

**WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2012
SAFETY, RETURN TO WORK AND SUPPORT BOARD BILL 2012**

PROOF

19 JUNE 2012

**Bills introduced on motion by Mr Mike Baird, read a first time and printed.
Second Reading**

Mr MIKE BAIRD (Manly—Treasurer) [4.23 p.m.]: I move:

That these bills be now read a second time.

I am pleased to introduce the Workers Compensation Legislation Amendment Bill 2012 and its cognate bill, the Safety, Return to Work and Support Board Bill 2012. These bills will ensure better protection for injured workers, save businesses from unnecessary premium hikes and get the scheme back into surplus. The purpose of the bills is to deliver urgently needed reforms to the New South Wales workers compensation scheme. With a deficit in excess of \$4 billion, the scheme currently is unsustainable. New South Wales workplace safety outcomes are similar to Queensland and Victoria, yet our workers compensation premiums costs on average are around 20 per cent to 60 per cent more. Increasing premiums to address the scheme's poor experience would only exacerbate the current discrepancy to the detriment of jobs growth. As the parliamentary committee states at page 42 of its report:

... there is nothing fair and nothing equitable about pursuing premium increases which would put so many workers out of a job.

If the Government does not act now then based on actuarial advice to the scheme the people of New South Wales will face the prospect of a 28 per cent increase in workers compensation premiums when the next insurance premiums order is made at the end of June in order to clear the deficit, with future premium increases also likely. This would have a negative impact on the economy, businesses and jobs growth in New South Wales. The Workers Compensation Legislation Amendment Bill responds to the recommendations of the report of the Joint Select Committee on the NSW Workers Compensation Scheme, and gives effect to the Government's commitment to introduce legislation during the 2012 budget session.

The Workers Compensation Legislation Amendment Bill represents a fundamental shift towards properly meeting the needs of the most seriously injured workers in the scheme while strongly incentivising return to work for those workers who have the capacity to return to work. The Government is committed to ensuring that the income, support and treatment needs of seriously injured workers are met, and the bill will increase the weekly benefits paid to the most seriously injured workers while ensuring such workers have benefits until retirement, if they cannot return to work. The Government is taking steps also to ensure insurers direct more resources to support injured workers to improve their return-to-work outcomes and will focus on reducing the costs of insurers, which also are impacting on the scheme.

The joint select committee was established on 2 May 2012 and published its report on 13 June 2012. I thank the committee for its hard work. The committee held public hearings and took evidence from a wide range of interested organisations and individuals. I thank also the organisations and individuals who took the time to make submissions to the committee—over 300 submissions were received by the committee. The committee was tasked with inquiring into and reporting on the performance of the scheme in key objectives of promoting better health and return-to-work outcomes, the financial sustainability of the scheme, and the functions and operations of the WorkCover Authority. Members will recall that the Government's intention in establishing the committee was to find ways of addressing the growing deficit in the New South Wales workers compensation scheme. The Government's concern is that without further reform, New South Wales businesses could face large workers compensation premium increases with adverse impact on business and jobs growth together with an inability to provide ongoing support to injured workers.

Additionally and of particular concern is that premiums paid by New South Wales employers are higher than those paid in comparable competitor States—Victoria and Queensland—and that further increases in premiums could drive New South Wales businesses and jobs interstate. The Government released an issues paper entitled "NSW Workers Compensation Scheme" with its proposed reform based on seven principles. Firstly, enhance New South Wales workplace safety by preventing and reducing incidents and fatalities; secondly, contribute to economic and jobs growth, including for small businesses, by ensuring that premiums are comparable with other States and there are optimal insurance arrangements; thirdly, promote recovery and the health benefits of returning to work; fourthly, guarantee long-term medical and financial support for seriously injured workers; fifthly, support less seriously injured workers to recover and regain their financial independence; sixthly, reduce the high regulatory burden and make it simple for injured workers, employers and service providers to navigate the system; and seventhly, strongly discourage payments, treatments and services that do not contribute to recovery and return to work.

The report of the joint select committee and these seven key principles have informed the Government's approach to reform the New South Wales workers compensation scheme. I refer now to the bill that seeks to amend the provisions of the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 with amendments ordered in 12 schedules. Firstly, in the area of weekly payments of compensation, the bill makes important changes to the current weekly payments provisions of the Workers Compensation Act. These changes aim to provide support to workers in the initial period following an injury, and encourage them to return to work once they are recovered. The changes implement recommendation 6 of the joint select committee report and are consistent with the recommendation of the report.

