WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2012

Second Reading

Resumed from an earlier stage of the sitting.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [5.07 pm] — in reply: Prior to being interrupted for question time, I was responding to the questions posed by Hon Kate Doust, who asked about whether stage 2 of the process of review of this legislation had commenced. Indeed, it has. I think we had a bit of a distraction, obviously by related personnel, in dealing with the bill that is now before us; nonetheless, the next stage of review, which I indicated during debate on the bill last year, has indeed commenced. Hon Nick Goiran also has an interest in this matter, and he will be glad to know that there will be active engagement with stakeholders in due course. Those are matters for another time.

There was also some query about the definition of "damages" in this bill. Hon Kate Doust asked me to discuss what the purpose of that term is.

Hon Kate Doust: Actually, I just want you to put it in plain English.

Hon SIMON O'BRIEN: Okay! I hope the member has come to the right man for the job!

Hon Kate Doust: You have plenty of time!

Hon Ken Travers: Mixed metaphors and common clichés is what we want it in!

Hon SIMON O'BRIEN: I will do my best to keep it at Hon Ken Travers' level so that everyone understands. In order to do that, I think we have to work backwards from the position that Hon Kate Doust has started from, and, to do that, we need to have recourse to the principal act. Part X of the principal act deals with insurance, and division 1 deals with the liability of employers and insurers. Indeed, we have already seen that some substantial terms have been inserted into the act at section 160, which sets out an employer's duty to be insured. Hon Max Trenorden and others talked about the reference in the second reading debate to section 160(1), which states in part —

> Subject to this Act, every employer shall obtain from an approved insurance office and shall keep current a policy of insurance for —

Inter alia —

> (b) the full amount of the employer's liability to pay damages to any worker employed by the employer in respect of a compensable injury for which the employer is liable.

That tells us that, broadly, every employer has a duty to be comprehensively insured for workers' compensation purposes for a number of reasons, including the payment of damages that may arise. In section 159 of the act the current definition for "damages" means damages due, claimed or paid independently of the act. As members will recall, when we passed the quite comprehensive Workers' Compensation and Injury Management Amendment Bill 2011 last year to amend the act, one of our purposes in considering insurance was to make sure that every worker would be covered by insurance, whether for prescribed benefits or under common law. To support that, we made it a legal requirement that all employers must take out common law insurance and, indeed, if they did not do so, penalties could be imposed upon them. That has caused us to examine again the definition of "damages", which is what brings us now to the definition of "damages" as set out in clause 4 of the Workers' Compensation and Injury Management Amendment Bill 2012. The proposed definition of "damages" in clause 4 basically seeks to include all the forms of damages referred to in the balance of the act, particularly in part X. Parliamentary counsel advises that it is better to prescribe these matters precisely, which is what we are doing in the proposed new definition. The four paragraphs that will now make up the definition are fairly self-explanatory, but I will simplify them a little. Proposed paragraph (a) of section 159 will apply to damages awarded to injured workers when the workplace injury is caused by negligence or some other civil wrong or breach of statutory duty, or by someone for whose negligence the employer is liable, such as a co-worker; proposed paragraph (b) applies to damages awarded to either the dependants or the estate of a deceased worker under the Fatal Accidents Act for wrongful death; proposed paragraph (c) applies to damages able to be awarded to the estate of workers who die after they commence proceedings for damages; and proposed paragraph (d) applies to damages awarded against an employer as one of a number of persons liable to pay an injured worker when there is more than one negligent party and there is an apportionment of that liability. Because the word "means" is used in the definition, as we know, that is the totality of the circumstances that may be seen to fall within the definition of "damages" for the purposes of part X of the principal act.

