




Speech By
Hon. Curtis Pitt

MEMBER FOR MULGRAVE

Record of Proceedings, 16 September 2015

**WORKERS' COMPENSATION AND REHABILITATION AND OTHER
LEGISLATION AMENDMENT BILL; WORKERS' COMPENSATION AND
REHABILITATION (PROTECTING FIREFIGHTERS) AMENDMENT BILL**

 **Hon. CW PITT** (Mulgrave—ALP) (Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships) (8.33 pm): I move—

That the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill be now read a second time.

The Palaszczuk Labor government continues to deliver the promises we made to Queenslanders. We said we would build and rebuild Queensland's workers compensation scheme to be the best in Australia, including restoring the rights of injured workers to access their legal rights. With this bill, the Palaszczuk Labor government delivers on another election commitment. We are committed to restoring fairness and balance to Queensland's workers compensation scheme. However, the bill is more than just an election commitment.

This is a bill about addressing the harsh and unfair amendments made by the former LNP government that introduced a greater than five per cent threshold to access common law and restricted the rights of many Queenslanders to seek damages against a negligent employer. This bill restores the rights of injured workers to seek common law damages for injuries occurring on or after 31 January 2015, the date of the Queensland state election, irrespective of their degree of permanent impairment. This restriction on the rights of everyday Queenslanders was unfair, unjustified and unnecessary, and the Palaszczuk Labor government has made it a priority to restore fairness and balance to Queensland's workers compensation scheme.

Under the LNP's former government, the parliament's Finance and Administration Committee conducted a 12-month inquiry into the operation of Queensland's workers compensation scheme. This LNP dominated committee recognised that imposing a threshold on access to common law damages would improperly remove rights from one group of citizens that are available to other citizens. The committee also considered that a common law threshold should not be imposed as the extent of amendments made in 2010 by the then Labor government had yet to be fully realised. Even now I want to thank all of the members of that committee for the solid work that they did and recommending that the scheme was working well—in fact, that it be strengthened.

The 2010 reforms to the workers compensation scheme have successfully addressed what was then an increasing cost of common law claims and claim numbers when compared to statutory claim numbers within the scheme. In the period 2009 to 2014, the scheme experienced a 15 per cent reduction in the number of common law claims lodged. In addition, the average annual cost of common law damages claims has reduced by 10 per cent. Over the same period, there has been an 11 per cent reduction in the number of new statutory claims and a 17 per cent reduction in the incidents of serious

work related injuries requiring more than five days off work. This has resulted in significant savings for the scheme and, as a result, Queensland's workers compensation scheme continues to perform strongly.

The improved performance of the scheme following the 2010 reforms highlighted the fact that the 2013 amendments introducing the threshold were unjustified and unnecessary. Queensland has the lowest average premium rate of any state in Australia of \$1.20 per \$100 of wages paid in 2015-16. Modelling by WorkCover's actuary PricewaterhouseCoopers over the five years to 2019-20 demonstrates that, based on current scheme trends, the removal of the common law threshold can be achieved without impacting on the average premium rate of \$1.20 given WorkCover's substantial reserves that have been accumulated since 2010.

As I outlined in my speech when introducing the bill into the parliament, there has been a significant focus on consultation in implementing the government's policy objectives. A stakeholder reference group comprising representatives of employer associations, trade unions, legal representatives, WorkCover Queensland and self-insurers advised the government on the transfer to the new arrangements, taking account of the rights of injured workers and the timing of workers compensation payments. I would like to take the opportunity to thank the representatives of the stakeholder reference group, being the Australian Industry Group, the Chamber of Commerce & Industry Queensland, the Housing Industry Association, WorkCover, the Association of Self Insured Employers of Queensland, the Australian Workers Union, the Queensland Council of Unions, the Queensland Nurses' Union, the Construction, Forestry, Mining and Energy Union, the Bar Association, the Australian Lawyers Alliance and the Queensland Law Society.

In considering the reinstatement of common law rights, the majority of stakeholder reference group members raised concerns that restoring access to common law from 31 January 2015 still leaves a group of workers adversely affected and impacted by the operation of the threshold. To address this unfairness, the bill provides for an additional lump sum compensation to workers injured after 15 October 2013 but before 31 January 2015 who have a degree of permanent impairment assessment below six per cent and an open claim. The provisions in this bill will be supported by regulation, and I table the draft regulation for consideration of members to assist in the debate.

Tabled paper: Workers' Compensation and Rehabilitation Amendment Regulation (No. ...) 2015, Tabling Draft [[1102](#)].

