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WORKERS COMPENSATION AMENDMENT BILL 2015

STATE INSURANCE AND CARE GOVERNANCE BILL 2015

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism)
[4.07 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

These bills honour the commitment made by the Minister on 15 March 2015, that a re-elected Baird Government:

- Would immediately review the financial position of the workers compensation scheme following the election and
- Out of that one-off review, of every dollar above the minimum surplus to keep the scheme sustainable, two-thirds would be invested in supporting injured workers and getting them back to work, with the balance being returned to business as lower premiums.

The Government will enhance benefits for injured workers, provide a performance discount for employers with good safety and return to work records and introduce three new organisations to operate and regulate the State's insurance schemes and regulate workplace safety.

In 2012 the scheme was in crisis with a \$4.1 billion deficit and businesses were facing premium rises of up to 28 per cent, with 12,000 jobs at risk.

Thanks to reforms introduced by this Government, the scheme now has assets exceeding its target funding ratio, the New South Wales return to work rate is higher, premiums have been reduced by an average 17 per cent and injured workers with the highest needs are receiving more benefits than before.

The Government is now in a position to return some of these funds to further support injured workers and get them back to work and to reward employers with an above average safety record with lower premiums.

The Government has considered the submissions to and recommendations of numerous recent parliamentary inquiries, held discussions with injured workers, and conducted surveys of businesses and injured workers.

We have also spoken to other stakeholders in the workers compensation system to understand their issues, experiences and suggestions for change.

While it is never possible to give everybody everything they may be looking for, the Baird Government has worked to be as well-informed as possible in identifying priorities for improving the system over coming months.

If someone is injured we need to provide them with the assistance they need to get back to work, or for those with more serious long-term injuries provide the support they need to live their lives with dignity.

Injured workers, employers, health professionals and other stakeholders currently have to deal with multiple parties with disparate goals and purposes, with the government paperwork and regulation to go along with it.

The system needs to have the customer and their needs and goals at the centre of decisions not at the end.

Fair. Sustainable. Customer-centric.

That is what the New South Wales workers compensation system should look like and this is exactly what the New South Wales Government will strive to achieve.

The benefit enhancements being introduced by the Government are focused on three simple objectives:

- supporting injured workers to recover and return to work,
- providing proper assistance to workers with the highest needs, and
- making sure that all changes to benefits will not compromise the financial sustainability of scheme.

These benefit changes are anticipated to benefit thousands of future and existing injured workers.

The Workers Compensation Amendment Bill 2015 will amend the Workers Compensation Act 1987 to deliver a range of improved benefits for injured workers and their families, and the employers of New South Wales.

Every workplace death is a tragedy. Every death is one too many impacting the family of the worker and many others.

Schedule 1 to the bill provides for a large increase in the amount paid to dependents of a worker who has died from \$524,000 to \$750,000. This is the most generous lump sum support package for families of workers who have died at work in Australia.

This will apply to any fatality that occurs from today onwards.

Funeral expenses are also increased from an amount of \$9,000 to \$15,000 to reflect current market costs. This recognises the need to support families and makes New South Wales one of the most generous systems in Australia.

Again this provision will apply from today.

Schedule 2 to the bill introduces a minimum safety net weekly payment for the most seriously injured workers.

The bill will ensure that the workers with the highest needs will receive a minimum amount of \$788 each week, which will comprise the benefit paid by their insurer and any post-injury earnings of the worker.

This will assist those workers with over 30 per cent permanent impairment who were on very low, pre-injury average weekly earnings and who may receive weekly payments for many years.

The bill introduces new terminology for seriously injured workers who have more than 30 per cent whole person impairment.

Injured workers with a permanent impairment of over 30 per cent will now be known as "workers with highest needs".

Workers who have more than 20 per cent whole person impairment will be referred to as "workers with high needs".

Schedule 2 to the bill also provides for a fairer system for review of work capacity decisions allowing injured workers to continue to receive weekly payments while their work capacity decision is under review by their insurer or WorkCover.

Currently, legal practitioners are unable to charge injured workers or insurers in connection with a review of a work capacity decision.

Schedule 2 paves the way for the payment of legal costs for legal advice on review of a work capacity decision to be permissible as prescribed by regulation.

The new section 44BF will require a regulation in order to be operative.

As the amount and point at which legal costs should be payable are important details I want input from stakeholders on, this amendment will allow for appropriate consultation to occur.

My intention is that the new State Insurance Regulatory Authority, in its role as the workers compensation regulator, will commence a process of consultation with stakeholders and the community about the content of a proposed regulation.

Schedule 2 also amends section 52 of the Workers Compensation Act to allow workers injured before retiring age to receive weekly payments for up to 12 months after reaching retiring age ... and allows for regulations to provide for variation of the calculation of pre-injury average weekly earnings, in order to reduce the complexity in some cases.

Schedule 3 to the bill amends the Workers Compensation Act to provide for a much more generous scheme for payment of medical and related expenses for injured workers to assist in their recovery and return to work.

