Speech By

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Record of Proceedings, 17 October 2013

WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (9.51 pm), in reply: I thank all honourable members for their contribution to the bill this evening. This bill gives effect to the government's response to the inquiry into the operation of Queensland's workers compensation scheme by the Queensland parliament's Finance and Administration Committee. The bill seeks to deliver Australia's best performing workers compensation scheme—a scheme that is the envy of the rest of the country.

The Newman government was elected on a platform that included rebuilding the Queensland economy and getting our state back on track. This bill builds on that commitment, which is good for jobs and good for Queensland. Having competitive premiums encourages business investment, meaning more jobs for Queenslanders. The bill achieves this by simplifying the regulatory processes and ensuring that compensation is available to help injured workers get back on their feet. It strikes a better balance between providing appropriate benefits for injured workers and the reasonable cost of premiums for employers.

As I mentioned in my explanatory speech, the government's response is the result of careful analysis of both the recommendations contained in the report and the 246 submissions made to the inquiry. In addition to the written submissions received from employers, insurers, lawyers, unions, professional bodies and individuals, the inquiry held 18 public hearings, five closed hearings and five official briefings in its year-long review. I also met personally with various organisations to discuss issues related to the operation of the workers compensation scheme.

The committee's report made 32 recommendations. The government supports 18 recommendations, supports a further two with an amendment and does not support 12 recommendations. I would like to again reassure all Queenslanders that the bill does not include any changes to journey claims. In a large decentralised state it is vitally important to afford workers this necessary protection. Queensland's workers compensation scheme will be the only scheme in any Australian state that covers journeys to and from work for the workforce generally.

The recommendations which were not supported were, in the government's view, based on commentary in submissions rather than detailed analysis or evidence. For example, the committee was of the view that there should be no restriction on access to common law damages claims in the scheme. This is despite evidence that claims with a work related impairment, or WRI, of between zero per cent and five per cent represented around 56 per cent of all common law claims and 52 per cent of the total costs in 2011-12. This number of lower end claims has remained constant or increased in certain WRI bands over recent years, rather than reducing.

The bill will, subject to consideration by parliament, introduce a threshold of greater than five per cent degree of permanent impairment to access common law damages. The threshold will apply to all injuries occurring on or from the day the bill was introduced into the parliament. If a worker

disputes the assessment of their degree of permanent impairment, they can request the medical assessment tribunals to review and decide the impairment. The tribunal comprises around 170 eminent medical specialists appointed by the Governor in Council whose role it is to make decisions solely of a medical nature including degrees of permanent impairment. Workers with a degree of permanent impairment of five per cent or less will continue to maintain access to statutory compensation, including weekly and lump sum compensation, consistent with current entitlements.

If I can be clear again to members of this House: workers with a degree of permanent impairment of five per cent or less will continue—in fact, all injured workers in Queensland will continue—to have access to statutory compensation. It is about this that I have seen a lot of misinformation out in the public domain, misinformation from the likes of the Australian Lawyers Alliance, who are advertising in papers—full-page ads—where they put how much was offered on a particular impairment from WorkCover, but they failed to mention that that may have been the lump sum payment at the end from a statutory scheme and failed to mention that for the first 26 weeks 100 per cent of wages would be covered, medical bills would be covered and after the first 26 weeks 75 per cent of the wages would be covered up to a period of five years. So, despite the misinformation going out there from a lot of people like the Australian Lawyers Alliance, who claim that people will not have any access to money, is simply wrong. All workers in Queensland will have access to a statutory scheme. For the first 26 weeks 100 per cent of wages will be paid and thereafter 75 per cent of wages for five years. The only difference is that half of that money will not be going to personal injury lawyers; it will be going straight to the employer and straight to the worker concerned, and I think that is great for workers in this state.

Under these changes, the government believes that it has got the balance right. All other Australian states that provide for common law damages have thresholds which go as high as 30 per cent. Cabinet deliberated on this matter. We looked at all the other jurisdictions. We looked at Victoria with a 30 per cent common law threshold and other jurisdictions like New South Wales with a 15 per cent common law threshold. We thought that by maintaining the journey claims and by introducing a five per cent common law threshold we have got the balance right.

Certainly there is a view in the business community that we should have gone with the New South Wales and Victorian models of a 15 per cent or 30 per cent common law threshold. We did not take that view. We thought the balance is right with introducing a five per cent common law threshold and keeping journey claims in the state, despite the fact that I have recently received a letter from the Law Society saying, 'Get rid of journey claims but don't touch common law thresholds.' So there is dispute amongst even the lawyers and the unions who were protesting out the front this evening. I had representation from one side to get rid of journey claims and from the other to keep them.