<24>

Based on the Victorian model, in the initial period, that is, the first 13 weeks of the claim, workers who have no work capacity will receive up to 95 per cent of their pre-injury average weekly earnings. From weeks 14 to 130 workers who have no work capacity will receive up to 80 per cent of their pre-injury average weekly earnings. The most seriously injured

workers will be better off under the bill as they will receive 80 per cent of their pre-injury earnings up to week 130 rather than the current statutory rate of \$432.50 which applies after the first 26 weeks.

The bill implements a new scheme for the payment of weekly benefits to partially incapacitated workers. Workers who have a partial incapacity and are able to work during the 13 weeks after their claim is made will receive up to 95 per cent of their pre-injury average weekly earnings. This amount will comprise the actual wages they are earning and a top-up of the benefit. Workers who have returned to work for at least 15 hours per week will continue to receive up to 95 per cent of their pre-injury average weekly earnings in total up to week 130 after their claim. Workers who can work but who are working fewer than 15 hours per week from week 14 to 130 will receive up to 80 per cent of their pre-injury average weekly earnings. This amount will comprise the actual wages they are earning and a top-up benefit.

If a worker who has work capacity is not working at least 15 hours per week by the end of the 130-week period, entitlement to weekly benefits will cease. However, workers who have no work capacity will continue to receive benefits of up to 80 per cent of their pre-injury average weekly earnings. This new benefit structure will support workers while they are recovering from workplace injury or illness and provide incentive to workers who have work capacity to return to work. The bill also adopts a similar model to Victoria of calculating pre-injury average weekly earnings by basing the calculation on average weekly earnings of the worker rather than the current method of the worker's current weekly wage rate at the time of injury and removing the distinction between award and non-award workers. This method of calculation is based on what a worker has actually been earning which is inclusive of specified allowances and will result in fairer and more generous payments to injured workers, particularly in the early weeks of an injury when it is important that workers are able to focus on recovery.

It will reduce disputation in the system as this aspect of the current legislation has led in many cases to prolonged disputes. The bill provides for weekly payments to cease after five years with some important exceptions; in line with recommendation 7 of the parliamentary joint committee. There will be no time cap on benefits for those seriously injured workers who have been assessed at having a level of permanent impairment of over 30 per cent except for the Commonwealth retirement age which is consistent with the scheme's support for seriously injured workers. Further, as recommended by the joint select committee there is provision for an intermediate category of workers who have a significant permanent disability. For workers with permanent impairment of more than 20 per cent the bill provides weekly benefits will not cease after five years provided they have no capacity to work or have work capacity and are working 15 or more hours a week.

In accordance with recommendation 10 of the report of the joint select committee an integral part of the workers compensation reform is the introduction of work capacity assessments. Proposed new section 44A of the Workers Compensation Act 1987 provides for the work

capacity assessment, which is based on well-established Victorian provisions and practice. Insurers will be required to conduct a work capacity assessment of an injured worker at specified points during the claim, starting from week 78 following the claim and at least every two years from that point. The work capacity assessment will be a holistic assessment that will take into account medical evidence, vocational retraining and other material specified in WorkCover guidelines. Consistent with the recommendation of the parliamentary joint committee, seriously injured workers whose whole-person impairment is more than 30 per cent will not be required to have work capacity assessments. However, those workers may wish to request an assessment to explore their return-to-work options. One of the key goals of the Government is to ensure seriously injured workers receive improved benefits if they cannot work and all possible assistance and support to return to work.

Workers whose whole-person impairment is more than 20 per cent who have total incapacity will receive a benefit of up to 80 per cent of the pre-injury average weekly earnings until retirement age. Seriously injured workers who are able to work more than 15 hours per week will also receive a weekly benefit that when combined with what they are earning will be up to 80 per cent of their pre-injury average weekly earnings. Established by schedule 9 to the bill to ensure that workers are treated fairly, the decision of an insurer about a worker's current work capacity can be the subject of an internal review by the insurer, merit review by the WorkCover Authority and procedural review by the proposed WorkCover independent review officer. It is also intended that any review of decisions by the Supreme Court should be undertaken by the court only once the claim has gone through review at all stages; that is, after review by the insurer, WorkCover and the independent review officer.

Schedule 1 to the bill also makes amendments to the Workplace Injury Management and Workers Compensation Act 1998 to strengthen the return-to-work obligations of both employers and workers. The enforcement of the return-to-work provisions will be enhanced by new provisions allowing WorkCover inspectors to issue improve notices to employers who fail to comply with return-to-work obligations such as the provision of suitable work for injured workers wishing to return to work. These new return-to-work provisions will reinforce and support the regime for weekly benefits and work capacity testing thereby assisting workers who are able to return to work.

