substantial and constructive way to the debate on this bill this evening, the debate on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill. This has been an historic week for our workers compensation scheme in Queensland. We have moved to further strengthen Queensland's scheme and ensure workers and employers continue to get the best value and fairest scheme on offer of any Australian state.

I have previously indicated to members of the House that an independent review will be conducted of institutional and working arrangements. I indicate to all members of the House that that independent review of a range of matters—including claims management, settlement of legal costs and other associated issues—will be carried out by Robin Stewart-Crompton, the former chief executive of the National Occupational Health and Safety Commission and most recently the chair of the National Review into Model Occupational Health and Safety Laws. That will be a very significant review.

There are many matters that came out of the very detailed stakeholder engagement process that we went through as part of developing a response to the issues relating to the WorkCover scheme. A whole range of issues came out of that process through stakeholder engagement, through the almost 60 public submissions we received. We will now proceed to move through some of those matters. If we can perhaps start where we ended, one of the issues the member for Nicklin raised was the issue of asking for a claims history of an injured worker. That is something that can be considered as part of the review of institutional working arrangements. I have asked officers of the department to ensure that matter is considered as part of that review. Where we go with those matters remains to be seen. Mr Stewart-Crompton has very great experience in this area and will act as an independent arbiter of a range of issues that have come out, and it is very important for those to be pursued thoroughly as we move forward.

As has been indicated by government members in the debate, this is a scheme that is constantly under review. The finish line is never reached. It is a matter of constant assessment and review to ensure and to guarantee that we have the most stable and secure workers compensation scheme in the nation. So we are doing that immediate review of institutional and working arrangements, and then we are going to do the effectiveness review in two years time to see how this particular tranche of reforms work.

It cannot be denied that WorkCover Queensland was impacted by the global financial crisis. You cannot have an organisation that sustains an operating deficit of $1.3 billion over two years that has not been impacted. There are two streams of income for any insurance company, including a compulsory workers compensation scheme. One is income on investments; the other is premium income. They are the two streams of revenue. We have a scheme that historically has been financially sound—the most solvent scheme in the nation. At 30 June last year, the solvency ratio of the workers compensation scheme in Queensland was 127 per cent—that is assets over liabilities. It was the most solvent scheme in the nation, but it was severely impacted by the global financial crisis, along with the significant increase and ongoing

increase in common law claims. They are the things that the WorkCover board initially had to deal with and then the government had to deal with in response to certain recommendations made by the board to government.

There has been rewriting of history tonight by those members opposite who denied the global financial crisis when it was coming, denied it when it was here and still continue today to deny the impact of the most significant economic crisis in 75 years on our state. You only need to look to Europe today to see the ongoing problems in international financial markets and the risk that the world faces—the Queensland economy, the national economy and the international economy face—of a potential double dip. What did the shadow Attorney-General say? He said, on 24 February—

With regards this global financial crisis, it is again the triumph of salesmanship over substance in Queensland, where the Government is trying to align an issue, which is external, which is only peripheral, to what's happening to Queensland.

I do not know where planet LNP is, but it is not in Queensland. He also said on 27 January 2009, in response to claims that the global financial situation was dire—

That is absolute nonsense. It is not even a recession.

Mr Springborg: Guess what? Was it? Was it a recession?

Mr DICK: I note the interjection by the member for Southern Downs. Every time it has been raised today he has put his head up and barked interjections. What he is trying to do is deny what he said publicly previously.

Mr Springborg: Was there a recession?

Mr DICK: He knows in his heart of hearts, as does every member opposite, that that sort of approach to economic management sunk him at the last election.

Mr Springborg: Was there a recession?

Mr DICK: I take the interjection: 'Was there a recession?' For someone who is not a lawyer, he certainly knows the words. He is seeking to deny what he put on the record then. We know what he did. He knows he did it. He knows that it destroyed his economic credibility and that of the alternative government. But we will wait and see, because we know that he will run for the leadership again. We know that the polls this week indicated that he is the preferred leader of the opposition by the Queensland community. He outrates the leader. He outrates the member for Clayfield on 11 per cent. But he also outrates 'unknown' on 23 per cent. So we do know that a quarter of Queenslanders polled do not want any of them leading the opposition. We also know from that poll that 50 per cent of Queenslanders polled do not believe the LNP is fit to govern Queensland. All of those on this side of the House certainly know that.

