

SECOND READING SPEECH

Workers Rehabilitation and Compensation Amendment (Validation) Bill 2012

Mr Speaker, I move that the Bill now be read for a second time.

Mr Speaker, the purpose of this Bill is to amend the *Workers Rehabilitation and Compensation Act 1988* to remove any doubt that version 2 and version 3 of the Guidelines for the Assessment of Permanent Impairment were validly issued by the WorkCover Tasmania Board. The Bill also clarifies that version 2 of the Guidelines took effect on and from 1 April 2011 to 30 September 2011, and version 3 of the Guidelines took effect on and from 1 October 2011.

Mr Speaker, the Guidelines perform a vital function in the workers compensation system as they are required to be used to assess the degree of whole person impairment under both the *Workers Rehabilitation and Compensation Act 1988* and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*. Both Acts provide lump sum compensation based on the percentage of impairment. Also, under the *Workers Rehabilitation and Compensation Act*, the level of impairment is used to determine a worker's entitlement to weekly compensation and to pursue common law damages.

It should be noted that under section 10(L) of the *Workers Rehabilitation and Compensation Act*, the Board has the function to issue those Guidelines. This function was assigned to the Board following major reforms that took effect from July 2001.

Mr Speaker, the background to this matter is that the Board initiated a review of the Guidelines to improve the consistency of assessments and provide greater clarity in some areas. This process culminated in the Board approving version 2 of the

Guidelines in August 2010, and approving version 3 in September 2011.

Mr Speaker, uncertainty as to the validity of version 2 of the Guidelines arose in a recent case before the Workers Rehabilitation and Compensation Tribunal. Given the potential ramifications of the outcome of that case, the Attorney-General intervened and sought advice from the Office of the Solicitor-General before the matter could be determined.

Mr Speaker, the Solicitor-General recommended that doubts removal legislation be passed as soon as possible, in order to clarify that version 2 of the Guidelines have been validly issued by the Board, and that they apply to impairment assessments conducted on or after 1 April 2011.

In respect to version 3 of the Guidelines, Mr Speaker, it was recommended that the doubts removal legislation clarify that the version 3 of the Guidelines has been validly issued, and that they apply to impairment assessments conducted on or after 1 October 2011.

Mr Speaker, the uncertainty has arisen in respect to both versions 2 and 3 of the Guidelines because section 10(l) of the Workers Rehabilitation and Compensation Act requires that the WorkCover Board must issue the Guidelines.

While the minutes of the relevant meetings of the Board reveal that the Board approved both versions 2 and 3 of the Guidelines, the Guidelines were not formally issued by the Board. This is why there have been questions as to the validity of those Guidelines.

Mr Speaker, further complications have arisen in respect to version 2 of the Guidelines, because while the Board did approve the Guidelines, it also agreed that the Guidelines would only take effect following the completion of training to

enable new doctors to qualify to undertake assessment, and secondly, following the completion of training to specialist areas where there were only limited numbers of providers available to undertake assessments.

Mr Speaker, while the Solicitor-General advised that it is likely that training which was conducted in March 2011 would have been capable of satisfying the first training requirement, it is uncertain what was meant by the second training requirement relating to specialist areas. As a result, it was not clear whether or when the second training requirement had been satisfied or if it was capable of being satisfied.

As the relevant training was due to be completed in late March 2011, WorkCover Tasmania informed impairment assessors that version 2 of the Guidelines would take effect from 1 April 2011.

In respect to version 3 of the Guidelines, Mr Speaker, at the meeting of the Board held on 20 September 2011, the Board approved version 3 Guidelines and approved its application to all assessments conducted on or after 1 October 2011.

The date of 1 October 2011 was selected to coincide with the commencement of the Asbestos-Related Diseases (Occupational Exposure) Act.

Mr Speaker another question that has been raised is which version of the Guidelines should be used? Section 10(L) of the Act simply gives the Board the function to issue Guidelines. Section 72(1) of the Act directs that an assessment is to be undertaken by a medical assessor in accordance with 'any relevant guidelines issued by the Board'.

Legal advice provided to the Board indicated that the reference to 'relevant guidelines' was intended to mean the latest set of guidelines. Consequently, the new Guidelines apply to all

assessments regardless of the date of injury. The Bill clarifies this issue.

Mr Speaker, it should be noted that insurers have expressed concern that the revised versions of the Guidelines are intended to apply to all assessments from the date they are issued by the Board. They believe this approach will impose additional costs on the insurance industry, particularly in respect to impairment assessments conducted on workers following spinal fusion surgery. The Board has acknowledged that there may be some additional costs for insurers, but maintains that the approach taken reflects the intent of the legislation and ensures that workers benefit from the improvements made to the Guides.

Mr Speaker, it should also be noted that the relevant case was tentatively listed for hearing in the Workers Rehabilitation and Compensation Tribunal on 12 and 13 June 2012, and as a consequence it is important that this matter be resolved as soon as possible.

Mr Speaker, this Bill will provide workers and their families with greater certainty that their entitlements under the Workers Rehabilitation and Compensation Act and the Asbestos-Related Diseases (Occupational Exposure) Compensation Act will not be adversely affected. There are many workers who have been assessed using the updated versions of the Guidelines. If the validity of these Guidelines is not clarified, those workers may have their assessments challenged and be forced to undergo fresh impairment assessments.

Further Mr Speaker, in respect to impairment assessments conducted under the Asbestos Related Diseases (Occupational Exposure) Compensation Act, there is a risk that they may all be deemed to be invalid. This is because version 3 is the only version of the Guidelines which has ever been used by impairment assessors under that Act. Failure to amend the Act may not only result in considerable inconvenience to those

workers who may be required to undergo fresh impairment assessments, but it may also impose a significant and unexpected financial burden on the Asbestos Compensation Scheme.

I commend this Bill to the House.