

SELECT COMMITTEE ON WORKERS' COMPENSATION

Establishment - Motion

HON KIM CHANCE (Agricultural - Leader of the House) [3.02 pm]: I move without notice -

- (1) A select committee is appointed.
- (2) Chapter XXII applies to the proceedings of the select committee.
- (3) The select committee is to inquire into and report on -
 - (a) the extent to which existing and proposed laws provide an equitable, sustainable and transparent system of compensation for persons injured in the course of, or who contract an illness or disease by reason of, their employment and whether time limitations on eligibility to claim compensation operate to the detriment of workers whose work-related illness is diagnosed after the limitation has effect;
 - (b) the sources and methods of funding the current scheme, its administration, and the efficiencies or defects with respect to any of those matters and options that would improve or supersede current practices or arrangements;
 - (c) the persons or classes of person included in the scheme and the adequacy or otherwise of the grounds for exclusion or ineligibility of those not included;
 - (d) whether the criteria on which the quantum of compensation is assessed are appropriate or unduly restrictive or act as a disincentive to participation in the scheme;
 - (e) the circumstances that determine, or should determine, payment of compensation in a lump sum or periodic instalments;
 - (f) whether it is desirable or necessary to retain an action in tort for negligence in a case where a plaintiff is, or is not, eligible to obtain compensation under the scheme and the conditions precedent, if any, governing the right to commence judicial proceedings;
 - (g) the feasibility of abolishing an action in tort and substituting a statutory cause of action arising from the imposition of strict liability;
 - (h) any matters with respect to those described in the preceding paragraphs.
- (4) For the purposes of its inquiry, the select committee may consider part or all of the Workers' Compensation Reform Bill 2004 and report any findings or recommendations on that Bill during its passage.

By way of explanation of the purpose of this motion, we have before us on the notice paper two Bills dealing with workers compensation, but, most notably, we have order of the day No 375, the Workers' Compensation Reform Bill 2004. It is a Bill that represents the challenges currently before the House in making changes to the Workers' Compensation and Rehabilitation Act that the Government believes are necessary. As members will understand, this is never an easy process, with all sides in agreement.

Hon Jim Scott has proposed variously that the Workers' Compensation Reform Bill be referred for inquiry by a committee of this House. The Government concedes that this is likely to be necessary for no other reason than the complexity of the legislation. However, the Government asserts at the same time that this legislation is the result of very considerable debate over a period of years leading up to its introduction in this House just last Friday.

The Government was also concerned about the understanding that it had of Hon Jim Scott's intentions with his proposed referral and what we thought would be possible by a referral of all or part of this Bill, because it became apparent to the Government that Hon Jim Scott's concerns go far beyond the scope of this legislation. As a consequence, we have agreed a course of action that I believe will allow the Parliament to achieve the ambitions that Hon Jim Scott has in looking at this highly contentious area of workers compensation and making comparisons between what happens in Western Australia and in other jurisdictions. The Government is keen to see that component addressed. We feared that in trying to achieve Hon Jim Scott's aims through the constraints of a referral of this legislation, both Hon Jim Scott's ambitions and those of the Parliament might be frustrated, because the lines of inquiry would continually run into issues that would put them beyond the scope of the Bill; thus, there would be endless frustration in trying to find a way through to what could be a better system of workers compensation.

In the meantime, the Government's issue was that we need to proceed with this reform. Parts of it may not be acceptable to other members of the House. However, let us have those matters debated on the floor of the House where decisions are made in the proper parliamentary context. As a Government, we were deeply concerned that the normal process of taking a Bill off the notice paper for the purpose of referring it for inquiry would not achieve our ends either in that regard. Therefore, we have agreed, after what has now been some days of discussion, on a proposition that I believe will allow each of the parties to this debate to move forward in a far more progressive way than would otherwise have been possible. In a nutshell, that is the reason I have moved this motion at this stage. It is a somewhat unusual way to proceed, because it effectively means that the legislation to which I have referred - the Workers' Compensation Reform Bill - will be the subject of inquiry by a committee of this House, but it will in parallel be available to the House for debate when we return in August. The motion is unusual, and for that reason I thought it required some explanation.

HON JOHN FISCHER (Mining and Pastoral) [3.11 pm]: I am not very happy about this. I believe we are moving far too quickly.

Amendment to Motion

Hon JOHN FISCHER: I therefore move -

That the motion be amended by deleting paragraph (4) and inserting the following -

The select committee is required to include as part of its inquiries to investigate and make comparisons with the workers compensation scheme that applies in Queensland.

