

**WORKERS' COMPENSATION AND REHABILITATION AMENDMENT (CROSS BORDER) BILL
2004**

Second Reading

Resumed from 2 July.

HON RAY HALLIGAN (North Metropolitan) [12.01 pm]: The Bill seeks to ensure that injured workers, no matter where they are injured in Australia, find themselves covered by some sort of workers' compensation. The Bill was referred under Standing Order No 230A to the Standing Committee on Uniform Legislation and General Purposes. I want to read into the *Hansard* some of the committee's report. Paragraph 3.6 states -

The Bill is 'uniform legislation' within the meaning of standing order 230A by virtue of being pursuant to an intergovernmental agreement to which the Government is a party: standing order no 230A(1)(a).

The Workplace Relations Ministerial Council agreed to the development of a mutual recognition framework for workers' compensation arrangements on 30 May 1997. Mutual recognition was mentioned in section 6 of appendix 1. It involves jurisdictions recognising the rules and regulations of other jurisdictions as sufficient and satisfactory. The agreement is usually reciprocal and, hence, mutual. The mutual recognition and regulatory standards in an area are usually identical. In the case of cross-border arrangements legislative amendments are effected to standardise the approaches of participating jurisdictions. The committee went to some pains to find documentation associated with that intergovernmental agreement. It is all included in report No 18 of the Standing Committee on Uniform Legislation and General Purposes of August 2004. For the sake of clarity I will read in a few more sections of that report. Paragraph 4.20 reads -

All jurisdictions agree to pursue complementary legislation that establishes a single rule for work-related accidents. New South Wales, Queensland, Victoria and the Australian Capital Territory have already introduced amendments, while the other States and the Northern Territory have yet to introduce their legislation.

Under the heading "Overview of the Bill", the report reads -

- 5.1 The Bill contains 19 clauses in three Parts.
- 5.2 The Committee's report is focussed on Part 2 which implements the intergovernmental cross border arrangements to ensure national coverage of workers' compensation principles.
- 5.3 Part 3 relates to the State Government's Workers' Compensation Reform Bill 2004 which provides for references in the Act to be changed from "disability" to "injury" and "the Commission" to "WorkCover WA" to ensure consistent terminology should that bill be passed.
- 5.4 The Committee observes that the commencement provisions of the Bill (clause 2) are crafted in a manner to enable different dates to be fixed for proclamation of Parts 2 and 3. This reflects the fact that amendments to the Act are also contained in the State Government's Workers' Compensation Reform Bill 2004 and enables Parts 2 and 3 to be proclaimed together or separately depending on progress of the Bill and the Workers' Compensation Reform Bill 2004.
- ...
- 5.6 The Committee observes comments that the commencement date of the cross border arrangements, as agreed by all jurisdictions, is July 1 2004. However the Committee notes that the Leader of the House has advised that the amendments to the Act effected by the Bill will apply from the date of proclamation - they will not be retrospective.

It is important that the House be aware of that. Some of the most important aspects of the Bill are included in the report under paragraph 8.3. Under the heading "Clause 7" it reads -

- 8.3 This clause inserts a new section 20 that, among other things, sets out the tests for establishing the home 'State of connection' to determine whether a worker's employment is connected with Western Australia or another jurisdiction. As previously noted, compensation under the Act (as amended by the Bill) will only be payable to a worker where the employment is connected with Western Australia (proposed section 20(2)). However, even if a worker is outside Western Australia when an injury occurs, compensation may be payable under the Act as long

as the worker's employment can be connected with Western Australia (proposed section 20(3)).

- 8.4 The sequential series of tests to determine 'State of connection' are set out in proposed section 20(4):
- If a worker "usually works" in a particular State or Territory, then the employment is deemed to be connected with that jurisdiction (proposed section 20(4)(a)).
 - If a single home State or Territory cannot be clearly established, then the 'State of connection' will be based on the jurisdiction in which the worker is "*usually based for the purposes of that employment*" (proposed section 20(4)(b)).
 - If no one State or Territory is identified by either of these tests, the 'State of connection' will be the State or Territory in which the employer's principal place of business in Australia is located (proposed section 20(4)(c)).
- 8.5 In circumstances where none of the above three 'State of connection' tests apply and the worker is not entitled to compensation for the same matter under the laws of a place outside Australia, the 'State of connection' is deemed to be the State or Territory the worker was in when the disability occurred . . .
- 8.6 Proposed section 20(5) provides a test to establish 'State of connection' for workers on ships. If the tests under proposed section 20(4) do not apply, a worker's employment, while working on the ship, is connected to the jurisdiction in which the ship is registered. If the ship is registered in more than one State or Territory, the worker is connected to the State or Territory in which the ship most recently became registered.
- 8.7 In deciding whether a worker "usually works" in a State or Territory (as per the first test of connection under section 20(4)(a)), proposed section 20(7) provides that regard must be had to the worker's work history with the employer over the preceding 12 months and the intentions of the worker and the employer. However it also provides that temporary arrangements under which a worker works in another State or Territory for a period of not longer than six months are to be disregarded. This removes the need for employers to have two workers' compensation policies for workers working temporarily interstate for up to six months.

