

## WORKERS COMPENSATION LEGISLATION AMENDMENT (BENEFITS) BILL 2008

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**Bill introduced on motion by Mr Joseph Tripodi, on behalf of Mr David Campbell.**

### Agreement in Principle

**Mr JOSEPH TRIPODI** (Fairfield—Minister for Finance, Minister for Infrastructure, Minister for Regulatory Reform, and Minister for Ports and Waterways) [4.45 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Workers Compensation Legislation Amendment (Benefits) Bill 2008. The New South Wales Government is proud of its record of delivering reforms to workers compensation and workplace safety in New South Wales, and the benefits that these reforms bring to workers and employers. The Workers Compensation Legislation Amendment (Benefits) Bill 2008 reflects the Government's continued commitment to ensuring the New South Wales workers compensation scheme provides comprehensive and generous compensation packages to the families of workers who die as a result of workplace injury. The significant reforms in this bill will provide additional security and peace of mind for these families. The bill also contains provisions that enable an alternative premium calculation model, creating an incentive for large employers to improve their workplace safety and injury management processes. These changes are responsible, sustainable reforms for the benefit of both employers and their workers.

The bill reforms the death benefit provisions in the Workers Compensation Act 1987 in a number of ways. The lump sum death benefit will be increased from the current rate of \$343,550 to \$425,000, an increase of more than 20 per cent. This lump sum payment is paid in addition to funeral expenses and the weekly payments available for dependant children. Death benefit arrangements will also be amended to allow the death benefit lump sum to be paid to a deceased worker's estate where the worker leaves no financial dependants. Currently in New South Wales, when a worker dies from work-related injuries and leaves no financial dependants, the only compensation payable is funeral expenses.

This bill provides for non-dependant family members of the State's deceased workers, by ensuring that the full lump sum benefit is paid to the deceased worker's estate. This will alleviate hardship for family members, including the parents of deceased workers, who would otherwise be required to prove financial dependency in order to access the lump sum. The third reform to death benefits ensures an entitlement to weekly and lump sum death benefit payments is not reduced on the basis of partial financial dependency. Currently, weekly and lump sum death benefit payments for a dependant child can be reduced if the child was only partially financially dependant on the deceased worker. This often requires families to go through dispute action to demonstrate degrees of financial dependency at a very difficult time.

Under the reforms in the bill, weekly benefits payable to children of the deceased worker will no longer distinguish between partial or total financial dependency. The entire lump sum benefit will also be paid. Where there is only one dependant, that dependant will be entitled to the entirety of the lump sum payment regardless of whether he or she was wholly or partially dependent. Where there are multiple dependants, the issue of whether the dependants were wholly or partially dependant on the deceased worker may continue to be taken into account when determining the apportionment of the lump sum benefit; however, the bill ensures that the total death benefit is apportioned. The new arrangements will apply to work-related deaths occurring on or after 24 October 2007, provided that the injury that caused the death occurred after the relevant provisions of the current workers compensation system commenced, that is, after 30 June 1987. These reforms will provide greater financial certainty and stability to families during a

difficult period.

The Workers Compensation Legislation Amendment (Benefits) Bill 2008 also contains an incentive for large employers to improve workplace safety. The bill contains provisions that enable an optional alternative premium calculation method for large employers based on the burning cost premium method, without threatening the viability of the scheme. WorkCover conducted a comprehensive review of the scheme's premium system in 2004, which resulted in a number of changes to premium calculations for the benefit of all employers, but principally for small to medium employers. In the course of this review, WorkCover received feedback from large employers indicating support for a premium calculation method that would be more flexible and responsive to their needs.

Following extensive consultation with large employers and other scheme stakeholders, an alternative premium calculation method for large employers has been developed. Under the Workers Compensation Act 1987, the premium for an employer's workers compensation policy is calculated by reference to an insurance premiums order and is determined on an industry basis. Under the proposed premium calculation method, instead of having the premium determined on an industry basis, an employer's final premium is based on the individual claims experience as determined five years after the policy commencement date. An employer's premium expense will be more closely linked to his or her own claims, not only during the policy period but until the claim is closed, or for four years following the expiry date of the policy period, whichever comes first.

The employer pays an initial deposit premium at the time of the policy being written. This premium amount is subsequently adjusted depending on the employer's claims experience. The final premium is capped to sit between a specified minimum and maximum premium. Employers who reduce the number and severity of claims and manage claims well can achieve significant savings under this model. By linking the premium so closely with the actual cost of the claims experienced, this method creates a direct and immediate financial incentive for employers to work with employees to prevent injuries, or where an injury does occur, to assist the worker to recover and return to duty. When utilised effectively, this method will contribute to improved employee health and return-to-work outcomes for injured workers and premium savings for employers.

If an employer's injury prevention and management system is not effective, the model can result in higher than conventional premium costs. These arrangements are therefore most appropriate for large established employers, with a relatively stable claims history and the specialist resources necessary to proactively manage injury prevention and return to work. The alternative method will only be open to large employers who satisfy eligibility criteria established by the insurance premiums order and who are approved by the Nominal Insurer for the alternative method. This will ensure that participating employers have the resources and systems to effectively implement the injury prevention and management strategies needed to utilise this premium arrangement effectively. The deferred premium payment feature of the alternative premium calculation method results in a cash flow benefit for the employer, but also presents a risk to the scheme and other participating employers from employer insolvency.

To mitigate this risk, the bill requires approved participating employers to provide the Nominal Insurer with security for their premium liability. This security can be in the form of a security deposit or guarantee to the Nominal Insurer. This security will protect the Workers Compensation Scheme in a situation where a participating employer goes into liquidation. By holding the required security, the Nominal Insurer can protect the WorkCover Scheme and ensure that other employers are not required to make additional contributions if an individual employer's business fails. As utilisation of the alternative premium calculation method will be voluntary, employers will be able to take the cost of providing a bank guarantee or other security into account when making the decision whether or not to apply for access to the alternative premium calculation method.

The changes contained in this bill are largely to enable WorkCover to obtain a bank guarantee or

other surety from participating employers. It is proposed to introduce the alternative arrangements gradually and initially limit the number of employers granted access, to allow for testing and refinement of the model before it is offered more widely. Consultation with stakeholders, including some of the State's largest employers, employer associations, Unions NSW, scheme agents and insurance brokers, has demonstrated strong broad-based support for the introduction within the WorkCover Scheme of this optional premium calculation method. Members will see from a close reading of the bill that it contains important measures for the benefit of workers and employers. I commend the bill to the House.