Hon Alison Xamon joined Hon Kate Doust in raising the question about the future for WA workers deployed offshore. That is a good question. The sort of situation that might apply is when a worker employed in Western Australia by a Western Australian company bound by our workers' compensation laws may, from time to time,

or even on a single occasion, be deployed offshore in the course of his employment. As I understand it, that worker is covered under workers' compensation insurance for defined benefits. However, they would not necessarily be covered under public liability. They may be if they have specific arrangements in place with the employer or the employer has a policy in place to cover such an eventuality, or they may not.

The honourable member is concerned about whether that would potentially leave a worker in that situation in a similar position to the sorts of circumstance that gave rise to my amendments in 2011. The answer to that is yes. Potentially that could be the case and I am concerned about that as well, as is WorkCover, which is why it is examining this matter and will make recommendations to me in due course. That is not something that is contemplated under this bill, but in the course of this debate I acknowledge that the issue is being examined and will be a matter for future resolution.

Recently I was at RCR Tomlinson Ltd in Welshpool to mark the occasion of it having been awarded substantial work under a contract worth some hundreds of millions of dollars. Tomlinson's is set to employ hundreds more people in connection with some major resource developments in our state. When dealing with the media interest in this matter, there was some discussion about local content. One of the stories of the day was about fly in, fly out workers. Interestingly, it was not about FIFO workers from the Perth metropolitan area, for example, who work at a remote site, which is what we often think of in relation to a FIFO worker, and nor was it about a FIFO worker travelling from interstate, because that happens as well with flights direct from Melbourne and Brisbane to the north west. This story related to FIFO workers flying to Western Australia from overseas. That is adding a new dimension to what is already a matter of public interest. Being a former customs officer, the first thing that occurred to me was how many times those people would have to go through immigration and other formalities as part of their commuting to and from work. At face value, my automatic response is that even while recognising there is a skills shortage here in some areas, I would feel uncomfortable about Western Australia being a FIFO destination for people coming from overseas. The query that gave rise to this issue was based on an operation in Queensland. I can advise the house that we actually do have fly in, fly out workers coming to Western Australia from overseas. Interestingly, they are Western Australians who, for the convenience of their own personal arrangements, are living in Bali and commuting to the north west of the state. That is a bit different from what most people have experienced in the past. It just shows how the workplace and work practices are evolving. That is why Hon Alison Xamon and others are quite right to ask this question about workers being deployed from Perth to other jurisdictions. I will not go into other considerations now—for example, the arrangements in that other jurisdiction. They may be very comprehensive but they are all matters for detailed examination, and that examination is occurring.

Hon Kate Doust also referred to my reply to the bill on 17 August last year and further work on the question of pleural plaques. Members can find that debate on pages 5979 and 5980 of *Hansard*. At the time I was thanking Hon Jon Ford for his support of the bill we were dealing with. I said, in part —

> I support his observations that the pleural plaques issue has been dealt with and, for now, resolved satisfactorily.

We were both referring to proceedings in another place, where I had observed a really good debate going on over a day or two in which some complex matters were worked through and a way ahead was found. I think the bill emerged in a better shape, or better able to serve the public than the condition in which it first went. I am not sure how often that happens in the other place but I am sure it is rare enough to merit some mention. At that time I indicated that there was a need for some more work to be done on similar diseases that may accompany the presence of pleural plaques. I indicated on 17 August that homework still has to be done on that and we cannot do that sort of thing on the floor of the house. Hon Kate Doust asked for an update on where we are at with that and whether Mr Vojakovic might need to wait for me to provide some more advice.

Hon Kate Doust: I think he'd appreciate perhaps an opportunity to meet with you to talk about that.

Hon SIMON O'BRIEN: I will tell the member a couple of things. First, work on that issue is going on, and about some other matters as well, which the member will be pleased to know. That is probably as good an outcome as the member would get if I was to meet with the Asbestos Diseases Society of Australia on this matter and we would undertake to do what we are already doing. However, if the member thinks it might be useful for me to meet with the fellow the member mentioned or a representative, I would possibly consider doing that. I do not know whether he has made an approach to do that but he is quite capable of doing so if he wishes.