I advise the House that the Opposition will support this legislation. We are aware that it has taken some time to come to fruition. However, it is particularly important that both employees and employers not only are aware of their obligations but also will be covered under certain circumstances. This legislation sets out in some detail exactly what those circumstances will be. It is important for the wellbeing of all concerned that that be the case. As I said before, the Opposition will support this legislation.

HON JIM SCOTT (South Metropolitan) [12.13 pm]: The Greens (WA) indicate neither support for nor opposition to this Bill at this point. This Bill deals with some aspects of the principal Bill which are in great contention and which we will debate later. That Bill should have been debated before this Bill, because it makes a very fundamental change to the assessment of injury through an impairment model rather than through the disability model that is used currently. The fundamental conceptual change that will be made through the principal Bill really should have been debated and settled before we even saw this legislation.

We are not sure whether the Government will agree with the changes if the principal Act is not amended. I am proposing to amend the impairment model.

Hon Derrick Tomlinson: Do you think we will do it before Christmas?

Hon JIM SCOTT: I am told that it was a matter of urgency, but it has taken a very long time to get to this point. If I state that I support the Bill, I am tying myself to the principal Act in terms of impairment.

Hon Ray Halligan: When we go through the reform Bill, we can change it back again.

Hon JIM SCOTT: That is true, but it means we would have to bring back the legislation and amend it.

Hon Ray Halligan: This is reforming the principal Act, as will the reform Bill.

Hon JIM SCOTT: Yes, indeed, but if the House does not accept the impairment model, this will need to be changed again.

Several members interjected.

The PRESIDENT: Order! The member is not meant to hear the interjections.

Hon JIM SCOTT: We indicate our support for changing the wording. I do not want to be seen to be tied to that position at this point. We will support the second reading, but we are not quite so sure about the complete passage of this Bill, even though we recognise that it is important to sort out the jurisdictional difficulties between the various States and some of the complexities that could arise with workers who travel outside the State to work or people from other jurisdictions who come here to work. That part of the Bill basically recognises that States have different rules and tries to put in place a workable system to protect injured workers. I am quite happy with that aspect, although I have some queries about it. Our jurisdiction is based on geographical boundaries and some issues are a bit hazy. For instance, people who work offshore on oil rigs might be employed by a company that comes to Australia. An American company called SEDCO sometimes comes to Australia to do wildcat or exploratory wells. That company employs people from all over the place. Sometimes they work inside Western Australian waters and sometimes outside of Western Australian waters; sometimes they work outside Australian borders and outside the areas described in the Petroleum (Submerged Lands) Act, as described in the Bill. I think schedule 6 describes some of those areas, including one called the zone of cooperation, which I assume is the zone in which there is sort of an agreement with East Timor. I have worked on an oil vessel in that area and I know that people working on those vessels would not have a very precise understanding of their location because they move from one hole to another, and one hole might be within a particular area and another hole might be outside it. In those circumstances they would not know they are covered under legislation, particularly when the company they work for is not a Western Australian company. Although there is nothing we can do about it here, an argument is going on about where the borders of that zone of cooperation actually are, and there is some possibility that they will change in the future. I am not sure what the impact would be on this legislation of changing those borders. I assume the legislation would simply change with the borders, but I am not sure about that.

The PRESIDENT: Order! I would like at this stage to acknowledge students from John Paul College in the public gallery today. I welcome the students.

Hon JIM SCOTT: The other issue is not a big one right now, but we must really start getting our heads around it in the future. What might be called virtual employees are starting to appear around the world. Telstra has virtual employees working in Bombay, for instance.

Hon Ray Halligan: Are they deemed employees?