Benefit changes for the injured workers with high needs, those with greater than 20 per cent whole person impairment, include payment of medical expenses for life.

All workers, regardless of their level of permanent impairment and whether or not they are in receipt of weekly payments, will receive reasonably necessary medical expenses for a minimum of two years from the date the claim was made.

For workers with a permanent impairment of 11 per cent or more this is extended to up to five years.

For workers in receipt of weekly payments, compensation will be available while those weekly payments are payable and for an additional two or five years (depending on their level of permanent impairment) after weekly payments are no longer payable to the worker.

Compensation for certain kinds of medical or related treatment, including artificial aids such as hearing aids and artificial members will not have a time limit.

The ability to claim for secondary surgery is also clarified in the bill. The term "secondary" surgery can refer to multiple subsequent surgeries. Secondary surgery is directly consequential to an earlier surgery and affects part of the body that was affected by the earlier surgery.

The surgery must be approved within two years of the earlier surgery or is approved following a dispute which arose within two years of the earlier surgery.

A replacement section 59A (4) will make clear the circumstances in which weekly payments are "payable" to a worker.

As a result of different arbitral interpretations placed upon the 2012 amendments to section 59A, there was some uncertainty about whether there could be a theoretical, rather than an actual, entitlement to weekly payments which would extend the duration of a worker's entitlement to compensation for medical and related expenses.

It was always the intention of the 2012 amendments that a worker's entitlement to compensation for medical and related expenses would be linked with the worker's actual, and not theoretical, entitlement to weekly payments.

The decision of the Workers Compensation Commission in *Flying Solo Properties trading as Artee Signs v Matthew Collet* [2014] NSWCC 202 gave effect to section 59A in accordance with the legislative intention.

The proposed section 59A (4) in this bill is intended to put the intended meaning beyond any doubt, by clarifying that for the purposes of section 59A, weekly payments of compensation are payable to a worker only while the worker actually satisfies the requirements to be entitled to weekly payments.

Schedule 4 to the bill provides for two new initiatives to help injured workers return to work, an important objective of the New South Wales Workers Compensation Scheme that benefits both employers and workers.

Return to work changes include assistance of up to \$1,000 for an injured worker returning to a new employer, as well as re- education and re-training assistance of up to \$8,000 for high-need workers who have received weekly payments for a year and a half and have a permanent impairment greater than 20 per cent.

These incentives are aimed at encouraging and supporting injured workers return to work, particularly if they are not able to return to their previous employment as a result of their significant injuries.

Schedule 5 to the bill provides for a more generous scheme for payment of indexed lump sum compensation for permanent impairment, similar to that used in Victoria. Injured workers with permanent impairment between 50 per cent and 75 per cent will be eligible for higher maximum lump sum amounts in recognition of the greater impact of their injury.

This will apply to injuries that occur from today.

Lastly, schedule 6 to the bill provides for savings and transitional arrangements.

Benefit changes to enhance equity such as payment of medical expenses, include extending the same benefits to those who have claimed from 1 October 2012 as those who claimed prior to this date.

Workers who were excluded from the operation of the Workers Compensation Legislation Amendment Act 2012 such as police officers, paramedics and firefighters, and some others will not be affected by the changes in the bill.

The Government is also delivering on its commitment to use one-third of annual surpluses in the Workers Compensation Scheme to reduce premiums for employers.

Businesses will benefit with approximately \$170 to \$200 million being returned to above average performing employers via a premium performance discount.

We are also making the insurance structures in New South Wales easier to understand.

The reforms contained in the cognate State Insurance and Care Governance Bill 2015 are an overhaul of the governance of State insurance and care schemes and the way in which those schemes are serviced in New South Wales.

We are proposing to establish three new organisations to operate and regulate the State's insurance schemes and regulate workplace safety.

The structural separation of these insurance functions addresses findings of the statutory review of workers compensation in New South Wales by the Legislative Council Standing Committee on Law and Justice Committee.

It responds to the calls of stakeholders in the system as well.

WorkCover has already recognised its conflicts of interest and has implemented an operational separation of its regulatory and insurance activities.

However, the Government has resolved to take stronger steps to address industry concerns and the recommendations of the recent reviews.

The structural separation to be implemented by this bill will give effect to that intention.

The new structure will be far more transparent and accountable and, most importantly, lead to better outcomes for injured workers. The new organisations will be more customer-centric, streamlined and efficient, building economies of scale and focusing on clear objectives.

The three new entities created by the bill are:

- Insurance and Care NSW, which will be a single provider of services for New South Wales insurance and care schemes
- The State Insurance Regulatory Authority or SIRA, which will be a new, independent regulator of New South Wales Government insurance schemes; and
- SafeWork NSW, which will be an independent work, health and safety regulator.

The bill will create a clear statutory and operational separation between the functions of providing government insurance services and the regulation of those services.