Finally, the honourable member asked: how do we know if an employer has an injury management system? There are a number of ways that we can vet this. Firstly, when WorkCover officers are dealing with any employer to verify their cover and so on, this is checked. Furthermore, I am told that in 2011 an employee survey indicated high levels of awareness and compliance with an injury management system. Officers are always on the lookout for any deficiencies in this regard, not necessarily in a punitive sense but certainly in a corrective

sense in the first instance to ensure there is compliance so that we work towards the goal of having fewer injuries—zero injuries, if possible—in our workplaces. That is why I am glad to see a high level of awareness and compliance amongst surveyors, as indicated by a very recent survey.

I have already referred to a number of things that Hon Alison Xamon has raised, in acknowledging her contribution to the debate. They include issues relating to offshore workers, definitions of damages and a range of other things. I also appreciated the references to the good work and assistance by officers in providing briefings. On behalf of them, I acknowledge that. I am very pleased with the working relationship that I have with those officers. Hon Alison Xamon went a little further in another aspect that was discussed earlier; that is, measures to pursue non-compliant workers. There is no point having these requirements unless we have some sanctions in the case of those who do not comply. That is why we introduced the consequences amending section 170 of the principal act, which provides for penalties for those who fail to insure.

Hon Max Trenorden referred to section 161(1)(b) of the Workers' Compensation and Injury Management Act 1981. I have already responded to his remarks. Again, I think it is accepted by most members in the house that it is not unreasonable for systems to need some finetuning when they are implemented after the practical application of the machinery that we come up with in this place. It does not mean that because something is uncovered, someone has been deficient in the drafting process. If they have, we need look no further than every one of us in this chamber. I do not think we need to allocate blame when we all approach these matters in goodwill. We will not need to put the CEO's head on a pike on Fremantle Traffic Bridge or anything to deter future miscreants. I am sure Hon Max Trenorden will vote for the bill, so that is the main thing.

Hon Nick Goiran is one of those most dangerous of people.

Hon Sue Ellery: He's a lawyer.

Hon SIMON O'BRIEN: No; he is a member of Parliament who knows a bit about something! Joking aside, I appreciate his contribution in these matters and the perspective that he was able to bring today. He contemplated the rhetorical question: have the reforms been positive or otherwise? I think, in substance, they most certainly have. They provide a safety mechanism that was not there before for people who might be injured and vulnerable. That is a good thing, so I am very proud that we have done that. Have we improved our systems by introducing our mediation and arbitration regimes? You bet we have, because it provides more strings to the bow and mechanisms to quickly and more easily resolve disputes in matters that are very, very important to those who are involved in the issue. It was on that aspect of dispute resolution that Hon Nick Goiran offered some comments based on his own experience and the ongoing contact he has with other former professional colleagues and stakeholders. He acknowledged, I think, that while we are getting resolution of disputes early—that is a good thing—he has some questions that he feels need to be examined about the role of conciliators. He questions whether they are qualified to take dispute processes to their finality, or whether there should be some other party involved. He discussed the progress of the conciliation service and the arbitration service, in what he acknowledges is fairly early days. I agree with him on that; I think it is early days, but nonetheless, WorkCover is constantly monitoring the processes as the new scheme evolves. The participants—whether they are insurers, employer bodies or the individuals who go through the often heart-rending experience of having their own compensation affairs go through these processes—are the ones who will be examining how well it works. If we need to fix or finetune it to make the system a little better in future—I am sure there will be some aspects that need to be modified—and we cannot do it through the guidelines and practices of WorkCover, but only through legislative change, then if I am the minister responsible I will be very keen to come back to this house and seek further assistance in providing the legislative mechanisms that our agency and our workers and employers require.

That is something for another day, but it is something I will approach with confidence, as I conclude by again thanking members on all sides for their promised support of this second reading.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and transmitted to the Assembly.