Hon JIM SCOTT: They are people working in the telecommunications and the Internet fields. People could be employed over the Internet in Australia, working for a company somewhere else.

Hon Ray Halligan: But they are still flesh and blood.

Hon JIM SCOTT: Yes; I am saying that with my tongue in my cheek. They could be described as virtual companies, in fact, because they are not physically on the ground; they are constructs in people's minds, in many ways. To reverse the Telstra situation, someone employed by a company based in Bombay may believe he or she is covered for workers' compensation while in Western Australia producing, say, computer graphics for that company, but what will happen if that worker is injured during the course of work? Those sorts of issues will arise in the future, and will probably have to be settled by the Commonwealth, rather than the States, because it will involve some level of international agreement. I hope that, when the need for such action arises, it will not take 100 or 200 years, as seems to have been the case with international agreements at the moment. We need to be able to protect Western Australian citizens under such laws. We have already seen areas in which companies will use their internationality to avoid their responsibilities. We have a very fine example of that in Australia, in James Hardie Ltd. I am sure that, unless we are very careful with our legislation, any loopholes will be readily found by some irresponsible companies to avoid their responsibilities in providing insurance cover against injury for their workers.

Hon Derrick Tomlinson: There will always be loopholes, and Parliament will always be meeting to remedy them.

Hon JIM SCOTT: Quite so, but I was just raising this issue of the changing nature of employment into more of an international situation than it has been in the past, and the need for us to be aware that the type of legislation currently before the House will not be adequate to deal with that problem. We probably need to think about how we can handle that, as well as fix this jurisdictional situation between States, because in the future it will be more than a situation between States; it will be between countries, and will involve companies that have very little tangible existence anywhere at all. We cannot very well cut off their access to the Internet, because it will probably take them only half a day to find themselves a new access point and away they will go again. We need to give a little more thought to how we will be able to do that in the future. We will be supporting the second reading so that we can ensure that as much protection as can be provided by this Bill will be provided. However, we give notice that we still have some problems about the proposed wording in the Bill with regard to the impairment model, and we will reserve judgment on that matter until we debate the major Bill at a later date.

HON MURRAY CRIDDLE (Agricultural) [12.26 pm]: I support the Workers' Compensation and Rehabilitation Amendment (Cross Border) Bill. I want to bring to the attention of members the situation of a shearer who was injured a few years ago while working in South Australia. This shearer worked mainly in the Geraldton region, but for many years he used to also work in South Australia for about three months of the year so that he would have 12-months employment. Unfortunately when he was injured in South Australia he was unable to access workers' compensation because he was covered only when he was working in Western Australia. I would like the minister to assure members that in future people like this shearer will be covered if a similar circumstance were to arise. It is unfortunate for this person that this Bill will not be retrospective, because the fact that he has not been able to obtain compensation for his injury has caused him a lot of concern. His injury has also had a big impact on his family, because he is no longer able to work in that industry and has had to find other employment. People who are in that situation find it extremely traumatic.

Hon Nick Griffiths: He was a shearer based in Western Australia but he went to South Australia to work. For how long was he there?

Hon MURRAY CRIDDLE: He was there for just a couple of months. As a rule he worked there for about three months of the year. He had been doing that for a number of years, but he just happened to get injured a couple of years ago. I have gone right into the issue, because I took it up with one of the members of the South Australian Parliament when he was unable to obtain compensation. I just hope that such a situation will be covered in this legislation.

Hon Nick Griffiths: Yes.

HON ADELE FARINA (South West) [12.28 pm]: As Chair of the Uniform Legislation and General Purposes Committee I am pleased to speak on the committee's report on the Workers' Compensation and Rehabilitation Amendment (Cross Border) Bill. As has already been indicated, the Bill was referred to the committee pursuant to Standing Order No 230A. The purpose of the Bill, as indicated in the long title, is to amend the Workers' Compensation and Rehabilitation Act 1981 and for related purposes. The amendments are related to intergovernmental cross-border arrangements to ensure national coverage of workers' compensation principles, and they include amendments to determine which jurisdiction a worker is connected with for the purposes of workers' compensation, when the test as to which jurisdiction a worker is connected with will apply, and in which jurisdiction a common law action can commence. The Bill also deals with and is related to the State Government's Workers' Compensation Reform Bill 2004, which provides for references in the Act to be changed from "disability" to "injury" and from "the Commission" to "WorkCover WA" to ensure that consistent terminology is used throughout the Bill should it be passed.

