WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023
WORKERS COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2023

Second Reading — Cognate Debate

Resumed from an earlier stage of the sitting.

HON NICK GOIRAN (South Metropolitan) [5.08 pm]: Following the conclusion of questions without notice, I will continue my consideration of this package of bills dealing with the complete rewrite of the workers compensation scheme in Western Australia. This bill, amongst other things, will repeal the law that has existed since 1981 and been amended on a huge number of occasions, and replace it with this rewritten act.

Prior to the adjournment of the debate, I was taking members—particularly the parliamentary secretary—through a number of concerns. I addressed clause 5, which defines "return to work"; clause 7, which discusses the impact on the definition of "administrative action" for stress claims, that is, claims for psychiatric injury; and clause 12, which deals with the definition of "worker". I will conclude my comments on clause 12 whereby I sought to compare and contrast the existing definition of worker in section 5 of the act with what has been proposed within the clause. Members may be aware that the complete removal of the extended definition of worker will occur, which will leave many workers without coverage, and with disturbing uncertainty in the workforce. I seek an explanation from the government on the return of this bill after the winter recess on why the proposed definition of "worker" will see a reduction in the number of workers in Western Australia able to access the scheme.

I now move to clause 55 of the bill. Clause 55 deals with the drop down rate. It is the case that at the moment that after a period of time, a portion of Western Australia workers will have their compensation reduced to the level of 85 per cent of what it was. That reduction will now take place for every Western Australian worker pursuant to clause 55, as I have read it. Why is it the case that there are currently a number of workers who do not suffer from this 15 per cent drop down in the rate of compensation but now will? It seems to me that the aim could be as described in the Supreme Court of appeal in the case of Paul Robert Ashfold v Metro Brick (1999) WASCA 1048 on 8 April.

The decision stated —

> The general policy behind the Act is to provide a scheme to ensure that workers who suffer a disability in the course of their work are adequately compensated by their employers. The underlying principle is to provide the worker with a weekly compensation payment which reflects, as closely as possible, the amount the worker would otherwise have been earning under the relevant award. In other words, a figure is to be arrived at that neither over compensates nor unfairly prejudices the worker. In my opinion the only way of arriving at such a figure is to provide the worker with an amount that reflects what he was actually earning prior to the injury subject, of course, to the express exclusions. Such a figure ensures that neither the worker nor the employer is unfairly prejudiced as a result of the disability.

In addition to this, it seems to me that if we are going to modernise the act, there is an opportunity here to consider a mechanism under which the employer might pay a worker's superannuation contribution while the worker is on workers compensation. We already have legislation at the moment that will continue under this rewrite that significantly restricts workers from common law damages claims. As a result, they are then unable to get back their superannuation contributions. To me, this seems to be increasing the gap that would otherwise see the worker put back as closely as possible to where they were prior to suffering the workplace injury. I ask the government whether such a mechanism has been contemplated during the course of this 14-year, two-phase law reform project.

I turn now to clause 56, and, in particular, the concerns about the current maximum rate of income compensation. According to my notes, the maximum rate is $2 872 per week, or $149 344 per annum. It follows that workers who are earning in excess of the maximum rate, which, for example, could be fly-in fly-out workers, to take one particular category, who are also supplied board and lodging as part of their remuneration are not adequately compensated under the current act. It seems to me that there is an opportunity to remedy that by increasing the maximum rate to a more realistic amount and providing an additional amount for board and lodging, where applicable. Again I ask the government, upon our return after the winter recess, to inform the house whether that has been contemplated and whether it is intended. If it has not, what is the justification for the maximum rate remaining, as I understand it, at $149 344 per annum?

In the remaining time I have, I will move to clauses 93 and then consider clauses 101, 182 and 577, and then comment on the regulations in the subsidiary legislation. I will see whether time permits me to do all that. Clause 93 is about compensation for workplace rehabilitation expenses. When the last round of common-law restrictions was enacted, many years ago now, the sweetener to sell it at the time was the notion of a specialised retraining program. If, as I understand it, we are to abolish that under the new model, I would like to know how many workers have

accessed the specialised retraining program over the years. It would not surprise me if the parliamentary secretary informed the house that no workers have accessed the specialised retraining program since its inception.

However, it would be good to clarify whether that is the case or whether, if some have, exactly how many it is. Whatever the number it is—it will probably be zero—if it is not zero, it will be small number. It would be good to have that clear and to get an understanding from the government about why we are abolishing the specialised retraining program that has applied to so few people, or, alternatively, to no-one at all. It seems to me somewhat improper to abolish a workers compensation reform that was sold back in the day—that is not a case for this government or even the previous government; that is how far back it goes—on the basis that a specialised retraining program would be made available. There is little point doing that and then taking it away if no-one has accessed it. Obviously, it was considered important at the time, so let us remedy that rather than simply remove it.

There is some talk, I think, about rehabilitation expenses. If we are to look at vocational rehabilitation expenses, it would be useful to have clearly stated on the record who receives those funds. If rehabilitation expenses are provided, does the worker or the rehabilitation provider receive those funds? Why are we not making the pathway more accessible for workers? What will be the effect of clause 93? Will we again see workers' rights maintained, or will they be reduced or abolished with respect to specialised retraining programs or workplace rehabilitation expenses?

I turn then to clauses 101 and 182, which deal with permanent impairment assessment.

The PRESIDENT: Order, member! Even though you have only one minute and 15 seconds left, I am required to interrupt debate for members' statements.

Debate adjourned, pursuant to standing orders.