

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [8.50 pm]: I move —

That the bill be now read a second time.

This bill clarifies common law insurance requirements under the Workers' Compensation and Injury Management Act 1981. The Workers' Compensation and Injury Management Amendment Bill 2011 introduced a new mandatory requirement for employers to hold compulsory insurance against their common law liabilities to injured workers. The new common law insurance obligation came into effect on 1 October 2011. While extensive consultation was undertaken with all stakeholders in the development of the amendment bill in 2011, the changes to common law insurance obligations have resulted in unforeseen implementation issues for employers, brokers and insurers. These issues relate to legal uncertainty over the scope of the insurance obligation in relation to employers of deemed workers under the workers' compensation legislation and the need for a limit on the common law insurance that employers are required to hold. In view of the potential for confusion around the insurance arrangements of employers, it is prudent to progress a small number of legislative amendments to clarify the common law insurance obligations under the Workers' Compensation and Injury Management Act 1981. I wish to advise members that the changes to the act in this bill do not impact on workers' entitlements and relate only to the scope and structure of insurance policies.

Application to deemed workers: The obligation to hold common law insurance was not intended to encompass workers of contractors who come onto the site of a principal contractor to perform work; that is, deemed workers under section 175 of the act. There is usually no direct employment relationship between a principal contractor and a contractor's workers. Normal practice has been for principal contractors to hold public liability insurance for potential common law claims from contractors and subcontractors. The bill therefore clarifies that an employer is not required to insure deemed workers for damages under the act. Damages claims by deemed workers will continue to be dealt with under the employer's public liability policy.

The bill also prevents public liability insurers from declining liability on the grounds that the liability is one for which the employer was required to be insured under the act from 1 October 2011. This change is required due to the operation of general exclusion clauses in public liability policies if insurance is required under a workers' compensation law.

Limit on common law liability: Prior to 1 October 2011, employers obtained insurance for common law liabilities as part of their workers' compensation policy based upon an agreed industry standard limit of \$50 million for a single event. An unintended consequence in the drafting of amendments to section 160(1)(b) has resulted in an obligation on insurers to provide common law cover without any limit. An unlimited common law liability has significant reinsurance and pricing impacts on workers' compensation insurers and therefore presents an uninsurable risk for workers' compensation insurers. The bill provides for a head of power for regulations to be made to limit the amount of insurance required under the act. The regulations will set the minimum limit of \$50 million per event, consistent with the insurance industry standard that has been in place for many years.

Terms of insurance and forms of policies: The bill will enable the making of regulations to standardise insurance arrangements by prescribing terms and conditions and permitting certain limits and exclusions in workers' compensation insurance policies. The types of standard exclusions that are intended to be prescribed by regulations include claims arising out of war and common law claims for injuries that occur outside the Commonwealth of Australia. The regulations will therefore give statutory recognition to what had previously been matters of contract in standard employer indemnity policies.

The bill also includes a savings provision to preserve terms, conditions and exclusions in current contracts of insurance to the extent these comply with the common law insurance amendments proposed in this bill. These changes clarify common law insurance requirements under the act and will provide certainty to employers, brokers and insurers.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.