

**WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2017**

*Second Reading*

Resumed from 12 April.

**HON ALISON XAMON (North Metropolitan)** [9.15 pm]: I rise as lead speaker for the Greens and indicate that we will support the Workers' Compensation and Injury Management Amendment Bill 2017. I will keep my comments fairly brief.

The objectives of the bill are to increase the lump sum payment to dependants; to provide for a simple and equitable method of apportioning the lump sum between those dependants; to increase the weekly child's allowance for the care and maintenance of each dependent child; to ensure that dependent partners and children have access to the full entitlement irrespective of their level of dependency on the worker at the time of death, which is a very important amendment; to ensure that dependent children can receive both the child's allowance and a portion of the lump sum; and to facilitate timely access to compensation for dependants with a clear claims procedure, support and guidance and a single pathway for an expedited resolution or claims.

Updated workers' compensation legislation is way overdue. I note that this bill is a much-needed interim measure while the government undertakes the process of drafting and consulting on a larger workers' compensation bill; that is not before time. It has been nine years since WorkCover WA began a two-stage review of WA's workers' compensation legislation. Stage 1 of the review was completed in 2011 with the passage of amendments to the Workers' Compensation and Injury Management Act 1981, which I spoke on at that time. The second stage of the review involved recommendations for developing a new workers' compensation statute. In June 2014—nearly four years ago!—WorkCover WA released a report that laid out 171 recommendations for inclusion in the new statute. The government has announced that a new bill is currently being drafted. I am looking forward to getting a draft of the bill and being able to make comment on it. I hope the government uses that opportunity to make the far-reaching changes that are very much needed.

Needless to say, the sudden and traumatic death of a worker has a profound impact on family and friends and will change the course of many lives. Losing a family member through a workplace fatality adds complexity to the grieving process. It is imperative that we do all we can to reduce their burden as far as possible. I have spoken in this place about the need for industrial manslaughter legislation. A well-functioning workers' compensation scheme is essential, but we need to ensure that we do everything we can to eliminate workplace fatalities altogether. I hope that will be considered as part of the suite of desperately needed changes.

It is important that this legislation is passed as soon as possible because some families will be immediately affected by these provisions. As such, the Greens support the passage of this legislation.

**HON RICK MAZZA (Agricultural)** [9.19 pm]: I rise to also support the Workers' Compensation and Injury Management Amendment Bill 2017. It is a very sensible bill that will streamline the system to make it a lot easier for people to access compensation. The most significant thing is the rise in the lump sum amount from \$308 339 to \$562 303. The bill will also change the definition of "de facto". In the past, it has been defined as a couple that has lived together for two years or more. This will change that requirement. I will not talk too long on this; I support the bill.

**HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary)** [9.20 pm]: I would like to echo what my colleagues have already said tonight. I, too, support the Workers' Compensation and Injury Management Amendment Bill 2017. It has been a long time coming for a lot of families. No death at a workplace is acceptable and, as representatives of our community in Western Australia, we have a responsibility to make sure we have appropriate laws in place to suitably compensate families. The trauma of having to experience losing a loved one at a workplace incident is one thing, but I imagine to then have potential financial trauma on top of that is, at times, too much to bear. I am really pleased that we are upping the lump sum payment to a more fair and reasonable amount. With the cost of living and household debt, we all know that people are suffering in our communities, so it is important that the lump sum payment reflects costs that people are suffering at the moment.

I would also quickly like to mention that we are changing part of the bill to make sure it is not discriminatory against de facto partners, who were affected in the past. I am really pleased that our government has brought forward this legislation. I thank Hon Bill Johnston for his work on it and I commend the bill to the house.

**HON NICK GOIRAN (South Metropolitan)** [9.22 pm]: I rise to speak on the Workers' Compensation and Injury Management Amendment Bill 2017. Workers' compensation reform in this state has been a laborious process, to say the least. The scheme was established in 1982 and since then we have had a series of piecemeal reforms. In 1986, amendments were made to allow for an increase in medical benefits to workers. In 1991, compensation claims procedures were revised and vocational rehabilitation allowances were introduced. The following year, workers were allowed to claim additional medical expenses, dispute resolution procedures were

amended and medical panel referrals were allowed. The following year, yet again, piecemeal reforms were made. This time, dispute resolutions were restructured, changes were made to weekly payments and restrictions were put on common law access. Significantly, in 1999, amendments were made to the act to reduce common law access, reduce weekly compensation benefits and introduce new procedures to process common law claims. In 2005, changes to common law access were made, in particular reference to “disability” was replaced with “impairment”. A cap was put on damages for the first year, allowances for medical expenses were increased and there was the introduction of what we all now know as a failed specialised retraining program. In 2012, age was removed and there was separation of conciliation and arbitration and both statutory and common law payments for injured workers of uninsured employers. In 2013, presumptive workers’ compensation laws were made for firefighters.

