



Jim Wilkinson MLC

Legislative Council

Date: 28 June 1995

Electorate: Nelson

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## **WORKERS REHABILITATION AND COMPENSATION REFORM BILL 1995**

### **Second Reading**

**Mr WILKINSON** (Queenborough) - Thank you, Mr President. This is the first time I will be afforded that privilege - and the only time, I suppose. But before I start I would like to thank everybody in this Chamber for the way in which they have accepted me over the past couple of weeks; it really has been appreciated and the help that has been offered has been very much appreciated. I congratulate the President on his elevation to the presidency of this Chamber and I also congratulate those members who have been re-elected and those who have been elected for the first time to the Legislative Council. I would like to place on record my thanks to all those who worked with me and for me during my election campaign and certainly those who gave me their electoral support prior to and on 27 May. Their assistance really was greatly appreciated.

I will not stay to get on to any further preamble because we have received a number of briefings on the workers compensation bill over the past couple of days. I think it is worth remembering that the major aim of any workers compensation legislation is for there to be fair compensation for an injured worker but when I say 'fair' that also implies that it should be at a reasonable cost to employers.

Talking with people and listening to a number of others it is obvious that something has to be done to stop the escalating cost of workers compensation. Without a doubt the problem is what, and it is not an easy question. These costs are becoming crippling to industry within the State and it concerns me that if they continue industry will be lost to this State and the obvious extension of that is that people will join the ranks of the unemployed, and we certainly do not want to see that occur.

But in saying that I do not believe that a change in the act will immediately reduce premiums. From yesterday's briefing with the Insurance Council of Australia that appears to be obvious because it would seem that its prognostications are that the premiums will remain the same for approximately four to five years and I further believe that the insurance companies will at first wait and monitor the effects of the amendments before deciding to either keep the premiums the same or alternatively to decrease them. I also believe that they may, even though they are saying they will not, endeavour to recoup some of their past heavy losses which are in the vicinity of between \$80 million to \$120 million, it would seem.

But without a doubt the best way to save costs and keep workers at work is to first ensure that they have a safe environment to work in; second, to reduce accidents;

third, to have a comprehensive rehabilitation program; and fourth, to give incentives to get workers back to work. If the workplace is safe then injuries are obviously less likely to occur and I therefore welcome the Government's legislation in relation to workplace safety but I believe there are some problems with the proposed legislation as it now stands and I must add that I only wish the Workers Rehabilitation and Compensation Reform Bill could have been with us some weeks prior to last Wednesday evening.

I believe that a real problem is the lack of an ability to appeal. To my mind that is the most important problem that faces this bill at this stage. It leads to a real risk of unfairness for both the employer and the employee. As members heard yesterday, commissioners make mistakes, judges make mistakes, we all make mistakes. That is why we have courts of appeal and the High Court.

If a mistake has been made on a question of law, then with the bill in its present form we cannot remedy that mistake at this stage. I believe that could lead to a gross injustice, especially when we are talking about the amount of money that can be involved, which can be up to and increasing from \$500 000. What happens if a person has defrauded or rorted the system and that fraud is only found out after the tribunal has made the decision? If that is the case, then this act does not allow for that person or the insurance company or whoever to come back before the tribunal with the fresh evidence and show that a mistake has obviously been made.

What happens also - I liken this bill to the honourable member for Westmorland's situation where he found out only today that the speed camera was faulty. If he was acting under this workers compensation act he would still be charged, he would still be fined, he still may have lost demerit points. It goes to the fundamental principle, I believe, of all our justice system, that if there are mistakes there has to be a right and an ability to remedy those mistakes, otherwise gross injustices could easily occur.

The other major area of the bill which I am concerned with is Schedule 2 which deals with savings and transitional provisions. Clause 18, as it is written, states that:

'A worker, who before 4 June 1995 received, was in receipt of, a weekly payment in accordance with the decision of the High Court of Australia in *Scott v. Sun Alliance Insurance Australia Ltd. & Anor.* (1993) 178 C.L.R. 1, is, on and after the commencement day, entitled to have received or to continue to receive that payment as if section 69A of the Workers Rehabilitation and Compensation Act 1998 had not been enacted.'

But what happens to workers who have already matters pending in the Workers Compensation Commission or who have lodged claims and are not in receipt of such payments? The effect of this immediately cuts them off and that also, I believe, leads to gross unfairness. They do not get anything. This means that where an employer or an insurer has not made payments as he is required to do by the present law, they gain a benefit. They are gaining a benefit by not abiding by the law as it now stands, and my belief is that that also is grossly unfair. In short, where a right is already vested, that right should not be extinguished simply because an insurer or employer has chosen to flout the law. There have been liaisons between certain members and myself - well, the Leader and Deputy Leader for the Government - and that has

created a situation where some amendments have already been prepared and some amendments are proposed to be made in relation to the bill, so I will not stay on those. But one of the matters which I believe is of importance is the ability to award costs, and I believe that now with some proposed amendments that ability will be able to be pursued. It is important with people who come to court with frivolous claims for a commissioner to be able to say that it is a frivolous claim and therefore award costs against the person who brings it before that tribunal.

There are other matters which could be raised and which will be raised no doubt in the Committee stage in relation to certain amendments which I will be moving to this bill, but it would be wasting everybody's time to state those amendments now and to discuss them. I support the principle of the legislation. I accept that there is a need for reform. I do not accept that the legislation is going to be a panacea to all problems but, with amendments that are foreshadowed and will be forthcoming, I believe it is a valid step towards achieving equitable legislation for all the parties.