The draft regulation provides that this additional lump sum compensation is available to workers where they can demonstrate on the balance of probabilities that the worker's employer would have had a liability for common law damages but for the operation of the threshold. Where eligible, a worker will be entitled to an additional payment based on their degree of permanent impairment equivalent to twice their lump sum entitlement. For example, an eligible worker with a one per cent permanent impairment will be entitled to a lump sum compensation of \$3,149 plus additional lump sum compensation of \$6,298. If a lawyer has assisted the worker in determining their eligibility, they may also be entitled to an additional payment of up to \$4,700. The draft regulation is supported by a simple administrative process that allows an insurer access to all required information to make a decision and the opportunity for the worker to have their case heard.

Where an insurer does not consider a worker is eligible, the worker will be issued with reasons for the insurer's decision and will be able to have the decision administratively reviewed by an independent panel of legal experts. This is a one-off, short-term arrangement that does not provide a substitute, of course, for the full restoration of access to common law damages, but it addresses the significant disadvantage experienced by these workers.

The bill also fulfils the election commitment made by the government to introduce deemed disease coverage for certain latent onset diseases for Queensland firefighters. It amends the act to allow a firefighter who contracts one of 12 specified cancers to have that cancer deemed to be work related for workers compensation purposes where they meet the required qualifying period of active firefighting service.

I have previously been an auxiliary firefighter and have an understanding of the hard work that all of our firefighters do for our communities. During my consultation with firefighters across the state, I had a very productive meeting with representatives at Cairns Fire Station on Gatton Street that I would like to share with the House. On 31 January 2015 I met with Paul Rossi, the Behana Gorge RFB secretary; Jamie Haskill, the area training and support officer of RFSQ Cairns Peninsula; John Thompson, RFBAQ representative and Speewah fire warden; Yvonne Thompson, Clohesy group admin officer; Dave Mcilvenie, a Little Mulgrave fire warden; Bernadette Iraci, Springmount district RFB member; and Warren McNamara, Clohesy group officer. They outlined their concerns in terms of the 150 exposure events requirement in that, due to poor record keeping and loss of information through

computer upgrades, it would be near impossible to prove that level of participation. Similarly, I note the recommendation of the Finance and Administration Committee that the additional requirement for volunteer firefighters to attend 150 exposure events should be omitted.

Unlike the former LNP government, the Palaszczuk government is listening to stakeholders, to the community and to our parliamentary committees. I will introduce an amendment to the bill during consideration in detail to omit the additional requirement for volunteer firefighters to attend 150 exposure events. This means that volunteers will be treated the same way as active permanent and auxiliary firefighters. These provisions will apply to firefighters diagnosed on or after 15 July 2015.

The bill also introduces a new entitlement for volunteer firefighters. Eligible active volunteer firefighters who contract one of the 12 specified cancers and who have their statutory claim determined using these deemed disease provisions will be entitled to access common law damages. This means that they will have not only the same coverage but also the same entitlements as permanent and auxiliary firefighters. No other jurisdiction that provides deemed disease legislation gives volunteer firefighters unfettered access to common law. These amendments will see Queensland with the best deemed disease arrangements for firefighters in the country.

The Palaszczuk government recognises that it would be unfair to time-limit deemed disease claims given the latent nature of these specified cancers. As such, there is no 10-year time limitation on making a claim following retirement from active firefighting service.

This government is proud to put forward these amendments, which will deliver nation-leading legislation—making it easier for brave Queensland firefighters to access compensation for work related cancers. I thank all those stakeholders who passionately advocated for these laws, including the United Firefighters Union of Queensland and their members, the Queensland Auxiliary Firefighters Association, the Rural Fire Brigades Association of Queensland and all the full-time, part-time, auxiliary and rural firefighters who met with MPs to discuss this legislation.

The bill will also realise the government's election commitment to remove prospective employers' ability to access an individual worker's compensation claim history. Privacy concerns have been raised about access to this information, and there is potential for the information to be misused to discriminate against certain workers, for example older workers in manual occupations.

The bill also makes a number of miscellaneous amendments, including clarifying the Workers' Compensation Regulator's discretion to grant extensions of time to lodge review applications if the applicant can satisfy the regulator that special circumstances exist. This follows the decision of the Industrial Court in *Blackwood v Pearce* which restricted this discretion.

