

**WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT
(COVID-19 RESPONSE) BILL 2020**

Introduction and First Reading

Bill introduced, on motion by **Mr W.J. Johnston (Minister for Industrial Relations)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [12.35 pm]: I move —

That the bill be now read a second time.

The bill that I am introducing today will provide for a number of important and urgent reforms to the workers' compensation system. A central part of the need to bring this reform forward at this time is to make sure that healthcare workers have timely access to workers' compensation entitlements if they contract COVID-19.

The bill addresses a small number of constraints and barriers in the workers' compensation legislation that are exacerbated by the COVID-19 pandemic and the responses to it. Each of the issues covered by this COVID-19 response bill are being brought forward from the broader rewrite of the Workers' Compensation and Injury Management Act 1981, given the imperative to deal with them as a priority.

The first and main issue this bill provides for is a rebuttable presumption in favour of workers who contract specified diseases for the purpose of accessing workers' compensation entitlements. At the forefront of our mind in bringing forward this reform are healthcare workers. Healthcare workers, and particularly those in hospital settings, are clearly at a heightened risk of contracting COVID-19, given their proximity to people with the disease. In recognising this, the McGowan government applauds the efforts of all workers providing essential services to the community during the pandemic.

Under the current legislative requirements, a worker's employment must be a significant contributing factor to the contraction of the disease in order to access workers' compensation entitlements. The requirement to prove an occupational link to diseases that are prevalent in the community can be difficult and costly. Without any specific legislative arrangement, healthcare workers would be left to prove COVID-19 was contracted from exposure at work, and produce medical evidence to support the claim. This, in turn, may prompt factual investigations and medical reviews by the relevant insurer if there is any doubt about the cause of the disease. When there is conflicting medical or factual evidence, the claim is likely to be disputed, with any resolution of the claim dealt with as a dispute in WorkCover WA's Conciliation and Arbitration Services. This is not the best way for claims to be resolved for healthcare workers who are working under such difficult circumstances in close proximity to the WA community. They should not have the added stress of having to prove the cause of COVID-19, should they contract the disease.

The bill will provide for regulations to be made that establish the presumption of work-related injury for diseases suffered by workers in prescribed employment. It will be up to the employer or insurer to rebut that presumption and establish that the disease was not contracted at work. This regulation-making power is brought forward from the rewrite of the act. Although the regulation-making power needs to be flexible to accommodate other occupational diseases and classes of employment if the circumstances justify it, the government's priority is to ensure that regulations are made in the first instance for healthcare workers in frontline settings who contract COVID-19.

The bill will enable regulations to be made with retrospective operation from 16 March 2020, the day of the first COVID-19 emergency declaration in WA. The legislative change required is small, but the effect on our healthcare workers is big. It will mean that they will be supported through the workers' compensation process and get the compensation they need for medical treatment or time off work, or their dependent loved ones will receive financial support if the worker tragically dies as a result of the disease.

The bill also removes what is known as the "termination day". This is an additional and more restrictive statutory time frame to the general limitation period that applies to common law claims for personal injury. Some workers have experienced problems obtaining impairment assessments from approved medical specialists due to the availability of specialists and social distancing requirements during the COVID-19 response. This is problematic for workers pursuing common law damages because they must have an impairment assessment completed and lodge the assessment and election to pursue common law by the "termination day". This is generally 12 months from the workers' compensation claim date. Although the procedural requirements to elect to pursue common law damages based on an impairment of at least 15 per cent will remain, the "termination day" will be removed. The only time constraint on workers commencing common law proceedings will be the general limitation period that already applies to common law claims for personal injury. The removal of the common law termination day is also being brought forward from the rewrite of the workers' compensation legislation and was broadly

supported by stakeholders as part of WorkCover WA's review of the Workers' Compensation and Injury Management Act 1981.

The bill also addresses two other important issues. The bill will introduce a protection against any indexed worker entitlement reduction. Caps on worker entitlements are indexed annually based on movements in Australian Bureau of Statistics indices such as average weekly earnings, the wage price index and the consumer price index. Without this protection, the economic impacts of COVID-19 may be reflected in future ABS indices being negative, which would result in payments to workers receiving compensation being reduced. We are also bringing forward changes to facilitate electronic service and exchange of certain notices and documents required to be sent under the workers' compensation legislation. I seek unified support from members for the timely passage of this COVID-19 response bill to ensure our healthcare workers are supported, and constraints and barriers in the workers' compensation legislation that are exacerbated by the COVID-19 pandemic are removed.

I commend the bill to the house.

Debate adjourned, on motion by **Mr A. Krsticevic**.