

WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Committee

Resumed from 8 August. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon MATTHEW SWINBOURN: When we ended up last night, there were a couple of outstanding issues relating to any further correspondence that I was going to follow up. Hon Nick Goiran asked us to table correspondence in relation to Chapmans Barristers and Solicitors and also Mr Peter Parker, which we did. There was a question about correspondence from Chapmans that was addressed to Hon Roger Cook rather than Minister Johnston. For the sake of completeness, I have here, and can and will table, the actual correspondence from Chapmans that was addressed to the minister. The correspondence will speak for itself. It deals with the same subject matter that was dealt with in the correspondence to Hon Roger Cook; however, there are some additional matters in this correspondence that were not in the other correspondence. Those matters do not go to the substance of their concerns but perhaps are criticisms of the government; members will make of that what they will. In terms of the government response, Minister Johnston gave that response on behalf of the government, and it was in response to this correspondence as well as the correspondence that had been received by Hon Roger Cook. This correspondence is dated 2 May and is addressed to Hon Mr W. Johnston, Minister for Industrial Relations et cetera, and includes a document headed “Serious concerns for workers with the proposed new workers compensation law”. I table that document.

[See paper [2421](#).]

Hon MATTHEW SWINBOURN: I add that during the debate last night, I made a qualification that additional correspondence with Mr Parker might be relevant to the concerns with the bill raised by Hon Nick Goiran. Although there is some other correspondence, none of it relates particularly to or takes any further the matters that were raised. His matter continues to be the abolition of independent registered agents. We do not propose to table that correspondence because, in our view, it does not take the matter any further. For the sake of completeness, I make clear that we did look at that correspondence overnight. As I said, there is some in existence, but it does not take the matter any further than what was discussed. We also indicated that we would try to get a copy of the additional report that WorkCover WA uses in determining its appeals. That report is available on its website.

Hon Dr Steve Thomas: Which I think I found anyway.

Hon MATTHEW SWINBOURN: The Leader of the Opposition found it anyway.

Hon Dr Steve Thomas: If you have it, all well and good.

Hon MATTHEW SWINBOURN: We do not have it with us. Again, it would simply be a case of printing it out and tabling it. It can be tabled; there is no issue with that.

Hon Dr Steve Thomas: I might ask in a bit whether I have got the right one.

Hon MATTHEW SWINBOURN: I do not presently have it with me but, again, we could address that tomorrow because we could just print out a copy.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary for his substantial reply to the second reading debate, in which he certainly covered a lot of the issues that had been raised. That was appreciated, at least from my perspective. I have a few questions at clause 1. The parliamentary secretary mentioned in his second reading reply that the government was committed to the drafting of priority regulations to prescribe the additional eight cancers. The parliamentary secretary indicated, perhaps not confidently, that he expected that they might be tabled today. I want to check whether they have been gazetted and tabled at this point or whether the parliamentary secretary has an update on when that might occur.

Hon MATTHEW SWINBOURN: I was not here at the beginning of the sitting day because I was on urgent parliamentary business, so I do not know whether a document was tabled today. I am not aware of it. What I can tell the member is that since the commencement of the Legislation Act, regulations are not published in the *Government Gazette* anymore; they are published on the website. I know the honourable member has a particular issue with that, but that is a debate for another time. The regulations have been published on the Western Australian Legislation website and will take effect from tomorrow.

Hon MARTIN ALDRIDGE: When I get a moment, perhaps during question time, I will have a look to see whether I can access those regulations on the WA legislation website. I, too, was not here during formal business, but I note that only one member was listed on the business program today for the tabling of papers, that being the President.

If there had been regulations to table, ordinarily they would have been tabled by the parliamentary secretary on behalf of the minister.

Hon Matthew Swinbourn: By way of interjection, yes, because they are industrial relations regulations.

Hon MARTIN ALDRIDGE: I suspect tabling has not occurred today.

Hon Matthew Swinbourn: No, I think you are right, because that would have been on the notice paper. As I have indicated, they have been published—I am looking at the website on my phone and they are there—and they will come into effect tomorrow.

Hon MARTIN ALDRIDGE: Okay. As I understand it, that will provide for the full additional eight cancers, which will allow us to meet the national standard of 20 cancers. Is the parliamentary secretary able to inform us about the retrospectivity of those provisions? I understand that the commencement day provision in the current legislation refers to a date in 2013, which is when the first 12 cancers came into force. When we add additional cancers, like we did in May when we added two cancers and now, according to the advice that the parliamentary secretary has given, the schedule is amended. These regulations have been issued under the existing act. What will be the retrospectivity of the regulations and will that change under the bill that is before us?