Schedule 2 to the bill reforms the scheme for lump sum payment of compensation by removing pain and suffering as a separate category of lump sum compensation and limiting lump sum payments to workers who meet an impairment threshold of greater than 10 per cent, which will be limited to only one claim. The amendment proposes only one assessment of the level of impairment for the purposes of permanent impairment commutation and common law work injury claims and allows workers to waive their requirement to obtain legal advice before agreeing to a lump sum. These initiatives will help to reduce disputes and reduce administration costs while allowing the scheme to focus on the more seriously injured workers.

Schedule 3 to the bill makes a change to the area of work injury damages with proposed new

section 151AD limiting common law claims for nervous shock suffered by a relative or dependent of a deceased or injured worker, unless the nervous shock is itself a work injury. This reflects the view that an employer's liability for psychological injury to family members does not fall within the object of the workers compensation legislation. Schedule 4 to the bill concerns medical and related expenses. Medical expenses have been an area of increasing cost to the workers compensation scheme. Under the bill payment of an injured worker's expenses for medical, hospital and rehabilitation services will be limited to a 12-month period after the claim is made or 12 months after weekly payments cease, whichever is the earlier. However, consistent with the Government's objective of directing workers compensation benefits to the most serious injured workers, workers with a permanent incapacity of more than 30 per cent will not be subject to the new restrictions for medical and related expenses. They will continue to be eligible for benefits for medical and related treatment until retirement age.

An employer's liability for medical and related treatment and rehabilitation services will be made subject to preconditions to ensure that the treatment is appropriate and properly provided and approved. WorkCover guidelines will be able to limit an employer's liability for medical and hospital treatment and rehabilitation services. Schedules 5 and 6 of the bill make essential changes to the workers compensation scheme in the area of liability. Proposed amendments to section 10 of the Workers Compensation Act mean that journey claims will no longer be covered by the New South Wales workers compensation scheme consistent with the position in many other Australian jurisdictions. While workers who travel for work will still be covered by the scheme, employees will no longer be liable for a journey between a worker's home and his or her place of work where the risk of injury is outside the control of the employer.

The proposed amendment to section 9B of the Workers Compensation Act will have the effect that worker heart attacks and strokes will not be covered by the scheme unless the nature of the employment concerned gives rise to a significantly greater risk of the worker suffering the injury than had the worker not been employed in employment of that nature. It is considered this is a fairer and more reasonable test for employers to meet than the current test of "substantial contributing factor". Schedule 7 to the bill implements recommendation 14 in the report of the joint select committee. For the scheme to be liable in the case of a disease, as opposed to an injury, the worker's employment must be the main contributing factor in order to address cases where the workplace has only a limited connection with the disease.

Schedule 8 to the bill provides for a regulation-making power which will permit insurers to commute workers compensation liabilities in cases prescribed by the regulations that do not meet the current criteria. This is similar to the position in some other States such as Victoria which provide greater flexibility for commutations and may be able to be used for workers who do not meet the current criteria, such as workers receiving small weekly benefits who would benefit from the commutation of their claims.

Schedule 9 to the bill provides for amendments to the insurance provisions of the workers compensation legislation, which are intended to permit the entry of new insurers into the New South Wales workers compensation insurance market. These new insurers could include new specialised insurers that could underwrite specified industry classes. It is, however, the Government's intention that where a specialised insurer is approved they must take all of the risk in an industry and will not be permitted to pick and choose which risks are eligible, thus leaving the nominal insurer with the worst risks.

Schedule 10 to the bill amends the Workplace Injury Management and Workers Compensation Act to provide for the administrative arrangements for establishing the new WorkCover Independent Review Officer, who will have the independent review functions in relation to work capacity assessments referred to above. The WorkCover Independent Review Officer will have also the functions of dealing with complaints about insurers, inquiring into and reporting to the Minister on matters concerning the operation of the workers compensation legislation, and such other functions as may be conferred on the Independent Review Officer. The WorkCover Independent Review Officer will have the dual roles of dealing with individual complaints and overseeing the workers compensation scheme as a whole. It will be an important accountability mechanism for the workers compensation scheme.

