



NSW Legislative Council Hansard

Motor Accidents Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 21 September 2004.

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.35 p.m.]: I move:

That this bill be now read a second time.

In a ministerial statement on 5 December 2002 I 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 in respect of a work injury damages claim by a coalminer. The workers compensation legislation provides that claims against an employer for common law damages arising from the death or injury to 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 PJB—a purpose built specialist mining vehicle—and used a forklift to pull the drum backwards, thus unwinding the hose. The drum fell off the forklift and hit the plaintiff standing nearby. Both the PJB and the forklift were found by the court 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 redefined the scope for the type of motorised equipment, and consequently the accidents, that now come within the Motor Accidents Compensation Act 1999, with the consequence that a motor accident can now involve unique pieces of equipment used on mining sites.

The judge in Pender acknowledged that it was debatable whether 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 1999. Specifically, in his judgment on 26 October 2002 Chief Justice Wood queried this with these words:

Whether the Legislature ever directed its attention to cases such as the present involving the type of equipment in question, and the manner of their use in coal or hard rock mines, and whether it is appropriate that such cases should be determined under the MAC Act, or under the Workers Compensation Act is no doubt debatable.

The judge further suggested:

... that close consideration on the part of the industry, and the Legislature, is required of the question whether accidents underground, which involve the use of equipment falling within the definition of motor vehicles, should be exempt from the operation of the MAC Act. The use of vehicles with the modifications required for mining purposes, and the nature of the activities in which they are displayed arguably places them in a very different category from that which would apply to the use of conventional vehicles above ground.

Since the bill was introduced in this place last year I have had the opportunity to undertake further consultation with a number of organisations including the Labor Council of New South Wales and individual trade unions, employer associations and the Law Society of New South Wales. There has also

been continued consultation with the Construction, Forestry, Mining and Energy Union—Mining Division and the New South Wales Minerals Council. As a result of these ongoing consultations I have been made aware of the potentially detrimental effect it may have on injured workers subject to the WorkCover scheme.

At my request WorkCover has undertaken an assessment of the impact of the proposed amendment and advised that the effects of the Pender decision are expected to be limited to the specific and unique circumstances of that decision. Consequently, the impact on the workers compensation scheme and those who contribute to the scheme is expected to be minimal. I have provided this advice to the Australian Industry Group and Australian Business Ltd. I have also provided an assurance that the operation of the amendments will be continually monitored to ensure that they have the effect intended by the bill. Accordingly, I intend to move a number of amendments in Committee that will restrict the operation of this bill to the coalmining industry in this State. I also intend to move an amendment providing for the bill to commence on assent, which incorporates the fact that the bill has been before the Parliament for a number of months and which addresses the concerns raised by the Legislation Review Committee in its assessment of the bill. I commend the bill to the House.