The government had to act. We have acted decisively but we have acted reasonably and sensibly to balance the needs of business and injured workers in this state. I reiterate just how well the local scheme has performed over recent years. It has served employers and employees and injured workers well. Queensland businesses and workers continue to enjoy the most financially stable workers compensation scheme in Australia, and these reforms will ensure that that continues.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill will ensure WorkCover Queensland's ongoing financial viability and will also maintain as a consequence full access to common law remedies for all injured workers as well as seriously injured workers. That Queensland has Australia's best performing centrally funded workers compensation scheme is not in question. As at 30 June last year, WorkCover Queensland controlled assets of nearly $3 billion, with liabilities of $2.3 billion. It is currently the only state or territory centrally funded scheme where assets exceed liabilities.

This is a government that is acting proactively to ensure that stability and certainty continue into the future. We have taken an enormous hit. We should look at what the board recommended to government. What did the board recommend? The board recommended a threshold for common law claims of 10 per cent or 15 per cent of whole-person impairment—a very significant and substantial claim. We know in their heart of hearts that members opposite wish to exclude injured workers from common law claims in Queensland. They have tried to do this in this parliament of Queensland previously, and men and women of political courage stood up against that tactic. That is what we are trying to do. We are trying to ensure stability in the scheme going forward. We had to protect that position.

That is why the legislation before the parliament features many of the points raised by employers, by unions and by the legal profession who were consulted widely, openly, in a transparent fashion and at length on the nature and need of the changes. We have had a very open process from the day the government received the report from the WorkCover board. I have reported to the parliament. We set up a significant broad-ranging stakeholder group involving employer groups, trade unions, representatives of workers, lawyers, other interested parties and business groups, including the Queensland Resources Council, the Chamber of Commerce and Industry Queensland and the Australian Industry Group. All of these people had a seat at the table and then we opened the process to public submissions. All of that is

on the department of justice website. All of those submissions can be accessed. It was very open and transparent. It was a very constructive way to develop public policy.

I should also say that not one of the 60 written submissions that the government received suggested a change to the fundamental nature of the Queensland scheme, which is a short-tail statutory scheme with access to common law. There is consensus in the Queensland community that the Queensland system works and delivers for Queensland. That is what we are trying to maintain.

No-one can claim that we have not acted decisively. Less than six months after becoming aware of the issue, we have introduced legislation to allow new arrangements to be in place by 1 July this year. We have listened to all points of view and produced a package of reforms that has required, inevitably, some concessions from all stakeholders in the best interests of our state. The suite of changes represents a responsible, well-considered response to WorkCover's financial situation while rejecting the call for injured impairment thresholds governing access to common law damages by workers. Instead, common law claims brought under the Workers' Compensation and Rehabilitation Act will be harmonised with arrangements under the Civil Liability Act 2003 with modifications to take into account the workplace context. I am advised that modelling by WorkCover's actuary, PricewaterhouseCoopers, indicates that harmonisation with the Civil Liability Act 2003 will result in a compression of claims at the lower end of the injury scale.

I would now like to turn to the legal cost provisions in the bill. I want to make it clear that the cost regime was not open for general review and amendment, apart from addressing an anomaly created by the decision of the Queensland Court of Appeal in Sheridan v Warrina Community Co-operative Ltd & Anor [2004] QCA 308. The government had two clear priorities with regard to claims costs. The first was to address the Court of Appeal case in Sheridan which held that no costs can be awarded against a plaintiff whose claim is dismissed. The second priority was to increase the pretrial obligations of third-party contributors to exchange relevant documents, certify readiness for conference and make mandatory offers.

