

## SECOND READING SPEECH – HON. DR. VANESSA GOODWIN MLC

### *Motor Accidents (Liabilities and Compensation) Amendment Bill 2015*

Mr President, I move that the Bill be read a second time.

This Bill makes amendments to the *Motor Accidents (Liabilities and Compensation) Act 1973* in relation to the appointment of members on the Motor Accidents Compensation Tribunal.

The Motor Accidents Compensation Tribunal is established under section 12 of the Act. Its purpose is to determine disputes between the Motor Accidents Insurance Board and persons seeking or in receipt of benefits under the Act, for example, medical benefits and disability allowances and benefits.

Mr President, the functions of the Motor Accidents Compensation Tribunal, including registry and administrative functions, are currently undertaken by the Workers Rehabilitation and Compensation Tribunal. The Chief Commissioner and Commissioner of the Workers Rehabilitation and Compensation Tribunal are both appointed as members of the Motor Accidents Compensation Tribunal. This arrangement has been in place for a number of years under a long standing agreement with the Magistrates Court, and was considered appropriate on the basis that both tribunals deal with no fault statutory compensation schemes involving similar issues.

In addition, the tribunal setting of the Workers Rehabilitation and Compensation Tribunal allows it to deal with these compensation issues in a timely and relatively informal manner including through the use of alternative dispute resolution methods.

Since assuming jurisdiction of the Motor Accidents Compensation Tribunal, the Workers Rehabilitation and Compensation Tribunal has also taken on the functions of the Health Practitioners Tribunal and the Asbestos Compensation Tribunal.

Mr President, the main purpose of the Bill before us today is to revise the appointment provisions in relation to the Motor Accident Compensation Tribunal to provide greater flexibility. The Motor Accidents (Liabilities and Compensation) Act provides that a person cannot be appointed as a member of the Motor Accidents Compensation Tribunal unless he or she is a Magistrate, Judge or Associate Judge.

The Chief Commissioner and Commissioner of the Workers Rehabilitation and Compensation Tribunal are not Magistrates in their own right. Ever since the Workers Rehabilitation and Compensation Tribunal has had carriage of the Motor Accidents Compensation Tribunal, they have periodically been appointed as temporary Magistrates under section 4 subsection (4) of the *Magistrates Courts Act 1987* to allow them to be appointed as members of the Motor Accidents Compensation Tribunal. Section 4 subsection (4) of the Magistrates Court Act provides that the Governor may, for any temporary purpose, appoint such number of qualified persons as the Governor considers necessary as temporary Magistrates.

This is not an ideal situation. It adds an additional layer to the appointment process, requiring extra time and resources to manage. In addition, and of more concern, there is no guarantee that the temporary Magistrate appointments will continue to be made. The fact that these Magistrate appointments have been ongoing for a number of years now is at odds with them being for a “temporary purpose”.

If the temporary Magistrate appointments are not made at any time in the future, the likely outcome is that the Motor Accidents Compensation Tribunal will have to be transferred to the Magistrates Court. This may cause considerable disruption, delays and cost.

The amendments proposed by this Bill are intended to overcome these difficulties and provide greater certainty. The Bill amends the appointment provisions by introducing an additional category of persons who can be appointed as members of the Motor Accidents Compensation Tribunal. This new category is Australian lawyers of not less than 5 years' standing as an Australian legal practitioner.

Mr President, the terms “Australian lawyer” and “Australian legal practitioner” are defined in the *Legal Profession Act 2007*. “Australian lawyer” is defined as a person who is admitted to the legal profession under the Legal Profession Act or a corresponding law (that is, a law of another jurisdiction that corresponds to, or has been declared by regulation to correspond to, the relevant provisions of the Legal Profession Act). “Australian legal practitioner” is defined as an Australian lawyer who holds a current local or interstate practising certificate.

Mr President, I note that these amendments are consistent with the membership provisions in relation to the majority of Boards and Tribunals in Tasmania, including the Workers Rehabilitation and Compensation Tribunal, the Anti-Discrimination Tribunal, the Resource Management and Planning Appeal Tribunal, the Guardianship and Administration Board and the Mental Health Tribunal. Most Tribunals and Boards require a person to be a legal practitioner of a specified number of years' standing to be appointed to various roles including the Chairperson or President roles.

This new appointment provision provides greater flexibility in the qualifications required for appointment to the Motor Accidents Compensation Tribunal and will allow the Chief Commissioner and Commissioner of the Workers Rehabilitation and Compensation Tribunal to be appointed as members in their own right without the additional hurdle of being appointed as temporary Magistrates.

In addition to the amendment relating to the appointment of members of the Motor Accidents Compensation Tribunal, the Bill also introduces new provisions to specify the terms of appointment as a member of the Motor Accidents Compensation Tribunal, including the maximum term of appointment and the circumstances under which a member vacates office. The Act is currently silent on these matters.

Under this Bill, a member of the Motor Accidents Compensation Tribunal may be appointed for up to 5 years. Once that 5 year term is up, he or she can be reappointed if still eligible and there is no limit on the number of times that a person can be reappointed. The amendments also provide for the circumstances in which a

member of the Motor Accidents Compensation Tribunal will cease to hold office. Those circumstances are as follows:

- the member ceases to hold the relevant qualification – that is, he or she ceases to be a Magistrate, Judge, Associate Judge or Australian lawyer; or
- the member dies or becomes bankrupt; or
- the Governor is satisfied that the person is unable to competently perform the duties of a member; or
- the member is convicted of a crime, or offence, that is punishable by a period of imprisonment of 12 months or more; or
- the member is absent from the office of member for a period of 14 days or more for reasons other than illness or leave; or
- the member submits a signed letter of resignation to the Governor.

The new provision will also allow the Governor to remove a member where there has been misbehaviour, neglect of duty or incompetence on the part of that member.

Mr President, these terms of appointment are similar to the terms of appointment that apply in relation to other Tribunals and Boards, including the Workers Rehabilitation and Compensation Tribunal, the Resource Management and Planning Tribunal and the Mental Health Tribunal. The amendments will provide greater certainty and clarity by putting the terms of appointment up front in the Act.

Key stakeholders, including the Motor Accidents Insurance Board, the Law Society of Tasmania, the Chief Magistrate, the Registrar of the Supreme Court, and the Chief Commissioner and Commissioner of the Workers Rehabilitation and Compensation Tribunal, have been consulted during the development of this Bill.

Mr President, in summary, this Bill makes amendments to the Motor Accidents (Liabilities and Compensation) Act to allow for more flexibility in relation to the appointment of members on the Motor Accidents Compensation Tribunal, and to provide for terms of appointment of members. The amendments are consistent with similar provisions in relation to other Tasmanian Tribunals and Boards. In practice, the Bill will allow the Motor Accidents Compensation Tribunal to continue to operate as it has for a number of years.

Mr President, I commend the Bill to the Council.