Workers Compensation Amendment Bill 2008

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Extract from NSW Legislative Assembly Hansard and Papers Friday 11 April 2008.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.13 a.m.]: I move:

That this bill be now agreed to in principle.

The Workers Compensation Amendment Bill 2008 contains a number of initiatives to cut red tape and improve workers compensation arrangements. The bill also gives effect to changes to specialised insurance to ensure the ongoing viability of the WorkCover Scheme. The bill contains a number of new provisions that modify the obligations of employers to take out workers compensation insurance. First, the bill exempts employers who pay wages below a threshold, initially of $7,500, from the requirement to hold a workers compensation policy. This reform aims to reduce the costs and administrative burden on several hundred thousand small and domestic employers by removing the requirement to obtain a minimum premium or domestic workers compensation policy.

Currently around 200,000 householders take out workers compensation insurance. This reform will remove their need to do so and also extend the same workers compensation coverage to around 2.4 million households in New South Wales. The exemption will not apply where an employer engages an apprentice or trainee, or is a member of a group for workers compensation purposes. Workers employed by these exempt employers will be covered for their compensable injuries by virtue of a "deemed" policy. If a worker employed by an exempt employer is injured at work, the employer will be required to notify the Nominal Insurer and pay the Nominal Insurer a once-only fee for the administration of the claim.

The fee will be prescribed by regulation, but it is expected initially to be in the vicinity of $175. Consequently, these exempt employers will still be required to meet all other workers compensation and injury management obligations. These include advising employees of their right to lodge a claim when injured, reporting injuries, and providing suitable duties where appropriate. This reform aligns New South Wales arrangements regarding the obligation to hold a workers compensation policy with Victoria, and is a further step in achieving the harmonisation and streamlining of workers compensation requirements between the States and Territories. Another insurance reform in the bill is to align the period for which records relating to wages must be kept with the record-keeping requirements of Victoria and the Australian Taxation Office. Currently, the workers compensation legislation requires employers to retain all records relating to wages for seven years. Under the bill, this will be reduced to five years.

The bill corrects an anomaly that exists in relation to the recovery of compliance audit costs from certain employers. Compliance audits or inspections are currently undertaken by or on behalf of WorkCover to ensure that the correct premiums are paid. Under existing legislation, costs of these inspections may be recovered from employers who have workers compensation policies and who under-declare wages by 25 per cent or more. However, there is no provision for recovery of these costs from employers who have failed to take out a policy. The bill contains a new provision that corrects this anomaly and will enable recovery of all audit and inspection costs incurred by WorkCover where the employer does not have a workers compensation insurance policy.

The bill also clarifies that an individual employer should hold only one workers compensation policy of insurance. While it is the intention of the existing section 155 of the Workers Compensation Act 1987 to prevent employers from holding more than one workers compensation policy of insurance, there has been some questioning of this. The bill now makes it clear that the rule is: one employer, one workers compensation policy. However, the amendment will not prevent an employer in the coalmining industry from holding a policy under the Coal Industry Act for employees in that industry, as well as holding a general workers compensation policy for any other employees.

An important reform in the bill is to ensure that WorkCover has sufficient powers to obtain and manage securities from current and former self-insurers to ensure ongoing claim liabilities, including for dust diseases, are serviced. New provisions in the bill extend the existing security arrangements to make it clear that they apply to former self-insurers who may be required to provide additional deposits or security. Further, interest earned may be applied to supplement any additional deposits that have not been made. These amendments will assist in protecting the scheme in the event that there is a shortfall in security and a self-insurer or former self-insurer is unable to fund their liabilities.

I now turn to proposals in the bill to close the class of specialised insurers. Around 75 per cent of employers are

covered by the WorkCover Scheme, which is managed by the Workers Compensation Nominal Insurer. The Nominal Insurer administers the scheme funds, which are held in the Workers Compensation Insurance Fund. The WorkCover Scheme offers workers compensation cover to any eligible employer, regardless of risk or claims history, and the substantial size of the fund allows the scheme to offer affordable premiums to all employers.

The New South Wales scheme has experienced a major improvement in efficiency and performance, with a deficit of over $3 billion in December 2002 being returned to surplus in less than four years. This strong performance has allowed the Government to reduce workers compensation premium rates by an average of 30 per cent and increase statutory benefits twice since December 2005. However, workers compensation insurance is also offered to employers in some industries by specialised insurers, which are licensed by WorkCover. Specialised insurers are generally responsible for specific industries or cover specific categories of employers, such as Catholic Church Insurance or StateCover, the local government scheme. Most specialised insurers are of longstanding and offer workers compensation cover to relatively small groups of employers.

The WorkCover Board has been concerned that the potential growth in the numbers of specialised insurers could threaten the ongoing viability of the nominal insurer because, unlike the nominal insurer, specialised insurers can refuse proposals for workers compensation insurance. This capacity allows specialised insurers to offer cover to employers who have a good claims record, but reject proposals from high-risk employers. If the number of employers eligible for cover by specialised insurers were to increase, the nominal insurer could be left with high risk and/or poor performing employers, affecting the stability and viability of the nominal insurer scheme. Further, the WorkCover Board believed that permitting the entry of new specialised workers compensation insurers would effectively involve the private underwriting of a significant section of the workers compensation system. The WorkCover Board accordingly recommended that the entry of new specialised insurers should cease immediately.

The bill provides for the closure of the class of specialised insurers to new entrants and it takes effect from the date of introduction into the House. Prohibiting the entry of new specialised insurers will reinforce the recent achievements in stabilising and enhancing the scheme by ensuring that it maintains a size and industry mix that is sufficient to provide stable and affordable premiums and that will ensure its long-term viability. The holders of existing specialised insurer licences will still be able to operate under their licences and to apply for renewals where the term of a licence expires. In summary, the bill provides a number of initiatives that will improve the workers compensation arrangements and administration, and ensure the continued long-term viability of the scheme. I commend the bill to the House.