I agree with Hon Alison Xamon in that I look forward to the substantial rewrite of the act, which the government has promised. I have been a vocal advocate for reform since my arrival in this place. Although I concede that piecemeal reform is at least a small step in the right direction, the problem with the reforms that have happened in a piecemeal fashion since 1982 is that the act has now become so convoluted that it is a highly complex area of law, even for lawyers. The overall reform of the act has been a long time coming and it has the potential if we—the government and Parliament—work collaboratively to ensure that we have the best legislation in the nation for workers. The question needs to be asked: what is the status of the legislative review? There is absolutely no point in me asking that question of the government because, as members will know, repeatedly during question time all we get are evasive responses from members of this government, so we have to do our own research. I note from the WorkCover WA website that the review’s current status is —

On 15 February 2018 the Hon Bill Johnston MLA Minister for Commerce and Industrial Relations released a media statement to announce the Government has approved the drafting of a Bill to modernise the workers’ compensation legislation.

The Bill will be based on recommendations from WorkCover WA’s *Review of the Workers’ Compensation and Injury Management Act 1981: Final Report*.

The Bill will also implement lifetime care and support arrangements for catastrophically injured workers, delivering on a commitment between the Commonwealth, and State and Territory governments.

Public consultation will occur on a draft Bill before it is introduced into State Parliament, —

I will repeat that, Mr Acting President —

Public consultation will occur on a draft Bill before it is introduced into State Parliament, continuing WorkCover WA’s open and consultative approach on the legislative review.

That quote is from WorkCover WA’s website. My first question, which I hope the minister responsible for this bill in this chamber will be in a position to respond to, is: what is the current status of the legislative review? That was the situation on 15 February. It is now 15 May. What is the current status of the review and proposed reforms?

It is important for any legislative reform to be a complete, transparent process. So far, we have seen anything but that from WorkCover. It has invited submissions from stakeholders, which have been dealt with privately and confidentially. This is not the norm for such reforms. I draw members’ attention to the approach taken by the Insurance Commission of WA when it sought submissions on the addition of a no-fault catastrophic claims scheme for third-party insurance. With the Insurance Commission of WA, copies of stakeholder submissions were made available on its website for public scrutiny. A question I have for the minister is: what did the stakeholders say to WorkCover on this bill? It will interest members to know that on page 256 of appendix 4 in the WorkCover report, the stakeholder submissions are listed. Three pages—pages 256 to 258—list all stakeholder submissions. It is important that the minister be aware, because I intend to pursue this a bit later, that the appendix is entitled “Appendix 4—List of Stakeholder Submissions”. When I came across this report some years ago now, I was keen to access the submissions that were provided by the stakeholders but, of course, that was impossible because WorkCover had chosen not to have a transparent regime like the Insurance Commission of WA; it decided on a secretive regime. Being unable on multiple occasions to get WorkCover to release those submissions because of its secret process—unlike the Insurance Commission of Western Australia that chose an open and transparent process—I took it upon myself to write to the stakeholders to ask them for a copy of their submission since WorkCover refused to provide copies of them to the public. Interestingly, one would assume that if WorkCover, in its final report, lists stakeholder submissions and if a member were to write to the stakeholders and ask, “Could I have a copy of your submission?” one would assume that those stakeholders would have a submission.

Let me read to members of this place a letter that I received on 11 October 2017 from the State Solicitor’s Office. The general manager wrote to me and said —

I refer to your request that this Office provide you with a copy of its submission to the WorkCover Review of the *Worker's Compensation and Injury Management Act 1981 (the Review)*, the Final Report for which was issued in June 2014.

