

WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Committee was interrupted after clause 364 had been agreed to.

Clause 365: Representation —

Hon Dr STEVE THOMAS: The parliamentary secretary probably should have been expecting this question. We are going to combine discussion on clause 365 with clause 366. Clause 365 is about representation in conciliation and arbitration procedures. The bill introduces a change from the existing legislation. Clause 365(2) states that representation can include “an authorised agent” but clause 365(4) reads “A prohibited person cannot represent a party” and clause 366 provides the meaning of a prohibited person in terms of the legal profession. This has been a bit controversial. Most of us have probably received correspondence from people who have been agents in the past and who will, upon the passing and implementation of this legislation, no longer be authorised to do those things because they are not legal representatives. Can the parliamentary secretary justify the removal of authorised agents who have been doing that job for some years and who will no longer be able to continue in that role?

Hon MATTHEW SWINBOURN: In WorkCover WA’s *Final report* in 2014, the recommendation was to discontinue the regime, with independent registered agents to be transitioned out of the scheme over a two-year period. That period will start only on the commencement of the act—not two years from its passage through Parliament, but on the commencement of the act. This position is based on the following reasons. First, it is our view that it is an inappropriate use of government resources to maintain a comprehensive regime of registration, oversight and audit on an ongoing basis for five individuals, because that is currently how many are registered. The state bears the responsibility for creating a regime, as I say, to register, oversight and audit them. The report states —

There is no unmet need in the scheme which necessitates continuing a regime for non-legally qualified agents to represent parties. There is a sufficient availability of law firms and unions operating in the workers’ compensation scheme to assist injured workers.

Should there be an unmet need in the future, a regime for five individuals would not be the appropriate response. Second, the five independent agents are unable to provide a complete service to injured workers without contravening the act. It is no longer the Legal Profession Act 2008, but the Legal Profession Uniform Law Application Act 2022, if I remember rightly; Hansard will help me to correct the reference. For example, they cannot provide advice on common law matters or claims against third parties. Legal practitioners are also trained in the more complex arbitration proceedings, including cross-examination. Those are our reasons for doing it. As I say, the two-year clock will not start ticking until the act commences. That is our position.

Hon Dr STEVE THOMAS: Is it the government’s position that these consultants or agents have been giving de facto legal advice to date and that is why they have to be removed from the system, or is there a role for an agent who is not providing legal advice to be engaged in the system and bring in a lawyer as required?

Hon MATTHEW SWINBOURN: We are not going to stand here and make an allegation that these individuals have engaged in uncertificated legal practice; that would not be an appropriate thing to do, and that is not —

Hon Dr Steve Thomas: But you’re just about to ban them.

Hon MATTHEW SWINBOURN: They are not being banned in the sense that there are still ways for these individuals to work within the system. They can work for a law firm; there are roles within firms where people who are not legal practitioners take on workers compensation work. They could also work for a trade union. I have no idea what their particular view is on different things, but it is not the case that their skill set will not be transferable and maintainable within the workers compensation system. It is just the fact that we have to maintain a register and supervision, and that there is an administrative cost to the taxpayers of this state for the provision of that. With regard to legal practitioners, they are registered by the Legal Practice Board, and the Legal Services and Complaints Committee, as it is now called, deals with any matters that relate to the ethical and professional performance of lawyers. There is a regime of supervision for trade union officials as well—perhaps not to the same degree as legal practitioners. I am also reminded of section 66 of the Industrial Relations Act. Union officials are also covered by the federal legislation, which provides other mechanisms for people to address their concerns.

The original recommendation was made back in 2014; it has consistently been adopted by the government since we have been in power that this was going to be the outcome. As I say, that will not take effect for two years after the commencement of the legislation. I am not trying to be unsympathetic to the five individuals concerned, but we have made a policy decision that we do not want to have them in the system, and we will be phasing them out.

Hon Dr STEVE THOMAS: I thank the parliamentary secretary. It is absolutely the case that this is no secret; the parliamentary secretary has been open and upfront, and I absolutely grant him that. I suspect the legal profession might be a little concerned about his comparison of the performance management of the legal profession and union officials in the same breath, especially if we go back to the Builders Labourers Federation! Let us be a bit cautious about that. I think the point has been made. A small group of people in the system will not be able to do some of the things they have done previously. I am not going to get a change from the government. This is government policy. We have ventilated the issue, and I think I will let it pass.

Hon NICK GOIRAN: I refer to clause 365, which contains three categories of people who will be able to represent a worker. The first is a legal practitioner, which needs no further scrutiny or explanation. The second is a class or person described as an “authorised agent”. In order to understand what an authorised agent is, one must go back to clause 303, which we have already passed. The clause states —

authorised agent means —

- (a) a registered independent agent; or
- (b) a person who is a member of a class of persons who are authorised by the regulations to provide agent services;

What is the difference between the second class of person found in clause 303 and the class of person listed in clause 365(2)(c)?

Hon MATTHEW SWINBOURN: Member, we are going to assert the right we have to take this one on notice and come back to the member when we get back to this bill at another time.

Progress reported and leave granted to sit again, on motion by Hon Matthew Swinbourn.