

WORKERS' COMPENSATION (COMMON LAW PROCEEDINGS) BILL 2004

435. Mr A.P. O'GORMAN to the Minister for Consumer and Employment Protection:

Will the minister comment on the likely effects of the Liberal Party's referral in the Legislative Council of the Workers' Compensation (Common Law Proceedings) Bill 2004 to a legislative committee?

Mr J.C. KOBELKE replied:

I thank the member for the question. This issue is one that really shows whether the Government is willing to grasp the nettle and deal with difficult issues. Similarly, it will be an illustration of whether the Opposition can deal with serious issues, or whether it simply wishes to duck them. The 1999 changes to the workers compensation legislation led to a lot of detrimental things flowing through the system in Western Australia. However, one clear aspect was the technical difficulties in those changes. Within a few weeks of the legislation going through, the Liberal-National coalition Government brought changes into this House to try to patch up some of the mistakes that were evident even then. Labor, in opposition, fully supported those measures. They went through this Chamber in less than 24 hours. They then went through the other Chamber within a short time. They involved an element of retrospectivity that we had difficulty with. However, we said that for the Act to work and for there to be proper management in this area, we had to make these decisions.

When the Dossett decision, the Dutch decision, the Henderson decision and the Mokta decision left a whole range of areas in legal turmoil, the Gallop Government said that it would fix the problem; it would not be easy, but it would fix it. We drafted that legislation very quickly and brought it into the Chamber. It has gone through this House. Now the issue is whether the coalition in opposition will help fix the problem that it created in 1999, or whether it will simply try to duck the issue. Ducking this issue will mean that a range of injured workers will have their access to the courts denied. They will not be able to proceed with their cases. As those cases unfold, more people could have their cases struck out because of the court decisions that have flowed from the 1999 changes. The employers are likely to be hit with higher premiums, because as more cases build up, as there is more legal action and as costs in the system continue to climb, insurers will factor that in. Increased costs will be caused by the blocking of that legislation in the other place. In addition, lawyers have made it very clear that they are in a position of professional jeopardy, because the issue is so complex and unclear that they cannot be sure of the appropriate advice to give their clients because of these High Court and District Court decisions. The Gallop Government, as a good Government does, has drawn a line in the sand and said, "Let us fix the problem and provide certainty so that people can have their rights preserved and can get on with action in the courts." It is incumbent on members of the other place to help get the legislation through - the Liberal Party should be a key determinant in getting this to happen - to provide certainty, look after injured workers, protect employers and make sure that lawyers can deal effectively with this area of law. What stand will the Opposition take to provide that very important certainty to fix a problem that it created with the 1999 legislation?