An important feature of the bill before the House is that it harmonises damages arrangements with the Civil Liability Act 2003. This will see a capping of payout amounts and changes to common law damages, particularly liability and contributory negligence. It is fair in all the circumstances and reasonable, as is the new injury scale value outlined in the bill which will be used to determine general damages by judging injuries on a scale of zero to 100.

I am advised that WorkCover's actuary, PricewaterhouseCoopers, said that these measures should reduce the frequency of common law claims and reduce the size of settlements paid, with injured workers continuing to receive fair benefits through the unchanged statutory scheme. The liability and contributory negligence provisions in the Civil Liability Act 2003 that have been drafted into the bill include some modifications to take into account the workplace context and the employer-employee relationship. Included is the mandatory reduction in damages of at least 25 per cent for a person whose intoxication contributed to their injury. This is entirely appropriate and, as other honourable members have said during the second reading debate, broadly acceptable to the Queensland community. However, section 48—which is mandatory reductions in damages for anyone injured by someone they knew or should have known was drunk—will not be included. This, too, is entirely appropriate because injured workers could unfairly lose damages even if an employer was at fault in not managing alcohol or drug related issues at the workplace.

The bill amends the Workplace Health and Safety Act to provide that nothing in the act creates a civil cause of action based on a contravention of a provision under the act. This amendment will apply to current claims and proceedings for damages if the proceedings commenced after 8 August 2008, the date of the judgement in Bourk v Power Serve Pty Ltd & Anor [2008] QCA 225.

The Workplace Health and Safety Act 1995 as enforced immediately before the commencement of the amendment will continue to apply to a proceeding for damages if the trial in the proceedings started before 1 July 2010. Where a claimant has already commenced proceedings but has not yet gone to trial, the amendments do not restrict the ability to make any necessary amendments to pleadings. The decision to make this amendment retrospectively was not taken lightly. WorkCover Queensland and Crown Law have advised that, in their view, as the ability to establish employer liability pursuant to common law negligence remains, only a very small number of existing claims will be affected by this change in the law.

WorkCover Queensland has given an undertaking to treat affected litigants fairly and in accordance with the principles of natural justice. This undertaking includes concessions to workers who have already brought a claim and who may not be able to establish employer liability due to the amendment. So we will treat anyone who is adversely affected by the change in the law fairly. We will receive submissions from them on how their claim might then be managed within the statutory scheme or otherwise and we will deal with them very fairly. WorkCover knows that. WorkCover will ensure that occurs.

As well as the legislative changes set out in the bill, I would like to highlight other initiatives which will improve service delivery, achieve better rehabilitation and return-to-work outcomes, and provide more assistance to poor-performing employers in terms of injury prevention and claims management. That

matter was raised by a number of members in the House. Honourable members will know from the budget in respect of the portfolio of Justice and Attorney-General that a new rehabilitation and return-to-work scheme will be established this year at a cost of $2 million. That is the first stage in dealing with rehabilitation and return to work. Obviously, it is important to get workers back to work as soon as possible to ensure that they have a productive life and that they have the fulfilment of employment. We want to ensure that occurs. We also want to work with employers in high-risk industries to ensure they provide safe workplaces. This will do two things: it will ensure workers are not injured and it will ensure their premiums over time are reduced.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill amends section 221 of the act to require the regulatory authority, Q-Comp, to refer a worker referred to it under section 220 to programs that may assist in the worker's return to work with the worker's consent. This is an important amendment that will ensure that those workers who do not have a job to return to will be provided with the necessary assistance to gain meaningful work.

I now turn to address the issues that were raised during the debate. The member for Southern Downs, as is his want, made a number of spurious allegations concerning the management of WorkCover in an obvious attempt to throw mud at WorkCover, at Q-Comp, at lawyers who represent injured workers, at injured workers themselves and at other stakeholders in a vain attempt to make mud stick. He claimed that WorkCover had an internal management issue and that the government's response was to intentionally run down the surplus in some effort to cook the books. It is simply nonsense. He should be ashamed of the comments he made during his speech. WorkCover Queensland is the best performing centrally funded workers compensation scheme in Australia. It is fully solvent. It is the only state or territory centrally funded scheme whose assets exceed its liabilities, and we are aiming to keep it that way.