So we are keeping journey claims. We are the only Australian jurisdiction to keep journey claims so workers are covered to and from work. And we are introducing a common law threshold of five per cent—one of the lowest common law thresholds. We are the only state currently that does not have a common law threshold. So, in terms of the introduction of a common law threshold, Queensland is still way below every other Australian jurisdiction—Victoria, 30 per cent; New South Wales, 15 per cent; others in between. We are one of the only jurisdictions that did not have a common law threshold. Honourable members may be interested to know that there are two to three jurisdictions in Australia that actually do not allow common law. They actually do not allow access to any common law. So they do not have a threshold. You are not able to sue your employer for common law; you only have the rights of a statutory claim.

I thank the members for their contribution. I thank the member for Gladstone for her contribution tonight. Over the last 48 hours a lot of stuff has been said about me by lawyers around the state and I have deliberately stayed out of the debate. I have not gotten personal with personal injury lawyers or the Law Society because I respect everyone's right to have a say. I respect the views of the 200 to 300 people who were protesting out the front this evening.

I say this to the member for Gladstone, who did make a good contribution. When we look at all the other Australian states and territories, Queensland is one of the only jurisdictions that does not currently either have a common law threshold or allow access to common law at all. Three jurisdictions do not allow any access to common law. I have looked through the committee report over the last 12 months. We set up the parliamentary committee to do its job. They did their job. We did not rush this; we took time to look at all the submissions. I personally met with the Law Society on numerous occasions. The Law Society met with the Premier and the Treasurer. At some stage I had a meeting with the Australian Lawyers Alliance. I met with business groups and businesses on the ground, including small businesses who have to pay the worker compensation scheme. Cabinet and I took the view that, upon considering all of that—not rushing it; it was an 18-month process—upon considering all the evidence before us, the best way to make sure we have a sustainable scheme for

the future is to retain the journey claims but to also introduce a very small threshold of five per cent, the smallest of any Australian jurisdiction by far. Victoria has 30 per cent. We will cover only the minor injuries. However, those who have minor injuries will have immediate access to a statutory claim. For the first 26 weeks of their injury they will have their full wages paid—100 per cent of their wages. After that, they will have 75 per cent of their wages paid up to a period of five years. At two years it gets reviewed to see where the employee is—whether the worker feels like they can go back to work. In essence, when the WorkCover scheme was established, it was not necessarily a compensation scheme; it was a rehabilitation and return-to-work scheme to ensure that workers could be best established to go back to work.

The only thing I can say to the member for Gladstone—if anything—is that we have thought long and hard about this over the last six months since the inquiry was conducted. We think we have a fair balance. We know that not everyone is going to be happy. We know that the personal injury lawyers who make a living from personal injuries under the five per cent threshold will not be happy. However, we think we have the balance right and we have not rushed the decision. I know the Law Society are not happy. They put forward recommendations to not touch the common law threshold. However, the government has to make a decision in the interests of all Queenslanders and we think that the best thing we can do here is to have the best scheme in Australia. We think we should have the most accessible statutory system available, which is a good statutory system with good money attached to it and of course medical expenses paid. We also think that we need to show business some faith in Queensland—and small to medium enterprises. It is concerning that opposition members in the Labor Party think this is all about big business. It is not. Small businesses also pay workers compensation. You could have a mum and dad small business with, say, five employees who will probably save about $300 a year. To a small businessperson $300 a year is a lot of money, and a lot of small businesses do not make any profit from their business. It might be $300 profit that they will make for the first time. This is not about big business; this is about small business in Queensland, the small to medium enterprises, the backbone of the Queensland economy. Every small business in the electorates of honourable members opposite pays workers compensation. We are saying that with these objectives we can save their small businesses around 12 to 15 per cent on premiums. That is a good thing for small business.

There is nothing that will stop people with minor injuries at workplaces getting a payout—going to WorkCover, filling out the forms, getting 100 per cent of their wages paid for the first 26 weeks and 75 per cent of their wages potentially for the next five years. We think we have come up with a fair, balanced scheme. We have not pleased everybody. We have not pleased the business community; they wanted more. We have not pleased the lawyers; they wanted less. Maybe we have the balance right if both sides are not entirely happy with where we have landed on this issue.