Immediately upon referral of the Bill to the committee, the committee wrote to Hon John Kobelke, Minister for Consumer and Employment Protection, seeking the usual information that the committee seeks from ministers; namely, information about the Bill and documents supporting its implementation. The committee specifically sought any relevant memorandum of understanding, minutes or intergovernmental agreement. The minister responded to the committee's request for information on 19 July. Supplementary information was also provided by WorkCover.

The committee did not advertise or invite submissions on the Bill. One of the continuing struggles that the committee has had is that it is required to report to the House within 30 days. That does not provide the committee with an opportunity to advertise or invite submissions. When we tried to do that in the past we received very little response, other than expressions of frustration from the people who were invited to make submissions that we were not giving them sufficient time in which to consider the Bill and report back.

Hon Derrick Tomlinson: Do you think we should revert to the 90 days, which was the original provision?

Hon ADELE FARINA: The committee has discussed that option. We definitely need to extend the time in which the committee must report, whether that be to 90 days or some other period. That is a matter for the House to determine at the appropriate time. I will not go into too much detail on that.

The minister advised the committee that on 30 May 1997 the ministerial council had agreed in principle to the development of a mutual recognition framework for the workers' compensation arrangements. The committee was provided with draft minutes from that meeting. Despite further inquiries, the committee was not able to get a signed copy of the minutes or confirmation that those minutes accurately reflected the outcome of the considerations of the ministerial council at that time. Included in the minutes was an agreement by ministers that the officers who were advising the committee would look into the matter and report to the ministerial council by 1 December 1997, and that the ministerial council would then report to the Council of Australian Governments by March 1998. Sadly, neither time frame was complied with. In fact, it was not until 2003 that any further action was taken. It seems that the coalition Government not only did not dot the i's and cross the t's in terms of signing minutes and making sure that they were an accurate reflection of the matters that were deliberated, but

also was very slow in following through on the matters that it had committed to undertake. This made things very difficult for the committee. It is a problem that the committee has faced on a number of occasions. Without an intergovernmental agreement, which the COAG principles require, or minutes that were clearly signed by the ministers, the committee had difficulty determining whether the Bill before the House complied with the intergovernmental agreement or the agreement that was reached by the ministers and their intent when they agreed to go down this path. As a result, it makes it difficult for the committee to advise the Parliament on compliance matters. The committee has been left to look at the Bill and make determinations.

As has already been indicated, the Bill contains 19 clauses in three parts. The report of the Standing Committee on Uniform Legislation and General Purposes focused on part 2, which implements the intergovernmental cross-border arrangements to ensure national coverage of workers' compensation principles. Part 3 relates to the State Government's Workers' Compensation Reform Bill 2004 and provides for references in the Act to "disability" to be changed to "injury" to ensure consistency in the terminology.

In response to the matter raised by Hon Jim Scott and his concerns about the Bill, I draw his attention to paragraph 5.4 of the committee's report, which states -

The Committee observes that the commencement provisions of the Bill (clause 2) are crafted in a manner to enable different dates to be fixed for proclamation of Parts 2 and 3. This reflects the fact that amendments to the Act are also contained in the State Government's Workers' Compensation Reform Bill 2004 and enables Parts 2 and 3 to be proclaimed together or separately depending on progress of the Bill and the Workers' Compensation Reform Bill 2004.

The House did not need to consider the Workers' Compensation Reform Bill prior to considering this Bill. They are quite separate. The sections of this Bill that relate to the other Bill will not be proclaimed if the other Bill is not passed. The report also states -

The key objectives of the amendments to the Act effected by Part 2 of the Bill are to:

- eliminate the need for employers to obtain workers' compensation coverage for a worker in more than one jurisdiction and ensure each worker is connected to one jurisdiction;
- ensure workers working temporarily in another State or Territory only have access to the workers' compensation entitlements and common law provisions in their home State or Territory . . .
- provide greater certainty for injured workers as to the State or Territory in which to make a workers' compensation claim and what the associated entitlements are;
- enable employers to determine the jurisdiction in which to insure each of their workers, before the worker commences work; and
- allow a court to determine the 'State of connection' and have that determination recognised by other courts in other jurisdictions, so only one determination is made.

