

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2011

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Finance)**, read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [5.51 pm]: I move —

That the bill be now read a second time.

This bill represents the first stage of a significant workers' compensation legislative reform program and brings a raft of positive and beneficial changes. The amendments follow a comprehensive review of workers' compensation legislation undertaken by WorkCover WA in the second half of 2009. This review, which included extensive consultation with all key stakeholders, recommended the redrafting of the Workers' Compensation and Injury Management Act 1981 in two stages. This bill introduces a number of changes to remove age limits on workers' compensation entitlements; to provide a mechanism to ensure seriously injured workers have a common law remedy when their employer is uninsured; to bring significant and much-needed improvement to the system by which workers' compensation disputes are resolved; and to address long-standing technical issues.

Changes to age entitlements: The bill significantly improves the status of older workers within the state workers' compensation scheme. At present, the scheme discriminates against older workers by limiting the entitlement of injured workers aged 64 years or more to only one year of income payments. While most workers' compensation claims last much less than one year, the current arrangements are not fair to older workers who suffer serious injury at work. The bill will remove all age-based limits on entitlements as from the date of proclamation of the amendment legislation. All workers will have the same entitlements to compensation regardless of their age. There is no retrospective entitlement for previous or current claims where the existing provisions will continue to apply. The change will lead to a small increase in workers' compensation premiums paid by employers.

Apart from addressing the clear inequity of the current arrangements, the removal of the discriminatory provisions will also have a positive impact on the state economy. The state has an ageing workforce, record low unemployment and a need to maintain a skilled and experienced workforce. There is a need to encourage older workers to remain at work. The state workers' compensation scheme must adequately reflect this environment. Past relationships between workers' compensation and the age pension are increasingly irrelevant in an environment in which many workers continue to work beyond the age at which pension entitlements become available. The removal of age discrimination from workers' compensation legislation will overcome the current disincentive for older workers to remain in or return to the workforce.

Common law safety net: The bill also introduces what has been widely referred to as a "common law safety net". This will ensure that seriously injured workers are able to access their rightful entitlements when their employer has failed to take out workers' compensation insurance and are unable to pay damages awarded by a court. The act currently provides a safety net for injured workers for the payment of statutory benefits when an employer is uninsured. In these circumstances, those payments are met from a fund administered by WorkCover WA. This bill will establish legislative provisions to enable common law damages awarded by a court to be paid from that same fund when an employer is uninsured and otherwise unable to pay damages. The new provisions require all employers to hold a policy of insurance covering both statutory and common law liabilities arising from injuries for which compensation is payable under the act. The provisions enable WorkCover WA to become involved and to exercise all the rights an uninsured employer would have had in relevant common law proceedings to ensure that the best interests of all parties are preserved. They also include a number of safeguards to ensure that all parties act in a manner that is fair and equitable, and to allow WorkCover WA to recover both statutory and common law safety net payments from an uninsured employer and other liable third parties.

Initially, these amendments will be funded recurrently through a very small increase in the premiums paid by employers. WorkCover WA is currently undertaking a broader review of funding models for safety net arrangements and will in due course make recommendations to the government.

Dispute resolution: The bill also implements new arrangements for resolution of workers' compensation disputes. In response to strong stakeholder feedback on the timeliness and efficiency of current dispute resolution arrangements, the bill implements a new framework based on separate conciliation and arbitration functions; greatly reduced initial documentation requirements; a focus on early conciliation in all matters; fixed time lines for conciliation processes; and transfer of the appellate jurisdiction to the District Court of Western Australia. The new arrangements provide for a conciliation service consisting of a director and conciliation officers with a sole focus on resolving disputes through conciliation, and an arbitration service comprising a registrar and legally qualified arbitrators who will determine matters that have not been able to be resolved at

conciliation. Access to legal representation and cost orders will be available for all matters dealt with by the new services. These significant changes to the dispute resolution mechanisms are expected to deliver a number of benefits, including improved accessibility and simplification of processes that will significantly assist unrepresented workers and employers, and greater certainty for parties about time frames associated with the resolution of disputes.

Legislative anomalies and inefficiencies: The bill also contains miscellaneous amendments addressing legislative anomalies and inefficiencies. These changes include measures to clarify the remuneration employers are required to declare for the purposes of setting workers' compensation premiums—for example, to exclude compulsory superannuation contributions; to simplify the calculation of the weekly payment entitlements of all workers; to increase from three to five working days the period in which an employer is required to lodge a worker's claim with an insurer subject to a penalty of \$1 000 for non-compliance with this requirement; to introduce a penalty applicable to an employer who fails to pay a worker's weekly payments; to abolish the 30-day period within which a worker must commence common law action after electing to do so; and to strengthen interim payment order provisions by making an insurer responsible for payment directly to a worker when the employer has failed to make a payment.

The entitlement and process improvements delivered through this bill will benefit both workers and employers whilst maintaining the long-term sustainability and fairness of the state workers' compensation scheme. I commend this bill to the house.

Debate adjourned, pursuant to standing orders.