



Motor Accidents Legislation Amendment Bill.

Second Reading

Mr TONY STEWART (Bankstown—Parliamentary Secretary) [10.12 p.m.], on behalf of Ms Reba Meagher: I move:

That this bill be now read a second time.

In a ministerial statement in the other place on 5 December last year the Special Minister of State announced that the Government would introduce legislation to remedy an anomaly in workers compensation entitlements that emerged as a consequence of the decision of the New South Wales Supreme Court in *Pender v Powercoal Pty Ltd*. The Pender case involved consideration of the interaction of the workers compensation legislation and the motor accidents legislation. The workers compensation legislation provides that claims against an employer for common law damages arising from the death or injury of an employee arising from a motor vehicle accident are to be determined according to the scheme for common law damages applying under the motor accidents legislation. In Pender the accident occurred while workers in an underground coalmine, in attempting to unwind a reinforced water hose wound around a 750-kilogram metal drum, attached one end of the hose to a purpose-built specialist mining vehicle, known as a PJB, and used a forklift to pull the drum backwards, thus unwinding the hose.

The drum fell off the forklift and hit the plaintiff, who was standing nearby. Both the PJB and the forklift were found to come within the definition of a motor vehicle. This accident did not involve any vehicle required to have compulsory third party insurance, nor did it occur on a public road. The Pender decision has defined a broad scope for the type of motorised equipment, and consequently the accidents that now come within the Motor Accidents Compensation Act, with the consequence that a motor accident can now involve unique pieces of equipment used only in particular workplaces, for example, excavating equipment on a construction site. Although the decision involved an accident in an underground coalmine, Pender has implications for many categories of worker. The Pender decision has led to the importing of the motor accidents scheme's procedures and method of assessing damages into the determination of a common law workers compensation claim when any motorised vehicle is involved.

This means that an employee injured in the workplace due to the use or operation of such equipment will have his or her common law entitlements to compensation determined in accordance with the damages provisions of the Motor Accidents Compensation Act 1999 rather than workers compensation legislation. The differential treatment of workers in the determination of compensation for workplace accidents, arising from the decision in Pender, raises important financial management and industrial issues of concern to the industry that need to be addressed. The judge in Pender acknowledged that it was debatable that the legislature had directed its attention to whether cases involving equipment such as that found in Pender and its manner of use should be determined under the Motor Accidents Compensation Act. The judge further suggested that close consideration should be given to whether certain types of equipment, such as the equipment used in Pender, should come within the operation of the motor accidents legislation.

In view of the issues raised by the Pender decision, the bill has been the subject of consultation with the Workers Compensation and Workplace Occupational Health and Safety Council, comprising worker and employer representatives, medical and legal practitioners, and insurance, injury management and occupational health and safety experts. There has been consultation also with the Construction, Forestry, Mining and Energy Union and the New South Wales Minerals Council. The bill addresses the circumstances where a worker is injured in a workplace accident involving motorised equipment. Schedules 1 and 2 amend the motor accidents legislation. The Motor Accidents Act 1988 and the Motor Accidents Compensation Act 1999 are amended such that their respective provisions relating to claims procedures and the awarding of damages do not apply where a claim relates to a work injury, the accident did not occur on a road or road-related area, and there is no motor accident insurer on risk or entitlement to claim against the nominal defendant. Schedule 3 makes consequential changes to workers compensation legislation.

The ministerial statement also indicated that the proposed amendment would operate retrospectively, from the date of the statement, and the bill has been drafted accordingly. Once the amended legislation comes into operation, a worker injured in a workplace accident involving motorised equipment that occurs off-road and does not involve a compulsory third party insurer will have his or her compensation entitlements determined in accordance with the workers compensation regime. This was the practice prior to the decision in *Pender v Powercoal*. I commend the bill to the House.

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