Work is very important and the debate that has taken place tonight is going to be important to how we are perceived in our society. In relation to injured workers who have a permanent impairment of five per cent or less, I want to see WorkCover and the self-insurers in the Queensland scheme have a stronger and a more active focus on rehabilitation and return-to-work outcomes. Where possible, these injured workers should be returned to their pre-injury employer. Where this is not possible, they should be actively case managed and assisted to find gainful employment with a new employer.

The bill also amends the Workers' Compensation and Rehabilitation Regulation to remove the table of injuries and references to the American Medical Association Guides to the Evaluation of Permanent Impairment. These will be replaced by the Queensland Guide to Evaluation of Permanent Impairment using nationally agreed assessment guidelines based on the American Medical Association Guide to the Evaluation of Permanent Impairment fifth edition. Chapter 18 of the AMA 5, which is devoted to the assessment of chronic pain, will not be included in the Queensland guide. Work is being undertaken by the University of Sydney's Pain Management Research Centre that will enable such a chapter to be drafted for consideration in the future.

Consistent with the committee's recommendation, there will be an increased onus on workers to prove that psychiatric and psychological disorders are work related. Workers with a psychiatric and psychological disorder will have to satisfy insurers that their employment was the major significant contributing factor to the injury or aggravation in order to be entitled to compensation. Psychological and psychiatric claims had an average finalised time lost claim cost of $40,742 in 2012-13, almost three times the average time lost claim of physical injuries of $13,211. Further, around 62 per cent of claims are rejected indicating that more clarity is needed in the broader community to differentiate perceived and actual connections between employment and the injury. In addition, employers will be able to require prospective workers to disclose any pre-existing injuries that could be reasonably

aggravated by performing the duties of employment. If workers do not comply, their entitlement to compensation or damages for an aggravation of a pre-existing injury ends.

It is in a prospective employee's interest to voluntarily disclose any pre-existing injuries to minimise the potential for an aggravation of an injury. Employers can already require prospective employees to undergo a pre-employment medical assessment to determine suitability for a role. Employers will also be able to request a prospective workers' claims history summary for a fee and with the worker's consent. However, employers will be prohibited from passing on this information to others. Allowing access to claims histories from consenting prospective employees will help to prevent employers placing workers in positions or duties for which they are not suited and which may carry the risk of re-injury or aggravation of a pre-existing injury. The bill will also increase the maximum penalties for persons who defraud or attempt to defraud insurers from 400 penalty units, or 18 months imprisonment, to 500 penalty units, or five years imprisonment.

I turn now to the structural arrangements. As I said in my opening remarks, the Queensland government is committed to reducing the costs of doing business in Queensland. The structure of the Queensland workers compensation scheme is the most complex in Australia, given it operates as three separate agencies: WorkCover Queensland, Q-Comp and the Office of Fair and Safe Work Queensland. This has resulted in duplication, overlap and increased scheme costs. On assent of the amendment act, Q-Comp will cease to operate as a stand-alone statutory authority. Its functions will be undertaken by the Office of Fair and Safe Work Queensland in the Department of Justice and Attorney-General. Q-Comp staff will be transferred to the department. The merging of the workers compensation scheme's regulator with the electrical health and safety regulator will provide economies of scale and go towards developing a more integrated corporate identity, regulating injury prevention, injury management, claims management and return-to-work services.

To ensure the orderly transition to the new scheme structure, the board of Q-Comp will continue to administer its functions and powers until its term expires on 30 June 2014. As part of the structural alignment, WorkCover and the Office of Fair and Safe Work Queensland will commence integrating their internet sites and call centres so they will have a single point of contact for safety and compensation matters. This will achieve efficiencies and seamless services to Queensland employers and workers. Under the new structure, regulatory independence from WorkCover will be maintained and WorkCover will continue to act as the sole provider of workers compensation insurance in Queensland.

The Bar Association of Queensland has proposed some minor changes that would clarify aspects of the legislation, which I would like to address. I do foreshadow an amendment that I will introduce during the consideration in detail stage in relation to these issues.

I thank the Bar Association of Queensland for meeting my office earlier in the week. I thank the Bar Association president and another representative for meeting me today and for having these issues discussed in a grown-up manner rather than out the front of parliament or in the media. The Bar Association of course have certainly lived up to their expectation as one of the most professional bodies in Queensland and have worked with me and come up with a couple of good amendments that I am more than happy to address, which I will be doing in the consideration in detail.

