NSW Legislative Assembly Hansard Full Day Transcript

Extract from NSW Legislative Assembly Hansard and Papers Tuesday, 28 March 2006.

Second Reading

Ms ALISON MEGARRITY (Menai—Parliamentary Secretary) [7.59 p.m.], on behalf of Mr John Watkins: I move:

That this bill be now read a second time.

The Workers Compensation Legislation Amendment Bill 2006 continues the Government's program of reform to our workers compensation system. The Government has been amending workers compensation progressively, with the most recent legislation in 2005 effecting reforms to dispute resolution procedures, clarifying outworker and labour hire deemed worker provisions and making the premium compliance and audit system fairer. This program of reform is bringing dividends for employees and employers in New South Wales. We have been able to boost benefits to the most seriously injured, slash the deficit, and cut premiums. The overall aim of these reforms has been to build a scheme that is fair, affordable and efficient. In line with these aims the Government has been reforming how employers' premiums are calculated. Our aim is to ensure that those who incur costs against the scheme pay their fair share.

The bill proposes amendments in two areas to meet this objective. First, the bill introduces a new scheme for grouping employers for premium assessment purposes. However, let me make it clear that this is about making the workers compensation scheme fairer and it is not about increasing premiums on employers. It is intended that the impact of these grouping changes will be revenue neutral to the workers compensation fund. Second, the bill requires New South Wales employers who become Comcare licensees to contribute to the WorkCover Authority Fund. This will ensure that they meet their proportionate obligations to fund WorkCover's responsibilities under the Occupational Health and Safety Act 2000. A further minor amendment is made to the way the excess amount payable by an employer is set. The amendment will permit the excess to be prescribed in the insurance premiums order rather than in the regulations.

In September 2002, two special advisers appointed by the Government, Ms Penny Le Couteur and Dr Neil Warren, issued a report on the degree of employer compliance with workers compensation and payroll tax obligations. The consultants noted that by splitting companies into separate and distinct entities to reduce wages in each company, employers are able to be insulated legally from their claims experience. The report stated that grouping of related employers is essential for economic neutrality in the treatment of different businesses under the payroll tax and workers compensation legislation. These consultants recommended that companies having common ownership and control should be grouped together for workers compensation purposes to reduce compliance costs and to prevent artificial splitting of activities and unfair reduction in premiums. The Government's initial response has been to generally accept this recommendation.

Schedule 2 to the Workers Compensation Legislation Amendment Act 2002 included provisions for grouping of employers for workers compensation purposes. A group of employers in those provisions is defined with reference to a group as defined in the Taxation Administration Act 1996 for the purposes of payroll tax. However, the provisions proposed in 2002 were not commenced because discussions with employers prior to implementation revealed some possible problems in requiring grouped employers to be insured under a single policy. In addition, there were possible adverse impacts on some charities and on small businesses that were exempt from payroll tax.

Grouping of related businesses for workers compensation purposes was then considered in the New South Wales Workers Compensation Premium Review Discussion Paper issued in March 2005. As a result of extensive consultation arising from that discussion paper, the bill now introduces a revised proposal for grouping employers. One of the guiding objectives of the review was to ensure that implementation of the reforms does not change the level of premium collected for the scheme. For workers compensation purposes the essential features of the revised proposal are: group employers are limited to groups with combined wages exceeding $600,000 per annum, the same threshold as specified for pay-roll tax purposes; charities and other not-for-profit organisations may apply for an exemption from grouping if their businesses are not in direct competition with profit-oriented businesses; and group employers will no longer be required to have a common policy, but their separate workers compensation policies must have a common renewal date and be with the same scheme agent.

Groups will include related trusts, partnership and corporations. If a group employer fails to pay an amount due under the Act, for example for premium or for penalty premium, all members of a group will be liable jointly and severally for those payments. The bill enables an employer to apply to WorkCover for an exclusion determination under proposed section 175E on the grounds set out in proposed section 175F. WorkCover will develop and publish guidance material to assist employers who may be entitled to seek an exclusion and as to

the criteria that will be taken into account in considering applications. Where an employer is a charity or not-for-profit organisation that conducts a business that is not in direct competition with a commercial operation, the charity will be able to apply to WorkCover for a determination that it is not a member of a group in respect of the totality of its business covered by a particular workers compensation insurance policy.