As part of its normal process, the committee asked the minister to advise the committee of the advantages and disadvantages to the State of Western Australia of enacting mutual recognition legislation. As set out in the report, the minister responded and provided advice that the advantages to Western Australia as a participant in the scheme include that -

- it gives employers with workers in different jurisdictions clear guidelines on their workers' compensation responsibilities;

I think we would all agree that that is a positive factor for employers -

- it provides injured workers with increased certainty about their workers' compensation entitlements and common law rights;
- it reduces the burden currently being placed on Western Australian employers of having to obtain workers' compensation coverage for a worker in more than one jurisdiction;
- Western Australian workers undertaking employment related activities temporarily in another jurisdiction will be covered by Western Australia's workers' compensation scheme for a period of up to six months;

I believe that addresses the query raised by Hon Murray Criddle. When a worker works in another State for a period of less than six months, he will continue to fall under the Western Australian jurisdiction -

- it clarifies that workers' compensation arrangements for seafarers on ships are to be treated in the same way as other workers. All States and Territories will have the same definition on "ship" and "home State of a ship" to ensure consistency in the tests for 'State of connection'; and

- it will reduce the insurance premium burden experienced by Western Australia employers who are currently required to take out more than one workers' compensation policy to provide coverage for workers who regularly work interstate.

The committee also looked at whether the intergovernmental agreement provides opt-out provisions should the State determine at a future date that it no longer wants to participate in the mutual scheme. Of course, when there is no intergovernmental agreement, clearly those provisions do not exist. That was the case with this Bill. It was simply noted by the committee that if at some future time the State wanted to remove itself from the scheme, it would simply go through the process of raising that matter with the ministerial council and making the necessary legislative amendments.

The committee addressed each of the clauses in part 2 of the Bill. I do not propose to go through those in detail, given the time constraints that we have. However, I just draw members' attention to pages 13 to 18 of the committee report, which detail quite clearly the consideration of those provisions.

I point out to members that Hon Jim Scott raised a question about people working overseas and how they are covered by this legislation. The minister, in his second reading speech, pointed out to the House that the legislation applies to Australian States and Territories, and it was for individual jurisdictions to continue to determine the extent to which employment overseas would be covered by their legislation. Therefore, it was not intended at any time that this Bill would deal with the question of people working overseas for a temporary period.

After full consideration of and deliberation on the Bill, the committee found no basis for any need to make any amendments to the Bill. The committee commends the report to the House for its consideration. On that basis, I will conclude my remarks as well.

HON NICK GRIFFITHS (East Metropolitan - Minister for Housing and Works) [12.39 pm]: I thank Hon Ray Halligan and the Opposition for their support of the Bill. I also thank Hon Ray Halligan for his reference to the work of the committee. I thank the committee for the job it did in analysing the Bill. Hon Adele Farina has given a good ministerial response, so I do not think I need cover the ground that she has covered. She did an excellent job.

Several members interjected.

Hon NICK GRIFFITHS: Parliament is an interesting area of activity. Even though I was being complimentary, members had a go at me! That is life.

Hon Barry House: Somebody wants your job.

Hon NICK GRIFFITHS: That is fine; good luck to them. I am sure they will do an excellent job. I look forward to that occurring - in due course.

Hon Derrick Tomlinson: As long as you decide the "due".

Hon NICK GRIFFITHS: No, not at all. I was somewhat surprised by one contribution to this debate. I refer to the contribution of Hon Jim Scott. I am surprised that the Greens (WA) are not sure whether they support or oppose this legislation, which seeks to do a number of worthy things. I will remind the House what the Bill is all about. The Bill will give employers with workers in different jurisdictions clear guidelines on their workers' compensation responsibilities. What is wrong with that? The Bill will also provide injured workers with increased certainty about their workers' compensation entitlements and common law rights, and it will reduce the burden currently experienced by Western Australian employers who have to obtain workers' compensation coverage for workers in more than one jurisdiction. Under the Western Australian workers' compensation scheme, the Bill will cover Western Australian workers who temporarily undertake employment-related activities in another jurisdiction for up to six months. The Bill will clarify workers' compensation arrangements for seafarers on ships and provide that they be treated the same way as other workers. The Bill will reduce the insurance premium burden experienced by Western Australian employers who are currently required to take out more than one workers' compensation policy to provide coverage for workers who regularly work interstate. It is very clear from the Opposition's support that the Bill is about good policy. I am very surprised that the Greens are, at best, indifferent.

Question put and passed.

Bill read a second time.