



Workers Compensation Legislation Amendment Bill.

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [5.51 p.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

The Workers Compensation Legislation Amendment Bill introduces a number of further reforms to workers compensation legislation. I will first list the major amendments made by the bill and then explain the purpose of the amendments in more detail. Schedule 1 gives effect to miscellaneous amendments to the Workers Compensation Act 1987, including to reverse an aspect of the decision of the Court of Appeal in *Orica Limited v CGU Insurance Limited* [2003] NSWCA 331, to ensure that the relevant employer is indemnified under statutory workers compensation policies for common law claims despite damage being suffered by the relevant worker many years after the initial injury was sustained; to ensure that WorkCover can make guidelines regarding payment for both gratuitous and non-gratuitous domestic assistance; and to include the Treasury Corporation among the entities that can provide guarantees to State-owned corporations to enable compliance with provision regarding securities for self-insurers.

Schedule 2 contains amendments to the Workplace Injury Management and Workers Compensation Act 1998 to provide new powers to presidential members of the Workers Compensation Commission and establish the Workers Compensation Insurance Fund Investment Board to determine the investment policies of the new Workers Compensation Insurance Fund. The amendment to the Sporting Injuries Insurance Act 1978 proposed in schedule 3 will provide that if a person unreasonably refuses medical treatment, the medical panel or referee may assess that person's permanent injury on the assumption that the person's injury would have been improved by such treatment. Before I turn to outline the amendments in the bill in more detail, I wish to acknowledge the assistance received in the course of settling the bill from the many stakeholders who commented on the bill. The bill was circulated to members of WorkCover's Advisory Council, which includes representatives of the Labor Council and employer bodies, on 11 May. As the second reading speech is lengthy, I seek leave to incorporate the balance of my second reading speech in *Hansard*.

Leave granted.

Comments made by stakeholders have been carefully considered and taken into account in settling the final terms of the Bill.

I will now outline the amendments in more detail.

Firstly, this Bill will address one of the findings of the Court of Appeal in *Orica Limited v CGU Insurance Limited* [2003] NSWCA 331.

In *Orica*, the Court held that common law liability would arise only at the time a worker has suffered damage. However, in the case of dust diseases, damage may occur many years after the injury was initially sustained.

The *Orica* decision means that, under certain statutory workers compensation policies, an employer would only be indemnified by an insurer for liabilities arising during the period of the insurance policy.

Given liability for a dust disease claim arises many years after these policies of insurance have expired, these claims for damages would not be covered by insurance and the employer would be solely liable for the claim.

The amendments ensure that insurers are required to indemnify employers where an insurance policy covered a relevant period when a worker was at risk of sustaining injury.

The amendments ensure that statutory workers compensation policies respond to claims for disease and injury with long latency periods, such as dust diseases.

The changes will ensure that employers are appropriately indemnified by insurers for these liabilities.

I wish to assure Honourable Members that no other terms of the insurance policies will be altered by the amendments,

such as the caps applying to some older policies. The amendments merely address an anomaly in statutory workers compensation policies and legislation that led to the decision in *Orica*.

Secondly, it is proposed that this Act be amended to ensure that licensed self-insurers who are state owned corporations are not disadvantaged because they use Treasury Corporation, also known as T-Corp, for financial services.

Generally, licensed self-insurers are required to deposit an amount of money with WorkCover as security. As an alternative, self-insurers can provide a guarantee from a bank, building society or credit union.

However, because T-Corp is not a bank, building society or credit union, they cannot provide such a guarantee.

This means that state owned corporations are required to obtain a guarantee from another institution and they lose the cost-benefit of the pre-existing relationship with T-Corp.

In order to rectify this inconsistency, T-Corp will be one of the entities that can provide guarantees to state owned corporations.

Thirdly, a further amendment to the Workers Compensation Act ensures that WorkCover can make guidelines for the payment of non-gratuitous domestic services as well as gratuitous domestic services.