Hon MATTHEW SWINBOURN: There is retrospectivity for the eight cancers that we have just gazetted. They will come into effect on the same date as the existing ones. I am not entirely sure of the precise date in November 2013, but it is the same date that applies to the existing provisions. This bill has savings provisions that relate to that part of the act so when the new act comes into force, that retrospective date will remain the same going forward. As the member indicated, eight cancers are now on the prescribed list. Obviously, for some of those cancers, the qualifying period is 10 years, so in November this year people will have the benefit of the rebuttable presumption in relation to those cancers.

Hon MARTIN ALDRIDGE: That is good to know. I had October 2013 in my head; the parliamentary secretary said November, so we are in the same realm of late 2013. I have not come across savings provisions in the bill because I was examining the clause in isolation. If a person made a claim sometime between November 2013 and today and that claim was denied, and when the regulations comes into force—say tomorrow, with retrospectivity—what will be the status of that person's denied claim, assuming that their claim related to one of the eight cancers that will be added from tomorrow?

Hon MATTHEW SWINBOURN: If the claim has been finalised and the legal process has been exhausted, and it was predicated on a certain set of legal facts—which is that there is presumption, so the onus is on the person to prove that their cancer was caused by their employment—the regulations will not give them the chance to resurrect that claim post the presumption date because their legal rights have been finally determined. If their matter was currently in train—this would be subject to their legal advice—they could withdraw and refile an application. The courts might take issue with that as being an abuse of process, but that is a matter for the courts. If someone had not made a claim because they thought they could not overcome the evidentiary burden placed on them, it would be open for them to make a claim post the commencement because of the retrospective application of the presumption.

Hon MARTIN ALDRIDGE: We can examine this more closely when we debate clause 11. The opportunity for a person who has received a diagnosis, pursued a claim and that claim had been finalised, and denied, to make a fresh claim based on the new rebuttable presumption is doubtful based on the information provided by the parliamentary secretary. Perhaps we can flesh that out during debate on clause 11.

When we get to the provisions that relate specifically to firefighters and amendments to the Fire and Emergency Services Act 1998, will advisers from the Department of Fire and Emergency Services be available?

Hon MATTHEW SWINBOURN: No, it is not our intention to have such advisers. The Minister for Industrial Relations has carriage of this bill. The advisers at the table come from his department. The bill intersects with all employment areas. We do not intend to bring in specialist advisers from any other employment area. That does not mean that we cannot seek advice from them, but they will not be at the table in the chamber.

Hon MARTIN ALDRIDGE: That is unfortunate, parliamentary secretary. I gave notice six weeks ago that the presence of DFES advisers would help facilitate the debate, particularly when we reach debate on the Minister for Emergency Services' act, which this bill will amend. The bill is not entirely the domain of the Minister for Industrial Relations. I flagged clause 11 as the time to have a conversation about settled claims. It might have allowed us to proceed quickly, because it may be that between November 2013 and today, no claims for the eight cancers have been submitted and denied. That would allow us to proceed quite quickly because we would know that no-one will be worse off because they are not able to make a claim on the basis that their claim has been settled. It is the decision of the government to either make or not make advisers available to help progress those matters.

We are getting close to question time. One of the things that I mentioned during the second reading debate was not responded to during the parliamentary secretary's second reading reply. To what extent during the extensive

process that led to the bill before us—I cannot remember the exact date when the process kicked off, but it was quite some years ago—was it anticipated that volunteers or a subset of volunteers, particularly those delivering government functions, should be incorporated into the Workers’ Compensation and Injury Management Act 1981?

Hon MATTHEW SWINBOURN: Noting that we will run out of time, the direct answer is no, that was not contemplated. I will put into context what we are doing here and what the 2013 discussion paper and the 2014 final report were about. Fundamentally, this is about redrafting the wording of the bill to increase its clarity. It is not a policy shift to introduce new parts to the regime. We are doing this because of the election commitments that were made by the then McGowan government in 2021. We listed what those particular things are and they do not include the incorporation of volunteers. To include volunteers of any kind would be a paradigm shift because this bill and the act do not apply to volunteers. As I said, a policy decision would have to be made to do that. Additionally, it was not part of the exercise that was undertaken, which was a rewrite of the act, not a reform of the act. The member is not alone; other stakeholders wanted us to do more than what we have done. That is not precluded from happening in the future.

The DEPUTY CHAIR: I interrupt the debate to leave the chair for the taking of questions.

Committee interrupted, pursuant to standing orders.

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