



Workers Compensation Legislation Amendment Bill

Second Reading

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WORKERS COMPENSATION LEGISLATION AMENDMENT BILL

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Bill introduced and read a first time.

Second Reading

Ms MEAGHER (Cabramatta—Parliamentary Secretary), on behalf of Mr Aquilina [5.32 p.m.]:
I move:

That this bill be now read a second time.

The bill before the House introduces a number of further reforms to the workers compensation legislation. The Workers Compensation Legislation Amendment Bill can be summarised as follows. Schedule 1 to the bill establishes a scheme to address cross-border issues in workers compensation. Schedule 2 introduces amendments to improve employer compliance with workers compensation insurance obligations. Schedule 3 contains amendments to the Sporting Injuries Insurance Act to permit insurance exemptions for sporting organisations that have adequate private insurance. Schedule 4 provides for the establishment of a single notification scheme for injuries to workers under both the occupation health and safety legislation and the workers compensation legislation. A further amendment in schedule 4 extends protection from personal liability to approved medical specialists who exercise functions under the Act in good faith.

I now turn to each of these amendments in more detail. For a number of years, there has been concern about the need for employers to take out workers compensation insurance for individual workers in more than one State or Territory even if these employees are working only temporarily in another State. Over the past 10 years there have been a number of attempts to resolve these cross-border issues. Discussions with all of the States and Territories at ministerial and officer level have recognised the need for a legislative solution. Attempts were made to prepare national template legislation, but these attempts have foundered because the proposed solution became too complicated and unworkable. However, national principles have been agreed. These aim to eliminate the need for employers to obtain workers compensation coverage for a worker in more than one jurisdiction. These principles also are intended to ensure that workers working temporarily in another jurisdiction will only have access to the workers compensation entitlements—and common law benefits—available in their home State or "State of connection" and to provide certainty for workers about their workers compensation entitlements and ensure that each worker is connected to one jurisdiction or another.

In addition, it has been agreed between New South Wales, Queensland and Victoria that each State should pursue complementary legislation establishing a single rule for workplace-related accidents, consistent with the national principles. Queensland introduced amendments to deal with this issue on 7 November. As Victoria is currently preparing for elections, legislative action in that State has been delayed. It is hoped that the provisions in all three eastern States will be operative by the middle of next year. It is also hoped that the other Australian States and Territories will adopt the template legislation that has been developed. Schedule 1 to the bill introduces the necessary legislative framework to give effect to these principles by amendments to the Workers Compensation Act. The test for home State connection is set out in proposed section 9AA (3). If a single home State cannot be clearly determined by the first test, that is, what is the usual place of

employment, the second test—where is the worker usually based—will be applied.

If no one State is identified by the application of the first two tests, the final test will be applied. That is, what is the employer's principal place of business in Australia? In deciding whether a worker usually works in a State, section 9AA (6) provides that temporary arrangements under which a worker works in a State for a period of not longer than six months are to be disregarded. This will remove the need for employers to have two workers compensation policies for employees working temporarily interstate for up to six months. Other provisions in schedule 1 will enable the recognition of a determination of the State of connection made in another State and will enable the State of connection tests to also apply to common law claims against an employer. The reforms contained in schedule 1 will be of significant benefit to both workers and insurers. It will give employers with workers in different States clear guidelines on their workers compensation responsibilities. It will also provide injured workers with increased certainty about their workers compensation entitlements and common law rights.

Schedule 2 to the bill relates to compliance amendments. In June 2000 strategic directions for the WorkCover scheme were announced. One of the key aspects of the Government's workers compensation reform agenda, which I outlined at that time, is the development of strategies to improve employer compliance with workers compensation insurance obligations. Where employers are not insured, or have not paid the correct amount of premium, the cost of any claims made by injured workers is picked up by the scheme. Also, if no premium is paid there is no economic incentive for employers to give priority to injury prevention. This is unacceptable and the Government takes the issue of employers avoiding their premium obligations very seriously. Major legislative reform of the compliance provisions was undertaken in December 2000 and July 2001. These amendments included an extension of liability for premium debt to directors of corporations; the ability to recover audit costs and charge employers interest on avoided premiums due to underdeclaration of wages; and increased penalties for non-insurance, failure to provide wage records for inspection, and failure to produce a workers compensation policy for inspection. The Government recognised that further strategies beyond these were necessary to ensure employer compliance with workers compensation.

In April 2001 a compliance working party was established under the Workers Compensation and Workplace Occupational Health and Safety Council to focus on strategies to address premium avoidance. The working party was comprised of representatives from peak employer and employee bodies. The working party identified a number of factors contributing to non-insurance, underinsurance and premium avoidance in the WorkCover scheme and put forward a number of proposals to address these factors. Proposals included options to extend the WorkCover scheme coverage to individual contractors, sole traders and partnerships; options to address underinsurance through monthly reporting; and options to address premium avoidance by related corporations and employers. In September 2001 the Government released a workers compensation compliance green paper inviting public comment on the working party's proposals.