These amendments that I will move later in the bill better clarify the intention of the prospective worker's obligation to disclose a pre-existing injury or medical condition and provide injured workers with another avenue for medical assessment if they dispute their initial degree of permanent impairment. We are also providing an alternative avenue for an injured worker to dispute their initial degree of permanent impairment through a doctor agreed to by both parties, the worker and the insurer. This would occur before an MAT decision, meaning that some disputes could be resolved before even getting to the MAT for final determination. This is similar to a process that is used in New South Wales.

I would like to clarify that under the amended section 237, a notice of assessment for an injury includes a reference to all injuries that arose from the same event and that have been assessed together under section 179, excluding psychiatric and psychological injuries. In relation to privacy and discrimination concerns around the provision of workers' claims histories and disclosure of pre-existing injuries, I am confident that current safeguards around privacy are sufficient and that the amendments do not impinge on a worker's employment prospects.

Can I thank members on all sides of the political divide for their contributions to today's debate. This is an important issue for Queensland, Queensland workers, business and the Queensland economy.

I will quickly address the consultation issue. Under the workers compensation act Queensland, I was required to conduct a statutory review. What would have been the ordinary course of events

under the Labor Party is the statutory review would have been conducted inhouse by the department. One of the first decisions that this government took was to set up and use our committee system for a parliamentary inquiry on an issue that had not been before the parliament. It was not just a bills committee; it was actually a parliamentary inquiry to look at a relevant issue. I thank the chairman of that committee for that parliamentary inquiry. They came up with the report that the honourable members have discussed tonight. The government's response to the review, of course, was not to accept some of the recommendations and to accept others. Bearing in mind that this House granted a 12-month extension of that review, I think it was one of the best reviews we have had in Queensland in terms of comprehensiveness and consultation.

But these reviews and committee inquiries were never set up to be a rubber stamp for government later on so that we would get the report, bring it in here, have the government rubber stamp it and say, 'We've got the report we wanted.' It was about having an inquiry and having all the submissions put on the table and then, in a grown-up manner, looking at all of the issues which were then addressed and assessed, looking at the recommendations and opinions of the opposition and crossbenches and coming up with something that the government thinks is the right balance between workers and employers. We had the committee's report, and the government took its time to go through the report in a grown-up manner and consider the pros and cons. We looked at all of the 246 submissions that were made. I met with the Law Society on numerous occasions throughout the past 18 months, and I can certainly understand the Law Society's submission. We had very fruitful discussions. I also had regular meetings with the Bar Association; I met with the CCIQ on occasion; we met with employers; we met with workers; and we discussed some of these issues through the workplace health and safety round table.

If the opposition want to talk about consultation, there has been one and a half years of consultation on this issue. Ultimately at the end of the day, upon taking all matters into consideration, the cabinet and the government have taken a view and we are responding with what we believe is the right balance. We want to make sure that every worker in Queensland is covered by the statutory scheme. I know the deputy opposition leader talked about facts and he stamped the lectern. Let's talk about the real truths and not the mistruths which came out of the mouths of those opposite.

Fact: every worker in Queensland will be covered by the statutory scheme. Fact: every worker in Queensland will have access to the statutory scheme. Fact: every worker in Queensland will fill out a form to put in a claim for workers compensation, WorkCover. Fact: every employee in Queensland if successful in their claim without any threshold—this is a statutory claim—will have 26 weeks of their wages paid for the first 26 weeks of their injuries. Fact: after that for the next four and a half years they will have 75 per cent of their wages paid.

But honourable members may be interested to know that in approximately 80 to 90 per cent of workplace injuries, workers are in fact back at work after 26 weeks. The majority of people have gone back to work after the first 26 weeks, and they are happy with their statutory claims. We can develop a system whereby if an employee is injured in an unfortunate workplace injury, their wages will be paid while they recover, they can go back to work and they can get a lump sum payment from the statutory scheme.

We then move to the common law scheme. We think that by saving some money on the premiums, the minor injuries for less than five per cent will be satisfactorily covered by the statutory scheme. What concerned me this evening was that some of the members opposite on the crossbench talked about common law claims because of negligent business owners or negligent employers. We have a no-fault scheme. The worker does not have to prove negligence when they put in a statutory claim. No-one is at fault: the worker is not at fault and the employer is not at fault. We have to try to invest in looking at businesses. I can tell the honourable members that Mal Meninga and I have been around the state recently. Mal Meninga is the Queensland safety ambassador. Mal Meninga is our—

Mr Pitt: It is a very personal issue to him.

Ms Trad: What is it they're talking about? Ha, ha!