Any increase in premium that may accrue to a group as a whole resulting from the grouping provisions will be limited in the Insurance Premiums Order. In the first year the increase will not exceed 25 per cent of the premiums that would have been payable by an employer had the employer not been grouped. This cap will extend to 50 per cent in the second year and 75 per cent in the third year. However, this cap does not apply to increases in premium that result from other factors such as increased wages or increased claims experience. The insurance premiums order to be made for 2006-07 also will impose a common sizing factor based on the combined basic tariff premium of all group members. The order will stipulate that caps on the maximum experience adjusted premiums for small and medium employers will apply to group members collectively rather than to individual group members.

In a further step to prevent avoidance, the insurance premiums order to apply from 30 June 2006 will permit the costs of claims for group members cancelling or not renewing policies to be allocated proportionally between remaining group members for experience premium calculation purposes. The bill also contains additional provisions to permit WorkCover to inspect records and contains an amendment that permits disclosure by WorkCover of information to the Chief Commissioner of State Revenue. This matches a power in the Taxation Administration Act 1996 for the Chief Commissioner of State Revenue to disclose information to WorkCover.

I would like to use an example to illustrate how a company may benefit from these improved grouping arrangements. A lift services group of three companies is engaged in manufacturing and servicing lifts. Once their polices renew on 31 December 2006 the overall group premium will be $452,804.66 as opposed to a total premium of $473,175 if the grouping calculation had not been used. This group benefits from grouping because they have a better than average claims experience relative to the industry they operate in, and the common "S" factor used under the grouping provisions provides a greater discount to their group tariff premium. This example demonstrates the importance of introducing these new grouping provisions. The revised proposals contained in this bill appropriately address the concerns raised about the practical implementation of grouping of employers for workers compensation purposes. The bill also repeals the redundant uncommenced provisions inserted by the 2002 amendments.

Item 2 of schedule 1 to the bill proposes a minor amendment to section 160 of the Workers Compensation Act 1987. Currently, section 160 states that the excess amount to be paid by an employer to an insurer in respect of each weekly compensation claim is $500 or such other amount as may be prescribed in the regulations. The change proposed is to enable the excess amount to be set in the insurance premiums order instead of in the regulations. As the insurance premiums order is reviewed each year, this will provide a simpler and more direct means of setting the amount of excess.

I turn now to the provisions in schedule 2 to the bill concerning contributions by Comcare licensees. Schedule 2 to the bill requires New South Wales employers who become Comcare licensees to make a contribution to the WorkCover Authority Fund. This ensures that they meet their proportionate obligations to fund WorkCover's responsibilities under New South Wales occupational health and safety laws. The WorkCover Authority Fund is supported by the collection of a contribution from licensed insurers and self-insurers. The contribution is calculated under section 39 of the Workplace Injury Management and Workers Compensation Act 1998.

WorkCover expends approximately 60 per cent of the fund each year on the enforcement of New South Wales occupational health and safety laws. Most employers pay the contribution indirectly. A licensed insurer pays a contribution to the fund based on the total premium income received by the licensed insurer. Employers who are self-insurers pay their contributions based on the deemed premium income that they receive. Deemed premium income is the amount of premium that a self-insurer would have been liable to pay a licensed insurer if the self-insurer had held a policy of insurance issued by a licensed insurer. Part 8 of the Safety, Rehabilitation and Compensation Act 1988 permits employers who carry on business in competition with current or former Commonwealth authorities to seek the issue of a licence from Comcare—the Commonwealth workers compensation scheme. Several employers have been declared eligible by Comcare to obtain such licences, and at least one large employer has been issued with a Comcare licence. An employer that becomes a Comcare licensee ceases to be required to hold a policy of workers compensation insurance, or to be a self-insurer, under the Workers Compensation Act 1987.

However, employers who become Comcare licensees remain subject to the New South Wales Occupational Health and Safety Act 2000. Under the Workplace Injury Management and Workers Compensation Act 1998 in its current form, there is no mechanism to collect a contribution from such employers to assist in the funding of the enforcement of New South Wales occupational health and safety laws. Honourable members will appreciate that this situation is inequitable, as it requires remaining employers in the New South Wales workers compensation system to bear the occupational health and safety enforcement costs for these Comcare licensees. The new contribution for Comcare licensees who remain subject to the New South Wales

occupational health and safety laws is a fair, reasonable and transparent method of ensuring that all employers who remain subject to New South Wales occupational health and safety laws pay their fair share. The bill continues the program of reform and improvement to the workers compensation scheme, in the interests of workers, employers and the broader community. I commend the bill to the House.