I will also introduce amendments to the Industrial Relations Act 1999 during consideration in detail which seek to return the administrative responsibility for the Queensland Industrial Relations Commission and Registry to the president and to remove the restrictive local lawyer requirement for appointment as a deputy president, court. The former LNP government moved administrative responsibility to the vice-president and placed a severe limitation on appointments to the role of deputy president, court. They did this without any adequate explanation and, in doing so, put the commission and Industrial Court out of step with similar institutions around the country. In other jurisdictions, administrative responsibilities are legislatively allocated to the president or provide the president the ability to delegate these responsibilities. The amendments I will introduce will remedy this and, with regard to the appointment of the position of deputy president, court, will have criteria consistent with those for the vice-president, court.

I thank the Finance and Administration Committee for its report tabled on 8 September 2015 regarding the Workers' Compensation and Rehabilitation and other Legislation Amendment Bill 2015. I also thank all organisations that made submissions to the committee and those who appeared as witnesses as part of the committee's inquiry.

Unlike the previous LNP government that did not listen even to their own LNP dominated committee, we have listened to the Finance and Administration Committee. The committee made six recommendations relating to the deemed disease provisions for firefighters, and it is proposed to support four recommendations in full and two recommendations in part. I am pleased to table the government's response to the committee's report.

Tabled paper: Finance and Administration Committee: Report No. 8, 55th Parliament—Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015, government response [\[103\]](#).

In recommendation 1 the committee recommends that amendments be made to allow for the inclusion of additional diseases that may be identified in the future. This recommendation is supported in part. The government supports the committee's view that the list of specified diseases under the

deemed diseases provisions for firefighters should be reviewed on a regular basis to ensure it remains up to date with current research and community expectations. The government has concerns that the recommendation of the committee could have the potential to infringe fundamental legislative principles by enacting a provision that expressly or impliedly enables the act to be amended by subordinate legislation or executive action. However, the government notes that section 584 of the Workers' Compensation and Rehabilitation Act 2003 already requires the act to be formally reviewed at least once every five years. The government believes that this is the appropriate legislative mechanism for facilitating the review of this list. This act will next be reviewed in 2018.

In recommendation 2 the committee recommends that the requirement for rural volunteer firefighters to have attended 150 exposure incidents be omitted from the legislation. This recommendation is supported.

In recommendation 3 the committee recommends that the legislation be amended to include the appointment of an independent committee or panel to be established to consider exposures and assist in determining whether rebuttal of claims is warranted. This recommendation is supported in part. The government supports the committee's view that the deemed disease provisions for firefighters be supported by an independent committee that is established to consider a firefighter's exposures and to assist in determining whether the rebuttal of a claim is warranted.

As outlined in its submissions before the committee, the government proposes that an independent committee consisting of representatives of Queensland Fire and Emergency Services and key stakeholder groups be formed to advise WorkCover on a case-by-case basis on these issues. The government believes that this committee is able to be formed administratively and does not require legislative change. To ensure a robust and transparent approach is taken to these claims, the government proposed that WorkCover Queensland report to the parliament yearly on the operation of the deemed disease provisions as part of its annual reporting requirements.

In recommendation 4 the committee recommends that the department seek and incorporate additional scientific studies of exposure by firefighters including rural firefighters. This recommendation is supported.

In recommendation 5 the committee recommends that as a matter of priority Queensland Fire and Emergency Services implement a system of record keeping for firefighters including volunteer rural firefighters that tracks individual firefighters' exposure to incidents. This recommendation is supported.

Recommendation 6 states—

Should the Minister not agree with the Committee recommendations numbers 2 and 3, the Committee recommends that the Minister reconsider the definition of an exposure included in proposed new section 36F.

This recommendation is supported. Section 36F is no longer required as a result of the removal of the requirement for volunteer firefighters to attend 150 exposure incidents. Omitting this requirement will extend the same rights to volunteer firefighters as those enjoyed by full-time and auxiliary firefighters who contract one of 12 specified work related cancers.

I said at the outset that I value the committee process and that certainly I would listen to the committee's recommendations. This is in stark contrast to the former government, which ignored the all-party committee's recommendations on workers compensation. In spite of the LNP's scaremongering and misinformation campaign, it is clear to anyone who reads the bill that the Palaszczuk government's legislation gives Queensland firefighters the best workers compensation access of all jurisdictions. The LNP had three long years in government to act to protect firefighters but did nothing when it had the power to do so. It was only in opposition that the LNP developed enough hollow empathy to introduce a rushed, fundamentally flawed bill that leaves firefighters, especially rural firefighters, exposed and nowhere near as well off as they are under the government's bill. This bill is about restoring the workers compensation scheme to one that is fair, sustainable and efficient by balancing low premium rates for employers with good benefits for workers. I commend the bill to the House.