Although the State Solicitor's Office is listed as a stakeholder in the Final Report, the State Solicitor's Office did not provide a substantive submission to the Review. As such, and putting aside the issue of whether there would be any impediment to the disclosure of such a document, there is in fact no document we could consider providing to you.

I trust this is of assistance to you.

It is exasperating, to say the least, that WorkCover constructs a secretive process of consultation, and the general public—which is, of course, the workers who will be affected by this scheme—are prohibited from seeing the submissions because of WorkCover's secrecy. I wrote to the very people who WorkCover tells the people of Western Australia are stakeholders who put in a submission and the State Solicitor's Office told us that that is false! The question I have is: how many more people listed in this stakeholder list from WorkCover WA did not really put in a submission? Of course, I am really interested in what they had to say to WorkCover and whether its report reflects honestly and transparently what the stakeholders had to say.

As I indicated earlier, I wrote to the different stakeholders and I am pleased to report to members that a lot of the stakeholders were quite happy to post or email me back a copy of their submission—no problem at all. One wonders why WorkCover was unable to do that. The mind boggles at how difficult it would have been for one person in WorkCover to spend a little bit of time writing an email to these people. A member of Parliament from South Metropolitan Region had enough time to do it, but WorkCover was far too busy to be able to do that. It is perhaps understandable. WorkCover WA has a big task. Maybe it is under pressure, maybe it is under-resourced or maybe it does not have time to do such things. However, I now know that not to be true as well because when I wrote to WorkCover on 9 February 2018, I said this —

I am writing to you in regards to the above and the submissions WorkCover received from the various stakeholders, referred to in its Final Report released in June 2014.

I **enclose** authorities I have received from the following stakeholders authorising WorkCover to release copies of their submissions to me:

I then listed four of the stakeholders that have provided me with an authority for WorkCover to release their submission. I concluded the letter by saying —

I look forward to receiving your response and should you have any queries or wish to discuss this matter with me please do not hesitate to contact my office.

**Hon Michael Mischin:** What was the date of that?

**Hon NICK GOIRAN:** The date of that was 9 February 2018.

One would think that this very, very busy WorkCover, which does not possibly have the time to be able to contact the stakeholders to release their so-called submissions, when it received a letter from a member of Parliament with authorities enclosed, would just provide the submissions. But no. What happens? I get this lovely letter back from WorkCover on 20 February 2018 from the acting chief executive officer saying —

I refer to your letter of 9 February 2018 requesting the release of legislative review submissions from the following stakeholders:

It quite accurately set out the names of the four stakeholders. The letter goes on to say —

I acknowledge the signed authorisations from the individuals above that accompanied your letter. However as the authorisations were provided to you as third party and consisted of a name and signature only, WorkCover WA was required to confirm their veracity directly with each of the four stakeholders.

All four stakeholders have now confirmed their identity and given WorkCover WA direct authority to release their submissions, which are attached.

If you have any queries please contact —

So on and so forth. It is staggering that a statutory body could concoct such a reform process of secrecy, completely the opposite type of process that we saw with the Insurance Commission when it quite rightly had an open and transparent process. WorkCover has a secret process. When it was asked to release the documents, it said, "No, we can't because it's confidential." "Will you contact the stakeholders and get them released?" "No, we won't do that. We're obviously too busy." A member of Parliament gets authorities from those people and WorkCover suddenly has enough time to investigate whether the authorities are true and correct. What an absolute farce! To top it off,

when I wrote to one of the stakeholders, the State Solicitor's Office, it said, "We don't even know what WorkCover is talking about because we never put in a submission anyway!"

I raise all these points for the benefit of the Minister for Regional Development so that she can have some idea of the exasperation on my part in trying to get to the bottom of what stakeholders have actually said to WorkCover. Did they put in a submission? In some cases we do not even know whether that is true. If they put in a submission, what did they say? I hope that the minister will, either in reply to conclude the consideration of the second reading or, alternatively, be in a position to tell us precisely which stakeholders listed in the list of stakeholder submissions wrote to WorkCover about the matters under consideration in this bill. I want to know which of those stakeholders have written on that. And, once we know who they are, I would like to know what they had to say on this. That is not asking too much given that WorkCover itself thought it was appropriate for us all to get appendix 4 and were going to list all the stakeholder submissions.