Earlier this year the Government appointed two special advisers on compliance, Ms Penny Le Couteur, an independent consultant, and Dr Neil Warren, Associate Professor of Economics at the University of New South Wales. The special advisers were asked to consider options and make recommendations on measures to substantially improve the level of employer compliance with workers compensation insurance and payroll tax obligations. The submissions received in response to the green paper were considered as part of this broader review of employer compliance. During the course of the review, the special advisers undertook considerable consultation with stakeholders, including WorkCover, the Office of State Revenue and employer and employee representatives.

Broadly speaking, the special advisers have recommended that the WorkCover Authority and the Office of State Revenue adopt consistent approaches to the assessment and collection of payroll tax and workers compensation premiums using consistent definitions. The recommendations contained in the final report include the alignment of definitions of "wages"; revision of payroll tax grouping provisions and their adoption for workers compensation purposes; and new provisions to oblige principals to be concerned with the workers compensation policies of

contractors. Schedule 2 to the bill amends the Workers Compensation Act 1987, to implement the special advisers' recommendations to improve workers compensation premium collection and minimise avoidance by employers.

The amendments contain provisions to adopt the recommendations made by the special advisers in relation to the definition of wages, the adoption of grouping and measures to oblige principals to be concerned with the workers compensation policies of contractors. The amendments proposed in schedule 2 to the bill provide for the definition of "wages" to be amended to include the grossed-up value of fringe benefits, employer superannuation contributions, long service leave special expenses, allowances, director's fees or other sums given by the employer. The amendments also provide explicitly for distributions from trusts to beneficiaries to be considered to be wages, where the beneficiaries perform unpaid work. These changes will more accurately reflect true wages paid by taking into account different forms of remuneration and will reduce the scope for premium avoidance.

This definition of wages will apply to all policies written on or after 1 July 2003 and there will be an appropriate reduction in the workers compensation tariff rates to offset the additional premium, which will be collected as a result of broadening the definition. Proposed section 175B requires principal contractors to verify that their subcontractors comply with their workers compensation premium obligations. Principal contractors will be liable for payment of any amounts of workers compensation premiums not paid by their sub-contractors for work conducted for the principal contractor unless the principal contractor has a written statement and certificate of currency from contractors indicating that the correct premiums have been paid. This provision is similar to section 127 of the Industrial Relations Act 1996, which makes principals liable for any unpaid remuneration for employees of sub-contractors.

If a statement given by a contractor is known to be false or the principal does not receive a statement, the principal may withhold any payment due to the contractor until they receive an accurate statement. Each contractor is required to have a statement from any sub-contractor of its own, ensuring compliance along chains of contractors. This proposal provides principal contractors with a means of ensuring that correct workers compensation premiums have been paid by contractors and sub-contractors. Schedule 2 to the bill inserts a new division into the Workers Compensation Act 1987 providing for the assessment of workers compensation premium based on employer groups. The grouping provisions in the Pay-roll Tax Act 1971 ensure that wages paid within a group, which is defined by reference to common ownership and control, are assessed together. The grouping provisions under the payroll tax legislation assess related employers as a group to prevent employers from splitting activities and reducing liabilities.

While there are currently provisions in workers compensation legislation that require some related entities to have their premium assessed on a group basis, these focus only on clerical and administrative support companies that are separated from core businesses. They do not address the large numbers of parallel companies which would otherwise be part of one entity, which are used as a device to minimise premiums. The bill requires each group to have one workers compensation policy. Employers who are part of a group will need to nominate a principal employer to represent the group and to act on its behalf for correspondence and insurance information. The nominated member, usually the controlling entity of the group, will be required to submit a declaration specifying all members of the group, and that there are no other related entities. Groups will include related trusts, partnerships and corporations. All members of a group will be jointly and severally liable for all premiums, penalties and all other liabilities under the Act.

Further consideration needs to be given as to how the grouping provisions will apply to organisations currently exempt from payroll tax, such as charities and religious organisations. Consultation with these organisations will be undertaken and any special issues will be considered. The bill provides for a regulation making power giving WorkCover the discretion to determine how grouping will apply to such organisations. The provisions contained in schedule 2 will assist in ensuring employers comply with their workers compensation obligations. Schedule 3 to the bill deals with a proposed amendment to the Sporting Injuries Insurance Act 1978. The purpose of this amendment is to enable the Sporting Injuries Committee to exempt a sporting organisation from

participation in the Sporting Injuries Insurance Scheme under certain circumstances. An insurance exemption may only be granted if the committee is satisfied that the sporting organisation will have adequate private insurance for the period for which the exemption will be in force.