Mr BLEIJIE: I note the member for South Brisbane's laughter. Let me explain why Mal Meninga—

Ms Trad: Ha, ha!

Mrs Miller: Ha, ha!

Mr BLEIJIE: The members for South Brisbane and Bundamba are still laughing. Let me explain why Mal Meninga is the safety ambassador.

Mr Pitt: We know! It is a very personal issue—

Mr BLEIJIE: Because he lost his father in a workplace incident—

Opposition members: We know!

Mr BLEIJIE:—are laughing at the fact that—

Mr PITT: I rise to a point of order.

Mr BLEIJIE: No, no! No personal offence! I was talking about the member for South Brisbane.

Mr DEPUTY SPEAKER (Dr Robinson): Attorney-General, take your seat, please. What is your point of order, Manager of Opposition Business?

Mr PITT: I have been indicating to the Attorney-General that this was a very personal issue to Mal Meninga, and whether he was or was not taking my interjections, that point was made by the opposition. So I do find any suggestion that anyone on this side of the House was—

Mr DEPUTY SPEAKER: Order! I fail to see, Manager of Opposition Business, how that was a personal reflection.

Mr Mulherin: It is on the record.

Mr DEPUTY SPEAKER: Order! Deputy Leader of the Opposition, I would appreciate it if you did not make statements in the middle of me giving guidance from the chair.

Ms TRAD: Mr Deputy Speaker—

Mr DEPUTY SPEAKER: I am assuming that the member for South Brisbane has a point of order. I hope it is not the same one as I have just ruled on, otherwise I would suggest you sit down.

Ms TRAD: The Attorney-General asserted that I was laughing at Mal Meninga's personal story. That is not right. I take personal offence—

Mr DEPUTY SPEAKER: Order! The member for South Brisbane will take her seat. It is a point of view; not a point of order. I saw no personal reflection—

Ms TRAD: I find the Attorney-General's statements—

Mr DEPUTY SPEAKER: Order! You are speaking while I am speaking. I warn you under 253A. The Attorney-General has the chair.

Mr BLEIJIE: Mal Meninga, a great Queenslander, lost his father in a workplace incident. He has now come on board as our Queensland safety ambassador and is doing a fantastic job attending places right around Queensland—seeing thousands of employers. We are actively encouraging employers and businesses right around Queensland to get involved in the safety campaign, to get the safety message and to improve workplace practices. However, there are some environments that are so dangerous that you could do everything in your power—you could spend every dollar you had or did not have—but unfortunately accidents would still happen. That is why it is important to have the best statutory workers compensation scheme in Australia. These reforms are for the future of the scheme—to make sure that anyone injured in a workplace incident has access to the statutory scheme.

I know the strong financial position that WorkCover is in. I congratulate the new board of WorkCover that we appointed when we came to government to make sure that remains the case. I refer to the common law thresholds. Under the Labor Party, the former chair of WorkCover, Ian Brusasco, recommended that common law thresholds of 10 per cent to 15 per cent be introduced. Ian Brusasco, members will know, is the chair of Labor Holdings, the big fundraising arm for the Labor Party. He recommended a common law threshold of 10 per cent to 15 per cent. We reject that. We are saying that we think we have a better balance with the introduction of the five per cent common law threshold.

We have seen a lot of misinformation in the last few days. I note honourable members' contributions to the debate with respect to where that misinformation is coming from with respect to ads in newspapers from the Australian Lawyers Alliance. I know that members of parliament have received threatening letters from certain personal injury lawyers. As a member of the legal profession I have to say that I am pretty disappointed that the profession would use the language it has over the last 48 hours. I am disappointed that the profession sent the types of letters that it has to members of parliament—members carrying out their duty, function and responsibility. But I think it reflects more on those individuals than it does on anything else. That is why I have not entertained the debate over the past 48 hours with respect to personal insults, innuendo, gossip and everything that some personal injury lawyers have thrown at members of this House. I think at the end of this debate we can say that we have taken the moral high ground on this matter because we did not entertain that sort of silly debate in the public domain. This is a serious debate. That is why we set up a 12-month parliamentary inquiry. That is why we have taken a few months to make sure we have got it right. I think honourable members on this side of the House have got the balance right.

We support the workers in this state. We support them going to and from work and having access to journey claims. We also support employers in this state—to make sure they can continue to employ people, employ more people and grow the economy in this state and to make sure that we do not have people making fraudulent claims. We need to make sure the system does get the balance right. I thank all honourable members for their contributions to the debate. I think the government has got the balance right for all interested parties in this issue.