WorkCover is a well-managed organisation that is solvent. I pay tribute to the board, which has worked assiduously and hard, particularly the chairman, Ian Brusasco, and the deputy chairman, Terry White, for their work over a long period of time to ensure financial stability. This is, again, a government being proactive to ensure that stability continues into the future.

It is recognised from comments of stakeholders, however, that WorkCover needs to do more. It needs to do more to keep stakeholders better informed of its performance and trends. I am advised that WorkCover is putting new arrangements in place to ensure stakeholders receive regular briefings on its operations. As was detailed by one of the government members in the debate, I also note for the honourable member for Southern Downs that, in response to concerns raised during the consultation process with stakeholders and the community, a structural review of institutional and working arrangements is currently being carried out by Robin Stewart-Crompton.

The member for Southern Downs asked for the proportion of claims that were dismissed in the last three years. The proportion of claims that were finalised and paid zero damages over that period has remained steady at 11.8 per cent, increasing marginally by 1.5 percentage points in the last financial year.

The member for Southern Downs complained that no actuarial reports were released. As has been noted previously, the actuarial assessment is not able to be released due to it containing information that is commercial in confidence. However, I would remind the honourable member that during the extensive community consultation on the reforms—a process that I would note the LNP chose to ignore both in failing to completely engage in the process or to mention in any part of members' addresses—an overview of the actuarial reports was provided to all interested parties while the actuaries presented their findings to the key stakeholders on a number of occasions. As the reform process continues to move forward and to build increased transparency into the scheme, actuarial information will be presented to scheme stakeholders every six months to provide updates on the scheme's financial position.

The member for Southern Downs has alleged that one of the problems with the financial position of the scheme was that too many common law claims were settled or uncontested. I would like to state at the outset that WorkCover has strongly denied this allegation. WorkCover seeks to follow model litigant principles in resolving common law claims, as it should—that is, that claims are resolved as quickly as possible using both the prelitigation processes in the legislation and litigation where it is necessary to do so. WorkCover also takes guidance from court precedents in determining employer liability and negotiating appropriate settlement amounts. This is something that has been raised and will be considered as part of the review of institutional working arrangements. In view of comments received during the public comment process, as I have said, we are going to continue to pursue that process.

It is very interesting to note that the mandatory precourt procedures were introduced when? They were introduced in 1996 by the then coalition government. They were introduced why? To resolve matters out of court to the mutual satisfaction of all parties. The parentage goes back to the coalition, goes back to the Borbidge government in 1996. That process of prelitigation negotiation now finds itself abandoned and orphaned by those opposite today.

I would like to address some of the issues raised by the member for Gladstone. The member for Gladstone and I do not agree on many issues, but she is a member of this place who brings some

considerable integrity and credibility to the arguments in this House on workers compensation and the support for injured workers. I take her questions seriously and I will do my best to respond to the issues that she has raised.

The member for Gladstone asked where and in what way WorkCover's investments were speculative. I can inform the honourable member that WorkCover's investments are managed by the Queensland Investment Corporation which operates a balanced fund. The balanced fund means that it is not generally involved in speculative investments.

The honourable member also asked whether significantly injured workers who require high levels of care would be disadvantaged. Under the proposals in the bill, workers who are severely injured are in fact likely to be treated more favourably due to the operation of the injury scale value which compresses generally at the lower end, particularly for general damages for pain and suffering. The compression is at the lower end under the injury scale value. But seriously injured workers should not be greatly disadvantaged because of the way the injury scale value is structured, reflecting the injury scale value in the Civil Liability Act. It is very important to ensure that the compression is at the lower marginal claims end and not in the case of seriously injured workers.