I have a number of other questions that I hope the minister will be able to answer. If it can be done expediently in reply to the second reading speech, all the better; if not, let us deal with it in committee. I would like to know whether there has been any further consultation with stakeholders about the matters before the house since the time of this final report in 2014. In particular, I note that this bill will see Western Australia increase the amount, as has been mentioned by Hon Rick Mazza, to \$562 303. I am told that that will put us in the mid-pack. My question is: why are we in the mid-pack? New South Wales is \$791 850, Queensland is \$600,080 and Victoria is \$598 360. Why has the government made the decision to go with \$562 303? The figure of \$303 is a very precise figure, is it not? It is not \$302 or \$304; it is \$303. Yet New South Wales blows us all out of the water at \$791 850. I would like to know on what basis it was determined that Western Australians deserved to be in the mid-pack. When it comes to football, I know that Western Australians would not be happy to be in the middle of the ladder; they would want to be at the top of the ladder. I would assume that the McGowan Labor government would be interested in ensuring that workers would be at the top of the pack. The decision has been made to make them the mid-pack, and I would like to know why. Interestingly, one of the few pieces of transparency that we had in this WorkCover WA process is from UnionsWA. What I mean by that is I do not think I have seen the submission from UnionsWA. It is not one of the ones I have a copy of. I obviously would have written to them.

Just to take up the minister's point, I, like her, hope that there are not going to be any more workplace accidents; I agree with her. But let us not trivialise the reform process and the lack of transparency by WorkCover WA. If there are stakeholders that have put in submissions about the matters before us, I want to know about them and I want the minister to explain to the house why we are mid-pack and not top of the ladder. I am not trying to trivialise it at all; that is why I am spending the time this evening and why I have spent the time, for the last few years, trying to get some transparency out of WorkCover WA. I do not do it for the fun of it, honourable member.

There are some other matters that I would like the minister to address, and that is that UnionsWA, we are told, put in a submission to the WorkCover report. In the WorkCover report, at page 112, under "Stakeholder Submissions", it states —

UnionsWA support a larger increase equal to the highest benchmark for all jurisdictions.

I do not know whether that is true, because as I said, I do not know what we can trust in this WorkCover report. WorkCover told us that the State Solicitor's Office put in a submission and I wrote to it and it said that it did not. For the benefit of this debate, when WorkCover decides to type into its final report that "UnionsWA support a larger increase equal to the highest benchmark for all jurisdictions", I assume that that is true. The only way I know that is true is if the minister tables a copy of the UnionsWA submission at some point. Then I will know whether it is true, because I cannot get it. There is no point in the Leader of the House shaking her head, I cannot get it from WorkCover. I have been trying for years to get it out from that secret department and it will not release it.

**Hon Alannah MacTiernan:** So your own ministers would not give it to you?

**Hon NICK GOIRAN:** Because WorkCover set up a secret process. The fault was not with the minister and I am not blaming the minister. I am not blaming the previous government; I am blaming WorkCover for having concocted a secret process contrary to how the Insurance Commission did its report, which was open and transparent. The blame here is with WorkCover WA; the blame is not with the minister, the minister whom she represents and former ministers. WorkCover was quite happy to spend the time to contact those four stakeholders, when I sent a signed authority, to ascertain the veracity of those signatures and their identity and then release me the submission. It needs to do the same thing with UnionsWA so that we can be sure that UnionsWA truly said that it supports a larger increase equal to the highest benchmark for all jurisdictions. No doubt the minister will be able to tell us about that a little later.

I note that there is some suggestion that the lump sum to be payable to dependent partners and children will be an apportionment between them set in statute and I would be interested to know the proposed apportionment. Could the minister please get advice on that and on the status of the rules and regulations? I note that it is proposed to

increase the child allowance from \$58.90 to \$133, so the question is: Why \$133? How did we get \$133 and not some other figure? I note that New South Wales is \$148.80 and Queensland is \$148.25. My final question for the minister is about the proposed changes to the definition of a de facto partner. I understand that the meaning will be that given in the Interpretation Act 1984, which is adopted in most statutes. But it would assist to know which statutes do not adopt that and why we have chosen to take that approach when there are other WA statutes that have not. That is all in all to say that in order to see the reform completed, it needs to be open and transparent. The intentions of this bill are good and I support them, but we need answers to these questions so that the transparent reform can be supported by all of us.

Debate adjourned, pursuant to standing orders.