

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [6.03 p.m.], on behalf of the Hon. Eric Roozendaal: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the *Workers' Compensation (Dust Diseases) Amendment Bill 2010* during Asbestos Awareness Week.

The New South Wales Government currently provides lump-sum payments, under the *Workers Compensation (Dust Diseases) Act 1942*, to the families of workers who have died due to asbestos and other dust-related diseases they acquired while on the job.

This bill contains important legislative amendments to increase the maximum lump-sum payments that are made to these families.

Losing a loved one is very traumatic for any family.

Supporting the families of workers with a fatal dust disease is important for this Government and we want to make sure their compensation is adequate.

When a worker dies of a dust-related disease they acquired while on the job, the New South Wales Government currently compensates the family with a one-off payment of up to \$245,700.

This bill includes an amendment to increase this payment to \$311,050.

This is in addition to benefits the worker receives, including the delivery of a range of health care services and payment of all medical expenses they incur as a result of the disease.

Dependent family members will continue to be entitled to weekly payments, including payments to children and full time students up to the age of 21.

People think the incident rate of asbestos-related diseases is decreasing. Sadly it is not.

Asbestos-related diseases affect more and more people each year with incident rates expected to continue increasing in the coming years.

Although the dangers of unsafe handling of asbestos has been known for years, the long time between exposure and the onset of symptoms signalling a disease means the number of people with an asbestos-related disease is expected to increase every year until at least 2018.

This increase will help ensure that the families of the workers left behind continue to receive a realistic level of compensation.

The increase will be phased in, with the benefit increasing to \$268,375 from the date of commencement of the proposed Act, to \$291,040 one year later, and to \$311,050 in the following year.

The amendments increasing the lump sum payable will apply to the dependants of any worker who dies from today, the date of introduction of the bill.

The New South Wales Government has a proud history of supporting sufferers of asbestos disease and will continue to do so.

In January 2009, New South Wales opened the Bernie Banton Centre, the world's first stand-alone research facility dedicated to improving the prevention, early diagnosis and treatment of asbestos-related diseases.

The New South Wales Government committed \$8.5 million to the Centre, which is a small gesture to the late Bernie Banton and is a world leader in developing better diagnosis and treatments tailored to individual patients.

In February this year, the Government also launched the new \$870,000 Dust Diseases Lung Bus.

The mobile respiratory screening unit travels New South Wales with State-of-the-art facilities to help make early detection and referrals for respiratory problems easier.

WorkCover is also carrying out campaigns to educate workers and the community on the dangers of asbestos.

This will help reduce the number of people affected in the future.

WorkCover's Asbestos and Demolition Unit has dedicated inspectors who visit commercial demolition and asbestos removal sites to ensure training, supervision and safe work practices are in place.

The Unit also operates an emergency hotline and after-hours service to ensure workers and the public are able to access information and assistance as quickly as possible.

New South Wales is the only State in Australia to have established dedicated bodies to compensate dust disease victims.

For more than 80 years, the Dust Diseases Board has been involved in compensating and caring for workers who have contracted a dust disease as result of their employment.

The Dust Diseases Board pays compensation from the Dust Diseases Fund, constituted under the Dust Diseases Act.

The Dust Diseases Fund primarily comprises contributions made by workers compensation insurers.

Under section 6 of the Dust Diseases Act, the Board determines an amount, the Dust Diseases Levy, to be collected from workers compensation insurers each year, to cover the liabilities of the Dust Diseases Fund.

The Board obtains the advice of actuaries when making this determination.

The New South Wales Government will continue to support asbestos victims. It is therefore fitting for me to introduce this bill today.

I will now outline the provisions of the bill.

Firstly, as I have indicated, the bill increases the lump sum death benefit payable under the *Workers Compensation (Dust Diseases) Act* from the current amount of \$245,700 to \$311,050.

The amount of the lump sum paid to the dependants of a deceased worker under the Dust Diseases Act has been historically maintained at 70-75 per cent of the amount of the lump sum payable to the dependants of deceased workers under the *Workers Compensation Act 1987*.

The Workers Compensation Act was amended in October 2008 to increase the lump sum death benefit payable from \$331,250 to \$425,000

This amounted to a 28 per cent increase. No corresponding amendment was made to the lump sum payable under the Dust Diseases Act.

The proposed amendment will restore the historical relationship between the death benefits in the dust diseases and workers compensation legislation.

The Board's actuaries advise the proposal will increase the Board's projected compensation payments by \$9.7 million in 2010/11 to \$101.6 million.

The increased future payments will remain at approximately \$9 million per year over the next ten years.