Professional sports people, those who receive remuneration, are regarded as workers under workers compensation legislation. Therefore, sporting organisations which employ professional sports people are required to take out workers compensation insurance. This does not apply where the professional sports person is covered under the Sporting Injuries Insurance Scheme. Under the proposed amendment, sporting organisations that participate in private insurance schemes providing adequate private insurance may be exempted from the requirement to take out workers compensation insurance cover or participate in the Sporting Injuries Insurance Scheme. This will eliminate duplication as sporting organisations that have exemptions will no longer need to take out workers compensation cover or cover under the Sporting Injuries Insurance Scheme, in addition to a private scheme organised by the organisation.

The amendment requires the insurance provider to be an organisation that is authorised to carry on insurance business subject to regulation by the Australian Prudential Regulation Authority. Under the amendment injury and death benefits that will be paid under the private scheme should be at least equal to those offered under the Sporting Injuries Insurance Scheme. This makes it possible for sports persons to enjoy more generous benefits than are currently provided under the Sporting Injuries Insurance Scheme. Sporting organisations will be required to pay a 10 per cent levy based on the rate of premium that they would otherwise have to pay, on each occasion of a grant or renewal of an insurance exemption, for the period of the exemption. The levy will be paid into the Sporting Injuries Fund to finance research into injury prevention. This will benefit all participants in the Sporting Injuries Insurance Scheme, and could reduce premiums for both the Sporting Injuries Insurance Scheme and approved private schemes.

The exemption may be granted for a period of up to 12 months renewable for further periods of up to 12 months, and is subject to approval by the Sporting Injuries Committee on satisfaction that the sporting organisation maintains adequate private insurance. Schedule 4 to the bill addresses two issues: it facilitates the establishment of a single notification system for employers in relation to workplace injuries; and it makes a minor amendment to the Workplace Injury Management and Workers Compensation Act 1998 to confer protection from personal liability on approved medical specialists for acts and omissions in good faith in the exercise of functions under that Act.

These amendments will establish a single notification system for reporting workplace injuries and incidents, replacing the current dual reporting requirements for employers imposed by the Occupational Health and Safety Act 2000 and the Workplace Injury Management and Workers Compensation Act 1998. The amendments will permit the notification required to be given by employers under the Workplace Injury Management and Workers Compensation Act 1998 to be given to either the insurer or to WorkCover. If notification is given to WorkCover, the authority is to forward the notice to the insurer. Similarly, if notice is given to the insurer, the insurer is to forward the notice to the authority.

The bill also provides for an amendment to the Occupational Health and Safety Act to provide that the giving of notice under the Workplace Injury Management and Workers Compensation Act 1998 will satisfy the notification requirements of section 86 of the Occupational Health and Safety Act. The effect of these changes will be to ensure prompt and accurate notification of all injuries, accidents and work-related illnesses and that a comprehensive database of these occurrences can be established. The bill permits the making of regulations that will simplify the current notification requirements and facilitate the notification of data by telephone and over the internet. These regulatory changes will be matched by administrative changes that will be established in consultation with unions, employers and insurers to establish systems to encourage an exchange of information about notifications between WorkCover, insurers and employers.

To encourage prompt notification of workplace injuries by employers, financial incentives will be introduced. The bill specifically permits the making of regulations to prescribe different excess

amounts payable by employers to their insurers in response to notification of injuries in certain time frames. For example, employers who notify within the specified time frames may pay a lower excess, or no excess, for that claim. Conversely, employers who do not notify within the specified time frame may be required to pay a higher excess for that claim. These amendments should benefit employers by reducing their administrative burden in the area of reporting of workplace injuries, leading them to potentially benefit from a reduction of up to 50 per cent in costs as they move from two reporting systems to one. Simplification of the notification process will promote higher compliance and more reliable, accurate and timely information on injuries, illnesses and incidents.

The President of the Workers Compensation Commission may appoint approved medical specialists. An approved medical specialist may make an assessment of the degree of permanent impairment of an injured worker for the purposes of the workers compensation Acts where a medical dispute is referred by a court, the commission or the registrar. Accordingly, approved medical specialists are essentially carrying out functions related to the commission. The proposed amendment confers protection from personal liability on approved medical specialists for acts and omissions in good faith in the exercise of functions under the Act. The protection proposed for approved medical specialists is similar to that given to mediators under section 318G of the Act. The amendments contained in the bill will achieve significant reforms: to resolve cross-border issues, to improve compliance with workers compensation insurance requirements and to enable exemptions to be made available under the Sporting Injuries Insurance Act. They merit the support of honourable members. I commend the bill to the House.

Debate adjourned on motion by Mr R. H. L. Smith.

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