The 2001 reforms introduced a new entitlement to statutory compensation for domestic assistance considered reasonably necessary to be provided to a worker as a direct result of an injury. The entitlement applies where the permanent impairment of the worker is 15% or more, with exceptions for short term special needs. The provision of this benefit was intended to ensure that the long term care needs of the most seriously injured workers were met by the statutory scheme.

The Act allows WorkCover to make guidelines, requiring gratuitous domestic assistance to be provided in accordance with a care plan set out in WorkCover Guidelines.

However, the Act does not make similar provision in relation to domestic assistance provided by professional carers, even though the criteria and prerequisites for the provision of all domestic services to workers are the same. This appears to be an oversight, which is remedied by the Bill before the House.

The fourth significant aspect of this Bill amends the *Workplace Injury Management and Workers Compensation Act 1988* to give Presidential members of the Workers Compensation Commission an additional power on appeal to remit the matter to the Arbitrator for determination, in accordance with any directions or recommendations of the Presidential member.

The powers of Presidential members on hearing reviews of Arbitrators are currently limited to confirming the decision, or revoking it and substituting a new decision.

However, in some cases—such as when a Presidential member hears an appeal on a preliminary decision—it is more appropriate for members to remit the matter back to the original decision maker. This procedure will save time and costs for the parties.

This proposal is consistent with powers in other tribunals, such as the Administrative Decisions Tribunal.

The new procedure might be used, for example, if the parties submit documents shortly before the hearing and the arbitrator does not receive them in time.

The fifth matter dealt with in the Bill is the establishment of the Workers Compensation Insurance Fund Investment Board.

Honourable Members will recall that the *Workers Compensation Amendment (Insurance Reform) Act 2003* reforms the arrangements for the provision of workers compensation insurance, to support the implementation of the report prepared by McKinsey & Company, *Partnerships for Recovery*.

That Act provides for the transfer of the six separate managed funds currently held by each of the licensed insurers into a single fund, to be known as the Workers Compensation Insurance Fund.

The Bill before the House provides for the establishment of a specialist board, to determine the investment policies of the Insurance Fund and to advise the Minister on the investment performance of the Insurance Fund.

The Board will comprise WorkCover's Chief Executive Officer and five other members, specifically chosen for their business, investment or other relevant qualifications. Members of the Board will be jointly appointed by the Minister and the Treasurer.

Finally, the Bill includes an amendment to the *Sporting Injuries Insurance Act 1978* to provide that if a person

unreasonably refuses medical treatment, the medical panel or referee may assess that person's permanent injury on the assumption that the person's injury was improved by such treatment.

The Scheme provides insurance cover for the members of any sporting organisation which has elected to join. The scheme is administered by the Sporting Injuries Committee, which comprises seven members, most of whom are involved in sport.

Over \$10 million has been paid from the Sporting Injuries Fund to applicants from a range of sports, including rugby league, rugby union, cricket, touch football, soccer, cycling and pony clubs. Any injury resulting in the permanent loss of a prescribed faculty or use of some prescribed part of the body is covered by the Scheme.

The Sporting Injuries Scheme is only intended to compensate for serious permanent injury or death. The proposed amendment is required to deter applicants from attempting to be assessed for permanent loss before corrective surgery has been undertaken.

This is particularly relevant for anterior cruciate ligament damage, which is a very common knee injury in sport. For example, there are more than 1,200 anterior cruciate ligament injuries each season in rugby league alone.

Corrective surgery can reduce the damage from between 35% and 45% to between 5% and 15%. This is below the threshold required to receive payment for permanent loss of the use of a leg.

Clearly, delaying surgery until after an assessment is conducted undermines the Scheme and will render the Scheme unviable in its current form, because it does not have sufficient resources to compensate for injuries where it is unnecessary.

The proposed amendment will ensure that the contributions made by sporting organisations to the Scheme are applied to compensate sportspeople who suffer permanent loss, consistent with the objectives of the Scheme.

In conclusion, 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.

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