The member also asked about the application for costs to pursue a claim under the Sheridan principle and whether such costs would act as a disincentive. If an injured worker has a legitimate claim, this provision of the bill will not act as a deterrent to bring a claim because legal advice will likely dictate a more realistic assessment of the claim. So injured workers will continue to have their statutory entitlements under the scheme but they will be no more disadvantaged than anyone else who brings proceedings in any other court in Queensland for some tortious action to recover damages, be it from a motor vehicle accident, an injury in a public space, an injury in a shop or any other private premises.

The general principles of negligence will apply. There will be an exposure to a costs order if the action is not successful, but the aim is to require plaintiffs to consider properly whether negligence has occurred in the workplace and whether the action should in fact be pursued. It will be a matter for the injured worker as a plaintiff to consider whether proceedings will be brought and they will take appropriate legal advice before any action is brought. But it is a necessary step that we need to take to try to plateau the increasing number of common law claims in the WorkCover scheme in Queensland. There are hard choices to be made to ensure that we continue to have stability and security in the system. These are the choices that had to be made as part of the amending bill.

The honourable member asked whether the harmonisation of WorkCover legislation with the Civil Liability Act will have an impact on the quantum of damages. I can inform the honourable member that, on my advice, the amendments in the bill mean that in the case of a more serious injury general damages are likely to increase. However, the general damages proportion of minor injuries at the minor scale may decrease. So, again, the compression is in relation to the lower scale injuries.

Further, the honourable member asked how many claimants will be disadvantaged by the capping of damages. Under the bill, it is the operation of injury scale value that will determine the impact on damages. The ISV, however, only affects general damages which is one component of common law entitlements. So there is the injury scale value which deals with general damages and there is the capping—three times average weekly earnings effectively—for economic loss. But most people, I am advised, do not reach the maximum amount of $176,000 a year approximately. Most workers in the workers compensation scheme do not reach that maximum anyway so there hopefully will not be a significant impact on them but we need this compression in the scheme again to try to plateau the common law claims.

Finally, the member asked why it was that the Bourk amendments will be retrospective. Again, it was a difficult decision that the government had to make to ensure that we could continue with financial stability. It was deemed necessary to stem the increasing number of common law claims. The amendment will impact on a small number of claims where they cannot prove negligence against an employer. However small in number, they make up six per cent of the 20 per cent growth in claims. So it is important that that matter be addressed.

In conclusion, I want to thank everyone who was involved in the process of developing this bill. I want to thank all the stakeholders who were so very open in their views and expressed them frankly and in a very direct manner as part of the stakeholder engagement. I thank all honourable members for their involvement in the debate.

Something had to be done to protect the workers compensation scheme in our state and something has been done. It had to be done quickly because all parties realised that action was needed if Queensland employers and workers were to continue to enjoy the best and fairest workers compensation scheme in the country.

As has been discussed earlier, for employers the WorkCover Queensland Board has advised that the average premium rate will increase on average to $1.30 per $100 of wages from $1.15. As has been said by other members in this debate, Queensland employers will continue to have the lowest average

premium of any state or territory compensation scheme. It is a very significant achievement for the board because the board recommends and sets the premium. It is the board that sets the premium. That was lost in the debate. You would not want the argument to be clouded by facts when it is put by the opposition. It is the board that sets and recommends that premium. I thank them for their work. It is a significant increase. We acknowledge that. But it is again another step that has to be taken to ensure financial security in the scheme moving forward. Workers will of course have the peace of mind that they will continue to have unfettered access to common law claims.

This has been a very significant project. I want to acknowledge officers from the department who have worked on this program. They include: Mr Paul Goldsbrough, Mr Simon Blackwood, Ms Jennifer Dunn, Ms Janene Hillhouse, Mr Richard Buchanan. From WorkCover Queensland I thank Ms Irene Violet, Mr Peter Worthy and Ms Sharon Stratford. From Q-Comp I thank the CEO, Elizabeth Woods, and Mr Rob Cordiner. I also thank Sebastian Bielew, Linda Buyers from the department and Janine Reid from WorkCover. They have worked very hard to deliver this important legislative reform for the state. I commend the bill to the parliament.