The Dust Diseases Board has considered its liabilities and assets as well as actuarial advice and is confident that it can fund the proposed amendments to dependant entitlements without the need to increase the Dust Diseases Levy on employers. However, to minimise the initial impact of the increase on the Dust Diseases Fund, it is proposed that the increase will be phased in.

There will be three annual increases, the first occurring on the date the Act commences.

The Act commences on Assent.

Currently, the lump sum benefit is adjusted in accordance with the indexation provisions of the *Workers Compensation Act 1987*.

During the phase in period the indexation provisions will not apply.

Indexation will recommence on 1 April 2013—the first adjustment date after the lump sum reaches \$311,050.

The proposal does not impact the weekly payments payable to workers' dependants. These payments will continue to be indexed as usual. The actuaries of the Dust Diseases Board have advised that the Dust Diseases Levy will not be impacted as a result of the proposed increases, as the benefits will be funded from the Dust Diseases Fund's capital base.

Dust diseases, including mesothelioma, are diseases of long onset, with most people not exhibiting symptoms of a dust disease for 20 or more years from the time of exposure.

As Australia became more aware of the dangers of asbestos, New South Wales introduced stringent occupational health and safety laws to protect New South Wales workers from being exposed to asbestos and other hazardous dusts, and to reduce the future incidence of disease within the New South Wales workforce.

Reports issued over recent years have shown varying predictions for the number of cases of mesothelioma in the general community and when the peak of disease incidence will occur.

Some reports suggest that the peak will occur in 2014, others 2018, or even later.

The Dust Diseases Board compensates only those New South Wales workers who were exposed to dust in the workplace.

The varying predictions of disease incidence cited in the reports include all members of the community who might have been exposed to asbestos, not just workers.

The Dust Diseases Board has made awards of compensation for mesothelioma to 1,572 workers over the past 10 years.

The total awards for all dust diseases, including mesothelioma, over this period is 3,775.

The number of new compensation claims received by the board from New South Wales workers each year has not varied significantly over time.

The annual number of new compensation claims from workers is anticipated to remain steady until 2018 when numbers are expected to start to decline.

The other key amendment in this bill will allow the Dust Diseases Board to consider the age of the worker at the time of death as a factor to be taken into account when determining the amount of lump sum compensation to be paid to a dependant of a deceased worker.

Dust diseases are diseases of long onset.

Many persons do not display symptoms or disability from a dust disease until after retirement age.

The average age of death for workers receiving benefits under the Dust Diseases Act is around 74 years.

This differs significantly to the circumstances giving rise to entitlements to death payments under the Workers Compensation Act.

The majority of those deaths are catastrophic and immediate in nature.

The age of worker deaths covered by the Workers Compensation Act is somewhat younger.

Section 8 (2B) (d) of the Dust Diseases Act currently allows the board to determine the amount of compensation that is "*reasonable and proportionate to the injury of that person*" to a partially dependent person following the death of a worker.

The Board considers the age of the worker at the time of death is a relevant consideration when determining what is reasonable and proportionate.

The Dust Diseases Act does not expressly provide for age to be taken into account when determining lump sum payments to the dependants of deceased workers.

Many workers are of an advanced age at the date of death. The Dust Diseases Board therefore considers that it is reasonable and appropriate for the dependants of a younger worker to receive more substantial lump sum compensation to meet their future needs than in the case of an older worker.

This is an established approach in determining compensation for relatives of deceased persons at common law.

The Dust Diseases Board proposes that a sliding scale of lump sum payments be adopted, based on the age of workers at their date of death, to promote greater transparency and predictability for the dependants of deceased workers and to allow for greater certainty in the calculation of the future liabilities of the Dust Diseases Fund.

The Board also considers that a distinction should not be made between dependants who were wholly or partially dependent on the deceased worker for this purpose.

Section 8 (2B) (d) of the Dust Diseases Act allows the board to determine the amount of compensation that is "*reasonably proportionate to the injury to that person*" to a *partially* dependent person following the death of a worker.

The majority of dependent spouses receiving compensation from the board are aged over 70 years and in receipt of the aged pension.

Therefore, the Board has decided to remove the income factor in exercising its discretion under section 8 (2B) (d) to reduce the maximum rates of the compensation payable.

The Board's actuaries assess that approximately 90 per cent of dependent spouse beneficiaries applying for compensation would be unaffected by removing consideration of the person's income.

The Board's actuaries have estimated that this change in policy will increase the board's annual compensation liability

by \$3 million in 2010-11, increasing to an additional \$5 million in 2019-20.

The proposed amendments in the *Workers' Compensation (Dust Diseases) Amendment Bill 2010* will provide real improvements to support for the families of workers who have died due to asbestos and other dust-related diseases they acquired while on the job.

I commend the bill to the House.