I now turn to the detail of the bill.

Part 2 of the bill establishes the new consolidated service provider, Insurance and Care NSW, which will be an independent statutory corporation with a board and chief executive.

The Board of Insurance and Care NSW will consist of up to nine directors, including the chief executive.

Pursuant to proposed section 11 of the bill, Insurance and Care NSW will have the primary function of providing services for the Workers Compensation Nominal Insurer, Lifetime Care and Support Authority and the NSW Self-Insurance Corporation. Insurance and Care NSW will also provide services to the new Dust Diseases Authority, which is to replace the existing Workers Compensation (Dust Diseases) Board and the Sporting Injuries Compensation Authority, which will take over administration of the Sporting Injuries Scheme.

Combined, these schemes represent insurance liabilities of more than \$26 billion, larger than any other general insurer in the country.

I want to assure the House that the services the Dust Diseases Board currently provides to workers with dust diseases and their families will not change under these new arrangements.

They will continue to receive the same high level of customer service and have relationships with the same staff.

The same dust diseases compensation fund will be available and the entitlements and services will continue to play an important role in supporting people with a work related dust disease.

This support will actually be enhanced under the new arrangements through Insurance and Care NSW.

Under the current system asbestos victims often have to wait up to one month to have their claim approved by the board members after the expert medical authority has already determined that they have a compensable dust disease.

For people with a malignant dust disease with an average lifespan of 12 to 18 months at reporting stage this wait time makes an enormous difference.

Under the new structural reforms, the expertise currently provided by the Dust Diseases Board members will be available to the Dust Diseases Authority through an expert advisory committee.

It will comprise a diverse range of organisations with expertise in dust diseases, including employer groups, employee groups, research groups and victim support bodies.

Some of these stakeholders will have a voice on this important table for the very first time.

The committee will advise on the delivery of services to workers and their families and how services can better meet their needs.

It will also provide strategic advice on the Dust Diseases Authority's research funding strategy, including advice on where research dollars can achieve the best outcomes for victims of dust diseases and community education activities relating to the risks from dust exposure.

Insurance and Care NSW will be a centre of excellence for long-term care needs, combining claim cohorts with similar care needs to focus on return to work and quality of life outcomes.

Insurance and Care NSW will deliver workers compensation that is less adversarial.

There will be fewer forms and less bureaucracy, and injured workers will have more say in their treatment and return-to-work pathway.

Given its role in servicing the Dust Diseases Scheme, the legislation will require that on its inception Insurance and Care NSW establish an expert committee on dust diseases.

This committee will ensure that Insurance and Care receives appropriate expert advice on the science, impacts and special considerations associated with dust diseases.

Part 3 of the bill establishes the new State Insurance Regulatory Authority or SIRA, which will also be a statutory corporation with a board and a chief executive.

The SIRA Board will have up to five members, including the chief executive.

SIRA will independently assume the regulatory functions of WorkCover in relation to workers compensation insurance and related activities, the Motor Accidents Authority in relation to Compulsory Third Party [CTP] insurance and of NSW Fair Trading in relation to home building insurance.

SIRA will focus on ensuring key public policy outcomes are being achieved in relation to service delivery to injured people, affordability, and the effective management and sustainability of the insurance schemes.

Consolidating regulatory responsibility for State insurance into one regulator will enable a consistent and robust approach to the monitoring and enforcement of insurance and compensation legislation in this State.

Finally, the role of WorkCover in enforcing work health and safety legislation will be transferred to a separate statutory regulator to be called SafeWork NSW.

The relevant provisions establishing SafeWork NSW are contained in schedule 13 to the bill by way of amendments to the Work Health and Safety Act 2011.

SafeWork NSW will focus on harm prevention and improving the safety culture in New South Wales workplaces.

SafeWork NSW will also include the establishment of a centre of excellence for work, health and safety in New South Wales.

The new structure will be more transparent and accountable and, most importantly, lead to better outcomes for injured workers.

There will be no job loss as a result of these improvements.

The head office of WorkCover in Gosford and other regional offices will not be relocated as part of these changes.

Staff moving to SafeWork NSW and SIRA will remain in the public service under the Government Sector Employment Act 2013 in the Department of Finance, Service and Innovation.

Their existing entitlements will be maintained.

Insurance and Care NSW staff will continue to be employed under a replicated award which mirrors the same entitlements that currently exist for public servants.

Insurance and Care NSW will report directly to me.

The Government has heard the recommendations of the recent parliamentary inquiries and statutory reviews into workers compensation and acted.

It has heard the views of industry stakeholders who took the time to tell us about their experiences in the workers compensation system and acted.

This bill makes it easier for participants in the system.

The Government is committed to a workers compensation system that is fair, financially sound and focused on earlier recovery and return to work for those injured workers who have the capacity to do so.

A system that is Fair, Sustainable and Customer-centric will provide the best protection for workers, employers, the community and our economy.

I commend the bills to the House.