NSW Legislative Assembly Hansard

Workers Compensation and Other Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Friday 19 November 2004.

Second Reading

Mr TONY STEWART (Bankstown—Parliamentary Secretary) [3.03 p.m.], on behalf of Ms Reba Meagher: I move:

That this bill be now read a second time.

This bill introduces a number of reforms to workers compensation legislation. I will first list the major amendments made by the bill and then explain the purpose of the amendments in more detail. Schedule 1 amends the Occupational Health and Safety Act 2000 to ensure that where WorkCover has not been notified of a serious incident, the time limit in which the authority can bring a prosecution is extended by six months. This is to stop employers either deliberately or inadvertently avoiding prosecution by taking advantage of the two-year time limit on prosecutions. Schedule 2 gives effect to miscellaneous amendments to the Workers Compensation Act 1987, including to permit WorkCover to issue stop-work orders to uninsured employers and to increase and extend the payment of funeral expenses for work-related deaths.

Schedule 3 contains amendments to the Workplace Injury Management and Workers Compensation Act 1998 to provide for the appointment of acting deputy presidents of the Workers Compensation Commission of New South Wales, to make procedural changes to the method of appointment of approved medical specialists, to permit the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales to establish committees, and to ensure that WorkCover may issue guidelines that specify the qualifications required by a medical practitioner to be permitted to assess the degree of permanent impairment of an injured worker. Consequential amendments are also made to the Statutory and Other Offices Remuneration Act 1975 and the Workers Compensation (Dust Diseases) Act 1942.

Before I explain the amendments in detail, I wish to acknowledge the assistance with the bill the Minister has received from stakeholders consulted. The bill was provided to the WorkCover Advisory Council, the Labor Council, the Bar Association, the Law Society, the Workers Compensation Commission, and the Self Insurers Association. These stakeholders provided valuable input at short notice, and honourable members may be assured that the Minister carefully considered their comments in finalising the bill.

I will now outline the amendments in more detail. Firstly, this bill will address an anomaly in the Occupational Health and Safety Act 2000 regarding the prosecution of offences. Currently, an employer that does not notify WorkCover of a serious incident within a two-year period can avoid prosecution because, in the absence of a coronial inquest, WorkCover must prosecute offences within two years. A six-month time limit already applies to prosecutions for breaches of the duties of designers, manufacturers, and suppliers of plant and substances for use at work. In these cases the six-month period begins when WorkCover becomes aware of the act or omission alleged to constitute the offence. This is because sometimes design faults causing safety risks take years to become apparent.

The proposed amendment will allow WorkCover to prosecute outside the usual two-year period for occupational health and safety prosecutions if WorkCover was not notified of the incident within seven days as required under section 86 of the Occupational Health and Safety Act. In these cases WorkCover may commence a prosecution within six months of becoming aware of the incident, and then only if the chief executive officer certifies that it is in the public interest to do so. The chief executive officer may also issue a certificate stating the relevant notification date or the date on which WorkCover became aware of the incident. The date on this certificate is not reviewable. I assure the House—and the Legislation Review Committee specifically—that the conclusive nature of this certificate is necessary to ensure that prosecutions can proceed for offences where a company has deliberately not notified WorkCover to avoid criminal prosecution.

This inability to prosecute employers simply because of a failure to notify WorkCover was highlighted in the recent parliamentary Inquiry into Serious Injury and Death in the Workplace, and this proposal implements recommendation 19. Employers who notify WorkCover as required under the legislation can be assured that the two-year time limit will still apply. The bill provides an additional safeguard by allowing WorkCover to notify an employer if it becomes aware of an incident that the employer did not notify. The six-month period will start to run from the date WorkCover notifies the employer.

The Minister assures honourable members that the discretion to prosecute outside the two-year time limit will, of course, not be exercised lightly. As I have already mentioned, this power cannot be exercised unless the chief executive officer of WorkCover certifies that the prosecution is in the public interest. This is a very important safeguard and WorkCover will develop guidelines to ensure that this power is exercised only where there is a clear need to ensure that an employer is brought to account for a serious workplace incident that was due to a breach of the Act. Further, the bill amends the Workers Compensation Act to address the problem of non-insurance by employers. Uninsured employers place a huge burden on the scheme because they do not contribute insurance premiums. This leads to higher premiums for the employers who do the right thing.

