

**WORKERS COMPENSATION AMENDMENT (LUMP SUM COMPENSATION) BILL 2015****Bill introduced on motion by Mr Paul Lynch, read a first time and printed.****Second Reading****Mr PAUL LYNCH** (Liverpool) [11.43 a.m.]: I move:

That this bill be now read a second time.

I have the pleasure of introducing the Workers Compensation Amendment (Lump Sum Compensation) Bill 2015 on behalf of the Labor Opposition. I note that joint responsibility for this bill lies with me and the member for Cessnock, in his capacity as the shadow Minister for Finance, Services and Property. The essence of this bill is to overturn the consequences of a decision in the New South Wales Court of Appeal in *Cram Fluid Power Proprietary Limited v Green*[2015] NSWCA 250. The bill's object is to amend the Workers Compensation Act 1987 to enable one particular group of workers to make more than one claim for lump sum compensation for permanent impairment in respect of a work injury.

The Cram Fluid Power decision restricted the making of claims for lump sum compensation pursuant to section 66 of the Act to one claim in respect of the permanent impairment flowing from a work-related injury. Cram Fluid held that that restriction extended to a claim for deterioration of an injury where a claim for lump sum compensation had been made before 19 June 2012—the date on which the relevant statutory provisions had commenced. That clearly had a retrospective element. This bill reverses that decision and allows a worker who made a claim for lump sum compensation prior to 19 June 2012 to make a further claim for lump sum compensation.

The arguments justifying this bill are powerful. Most obviously, the bill seeks to restore the commonly understood position in the sector, as revealed, for example, in the decision of the president of the Workers Compensation Commission in relation to Mr Green's claim. Equally, if this was the broadly understood position there should be no significant implications in relation to funding. That seems to be the position of the Government, at least as presented by the Minister in his answer to supplementary questions during estimates hearings. If this is not the case then not to support the bill simply allows someone or something to make a windfall gain at the expense of injured workers. The bill should also be supported because to do otherwise would be to unconscionably support a retrospective legislative impact. The bill should also be supported because it is fair.

Workers who will be affected are typically those who are injured at work and uncontroversially lodge a claim, including a claim for section 66 lump sum compensation for a whole of person impairment. Their condition subsequently requires them to come to surgery, most typically several years later. The surgery will typically leave the worker with a substantially greater whole person impairment, and usually even greater unemployability. That greater impairment will often be quite substantial. For workers in such situations not to be compensated for their eventual actual impairment seems entirely wrong granted this category is entitled to such lump sum compensation. The bill is necessary because it seems clear that there will be no appeal from the Cram Fluid decision to the High Court. The appeal would be funded only by the WorkCover Independent Review Office [WIRO], and it has indicated that it will not fund it.

The Government, through its Minister during the estimates committee, indicated that it will not amend the law in response to this decision. Curiously, the Minister said that this is how the Government wanted the law to operate, notwithstanding that that is clearly not how it had been implemented. The issues involved become much more real when the factual background of such cases is understood and appreciated. In the Cram Fluid case the injured worker, Michael Green, was employed as a maintenance fitter by Cram Fluid Power Proprietary Limited. On 24 May 2005 when he was crouching

down to lift parts off a hose assembly he injured his lower back. He made his claim within six months, as required. There was no dispute as to this or to payment. In December 2010 he made a section 66 claim for lump sum compensation. He claimed 7 per cent whole person impairment in respect of the injury to his lumbar spine. The claim was resolved within a fortnight by agreement. The claim amount was \$8,750, representing 7 per cent permanent impairment.

Subsequent to this his condition deteriorated, as it often will in such cases. He underwent spinal surgery in September 2012. His permanent impairment was now assessed at 22 per cent. That is a not an uncommon history. In October 2013 he made a claim for further compensation under section 66 for 22 per cent whole person impairment, less credit of the 7 per cent compensated already. He also claimed compensation for pain and suffering under section 67 of the Act. The workers compensation insurer, Allianz, disputed liability for any further section 66 payment. Mr Green's entitlement to this further section 66 claim was upheld by an arbitrator in the Workers Compensation Commission. On appeal, the President of the Workers Compensation Commission confirmed the arbitrator's approach. As well as finding that the 2012 amendments to section 66 did not apply to Mr Green's claim, the president also found that if the new section 66 (1A) applied in the present case, it only applied prospectively to claims for lump sum compensation made after June 2012—that is, Mr Green's subsequent lump sum claim was his one post June 2012 claim.

An appeal on these points was then made to the Court of Appeal. In the Court of Appeal Acting Chief Justice Beazley, and appeal judges Emmett and Gleeson all found in favour of the appellant, the main judgement being by the latter of these three. The bill is designed to overcome the consequences of that decision. The provisions of the bill are very simple and provide for appropriate amendments to schedule 6 of the Act and the regulation. This is a bill of simple fairness and justice, and I commend it to the House.

**Debate adjourned on motion by Mr Paul Toole and set down as an order of the day for a future day.**