Schedules 11 and 12 to the bill provide for various miscellaneous amendments and savings and transitional provisions. The amendment to section 74 of the Workplace Injury Management and Workers Compensation Act will reduce red tape by simplifying the notice provisions for an insurer disputing liability, while the amendment to section 341 of that Act will require the Workers Compensation Commission to order that costs follow the event in legal proceedings before the commission unless it appears to the commission that some other order should be made in order to discourage unmeritorious claims.

In relation to transitional arrangements, the general principle is that many of the new arrangements for weekly payments will apply to existing claims as well as new claims. However, there are provisions for staged implementation of the new weekly payments provisions, especially for existing claims. Changes to lump sum compensation and work injury damage will generally apply to claims from the date of the introduction of the bill. A number of the recommendations of the joint select committee that were not legislative in nature involved legislative issues requiring greater consideration, or recommended referral to a parliamentary committee for further consideration. The Government is still considering its response to these recommendations. In conclusion, these reforms to the workers compensation legislation provided for in the bill represent an integrated package of reforms that will assist and encourage workers who have work capacity to return to work, while continuing to support and assist seriously injured workers.

I now turn to the cognate bill to the Workers Compensation Legislation Amendment Bill, that is, the Safety, Return to Work and Support Board Bill 2012. This bill establishes a single board to oversee the functions of the WorkCover Authority, the Motor Accidents Authority,

the Lifetime Care and Support Authority and what is currently known as the Sporting Injuries Committee. It is proposed that the board be known as the Safety, Return to Work and Support Board to adequately reflect the diverse functions of the various authorities. The board will comprise seven members, including the chief executive officer. Each of the members will have skills and experience in one or more areas relevant to the functions of the authorities, including insurance, finance, investment, law, health, work health and safety, injury prevention, return to work, disability services, marketing and communications.

Mr John Robertson: Surely all your mates have got jobs now. They don't need a new board so that you can put them on it, do they?

Mr Troy Grant: You shouldn't go there.

Mr John Robertson: I'm happy to go there.

Mr MIKE BAIRD: It's actually less boards.

The DEPUTY-SPEAKER (Mr Thomas George): Order! I remind Opposition members that a number of them are on three calls to order.

Mr MIKE BAIRD: The three key functions of the board will be to determine the general policies and strategic direction of each relevant authority, oversee the management and performance of each relevant authority, and advise the Minister and the chief executive officer on any matter relating to the relevant authorities or arising under any relevant legislation, either at the request of the Minister or the chief executive officer or on its own initiative. Each of these functions is to be carried out properly, efficiently and with regard to the objects of the legislation relevant to each of the authorities. The affairs of each relevant authority will also be managed and controlled by a single chief executive officer, who will be subject to the board's functions and the legislation under which each authority is constituted.

In addition, the board will determine investment policies for each of the funds administered by the authorities, which include the Workers Compensation Insurance Fund, the Lifetime Care and Support Fund, the Nominal Defendant's Fund under the Motor Accidents Compensation Act 1999, the Sporting Injuries Fund and the Workers Compensation (Dust Diseases) Fund. The board will have the ability to establish one or more common funds for the purposes of investment of any of the funds I have just mentioned in order to gain synergies and benefits obtained by jointly managing the various funds. Ownership and investment powers in relation to each of the individual funds will not be affected.

The bill also abolishes a number of advisory councils and industry reference groups which currently have a broad remit of advising the Minister and the authorities on the various schemes. Two mechanisms will replace the advisory councils and the industry reference groups. First, the board will have the power to establish committees to assist it in connection with the exercise of its functions. In particular, the board will have the power to establish a

committee to advise it on matters arising under the Sporting Injuries Insurance Act 1978. The bill abolishes the current Sporting Injuries Committee and transfers to the WorkCover Authority the claims and grant determination functions under the Sporting Injuries Insurance Act. Those functions will be exercised by WorkCover under the oversight of the chief executive officer and the board. Secondly, the Minister will be empowered to appoint advisory committees on an ad hoc basis. The functions of an advisory committee may include investigating and reporting to the Minister on specific matters arising under or in connection with the compensation and other related legislation or any other Act under which a relevant authority exercises functions.

The Government has also implemented recommendation 16 of the Joint Select Committee on the NSW Workers Compensation Scheme that a committee of the Parliament conduct ongoing oversight of the New South Wales workers compensation scheme and conduct an extensive review of the scheme, and have the capacity to engage actuarial expertise to assist it to perform its functions. Proposed part 4 of the Safety, Return to Work and Support Board Bill provides for this parliamentary oversight, which is expected to improve accountability for the scheme. I commend the bills to the House.