This initiative will complement existing powers to prosecute for non-insurance and recover double the unpaid premiums from uninsured employers. However, this power will allow for the immediate enforcement of the obligation of all employers to hold workers compensation insurance. Inspectors will be able to issue stop work notices to uninsured employers. This is a similar instrument to stop work notices for safe workplaces. The decision by WorkCover to issue a stop work notice can

be reviewed in the Supreme Court. However, the notice will come into effect only if the employer does not provide adequate proof of insurance within five days. If employers do not comply with the notice they will be liable to fines of up to $55,000 and imprisonment for six months. Employers who are insured need not be alarmed by these tough new powers because they can readily obtain a certificate of currency from an insurer as proof of insurance.

I thank the Construction, Forestry, Mining and Energy Union and the Labor Council for drawing my attention to this proposal. The amendment has been agreed by the WorkCover Advisory Council, which comprises both employer and employee representatives, and which advises me on occupational health and safety and workers compensation matters. The proposal developed by a working party of the advisory council was unanimously supported by the full council. The bill amends the Workers Compensation Act to increase and extend the payment of funeral expenses for all work-related deaths. The amount of funeral benefits payable will increase from a maximum of $4,400 to $9,000 for workers who die in the course of their employment. This amendment will take effect from the date of introduction of the bill. The increased amount is double the amount available in most other Australian States.

Apart from a 10 per cent rise to cover GST in 2000, this is the first increase since 1992. In addition to this increase, funeral benefits will now be payable for all workers who die in the course of their employment. Until now only workers with no dependants were eligible for funeral benefits. This meant that, in cases where workers had dependents, funeral expenses are paid out of the compensation that dependants received. As a result of the Government's decision, workers with dependants will receive up to $9,000 for the funeral. Of course, they will continue to receive the lump-sum compensation of $296,000 plus weekly payments for their dependant children aged under 16 or, in the case of dependant children who are students, under the age of 21. This extension of funeral benefits to workers who have dependence is another recommendation of the parliamentary inquiry into serious injury and death in the workplace.

Several changes are also proposed to the Workplace Injury Management and Workers Compensation Act 1998. The bill allows the Minister to appoint acting deputy presidents of the Workers Compensation Commission. The primary role of deputy presidents is to hear appeals from arbitrators. Currently there is only provision in the Act to appoint an acting president, but not to appoint acting deputy presidents. These appointments mean that acting deputy presidents can be appointed when a deputy president is on leave or when the Minister considers it necessary to ensure the proper and efficient administration of the commission.

Consequential amendments also are made to the Statutory and Other Officers Remuneration Act 1975 so that the Statutory and Other Officers Remuneration Tribunal can determine the rate of payment for the acting deputy presidents in the Workers Compensation Commission. The bill also makes minor procedural changes to the way that approved medical specialists are appointed. Approved medical specialists issue binding certificates about the level of a worker's permanent impairment in disputes in the commission. The bill confirms that when appointing approved medical specialists the president may consider the recommendations of the WorkCover Advisory Council. The bill provides that the council can set up a subcommittee to assist in the carrying out of the council's functions.

The 1998 Act currently allows WorkCover to make guidelines regarding the assessment of permanent impairment of injured workers. They bill makes explicit that this power includes the ability for the guidelines to specify the training and qualifications of practitioners who undertake these assessments. The amendment addresses an issue that was the subject of a recent Supreme Court case in *Thomson v WorkCover*. I understand that WorkCover is appealing the decision in the Court of Appeal. Honourable members would be aware that these guidelines were issued by WorkCover in consultation with the permanent impairment co-ordinating group, which consisted of representatives from the specialist medical colleges as required by section 377 of the Act, as well as Labor Council representatives.

Any future changes to the permanent impairment guidelines will be developed in consultation with the WorkCover Advisory Council. I can assure the House that the amendment does not change the permanent impairment guidelines in any way other than to address the issue that was identified in the Thomson decision—that is, to confirm that guidelines may provide for the training and qualifications of doctors who may undertake permanent impairment assessment.

Currently the guidelines provide that an assessor will be a registered medical practitioner with qualifications in the relevant medical specialty who has undertaken the requisite training in use of the WorkCover guides. Assessors may be one of the claimant's treating practitioners or an assessor engaged on behalf of the employer or insurer to conduct an assessment for the purposes of assessing the level of permanent impairment. However, given that the Government intended that the guidelines provide for who may undertake permanent impairment assessments, the bill will ensure that existing guidelines issued in 2002 are valid.

I assure the Legislation Review Committee specifically that this retrospective validation is necessary not only because it implements the Government's policy but also because it ensures that the system in place since 2002 is not unduly disrupted on technical grounds. The bill continues the program of reform and improvement to the workers compensation scheme in the interests of workers, employers and the broader community. I commend the bill to the House.