I first spoke on the workers compensation legislation on 10 September 2002. I have spent quite a lot of time looking at the various workers compensation systems that apply throughout Australia. Queensland currently has the lowest average premium of any Australian State, at 1.55 per cent, and it has done so since 2000. Queensland is the only State in Australia that projects a premium in advance, therefore giving employers the advantage of projecting their budgets accordingly. I believe the system in Queensland is the best system operating in Australia at this time. I want to ensure that the select committee gives full consideration to the way in which the Queensland system operates. If that paragraph is not included in the motion, I will not be satisfied that there has been a thorough investigation of all the opportunities that are available. I believe the existing workers compensation laws are inferior. I believe the proposed legislation is also inferior. I have read very thoroughly several critiques of the proposed legislation. One of those critiques was released by the Australian Plaintiff Lawyers' Association, and I quote one comment from that critique -

There is legal authority for the proposition that where a regulation is not passed as part of the legislative scheme, it cannot affect the interpretation of an Act - observance of this principle would probably result in challenges to any subsequent regulations before the Supreme Court and possibly even the High Court. Injured workers and their families are the last persons who need to be drawn into prolonged litigation either to assert their rights/entitlements, or, as unwilling respondents to insurance company appeals.

I will not make a speech on what I think is wrong with this proposed legislation, other than to repeat that I believe it is inferior. It is necessary that the select committee be given every opportunity to examine all other methods working within Australia, particularly, as I mentioned before, the Queensland model.

HON KIM CHANCE (Agricultural - Leader of the House) [3.17 pm] I am delighted that Hon John Fischer has picked up, and generally supports, the reason for this motion. The amendment he has moved is certainly within the spirit of the motion itself. I would prefer, however, that the amendment not be adopted. I will explain, particularly to Hon John Fischer, why I would prefer that to be the case.

It is most certainly the Government's intention that the spirit of Hon John Fischer's amendment be carried. We will certainly consider looking at models on a comparative basis, with inquiry into the Queensland model being one of the objectives of the committee's terms of reference. The terms of reference in the original motion provide ample scope, without having to state it, for a comparison with the State of Queensland. The difficulty is that once a specific jurisdiction is stated, we may limit the committee's capacity to make comparisons with other jurisdictions. The complicated legal Latin terms "sui generis" and "ejusdem generis" cover this issue. The more we state the terms of reference of an inquiry, the more we limit those terms of reference. I assure Hon John Fischer that the terms of reference are sufficiently broad to enable a comparison with Queensland and/or any other jurisdiction in not only Australia, but also anywhere in the world.

HON JIM SCOTT (South Metropolitan) [3.19 pm]: I assure Hon John Fischer that the intention is to look at those models, including the Queensland model. Paragraph 3(a) of the motion fully covers that intention.

Hon John Fischer: It does not specify it.

Hon JIM SCOTT: It does not specify it because we do not want to limit it in that regard. Paragraph 3(a) reads -

... existing and proposed laws provide an equitable, sustainable and transparent system of compensation ...

That enables us to look at all those models, and it has certainly been my intention to ensure that the Queensland model is one of them. The motion also provides for the committee to inquire into existing and proposed laws, which includes the regulations that are a part of those laws.

HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition) [3.20 pm]: The Opposition is happy to support the initial proposition of the minister. I also acknowledge the minister's comments about the amendment moved by Hon John Fischer, and we will go along with his views on that on the basis of his assurance that the committee will look at the Queensland model. We accept the Leader of the House's assurance in that regard. Therefore, the committee will be able to travel not only to Queensland, but also anywhere else, if need be. I am sure that that will be part of the committee's activity between now and when it reports.

I have just a couple of quick questions about the proposition itself. The motion reads "A select committee is appointed". I assume that that means a committee of three members, which is the size of a traditional select committee.

Hon Kim Chance: Yes, but that will be subject to a consequential motion.

Hon NORMAN MOORE: I appreciate that, but because the motion does not mention the number, I assume it is three -

Hon Kim Chance: That is correct.

Hon NORMAN MOORE: Why does the motion not contain a reporting date for the committee? It is a bit open-ended in that regard. In the context of raising that issue, it seemed a little strange that this inquiry into workers compensation may be still going when the House decides to debate the two Bills that are on the notice paper. I wonder about the sense in that, even though I acknowledge that the select committee can report its findings or recommendations on the Bill during the passage of the Bill. I presume that the committee and the Leader of the House will collaborate on when the committee can make recommendations and when the Bills will be brought on for debate. It would be ludicrous if the select committee is investigating these matters while the House is debating them without the benefit of the work being done by the committee. I guess the Leader of the House could give me an assurance that, if the committee has some recommendations to make in respect of the Bills, they will be brought to the House's attention before we debate them.

Hon Kim Chance: It is certainly my intention that the House will receive an interim report from the committee on those matters relevant to the Workers' Compensation Reform Bill at some stage before the final report of the committee, which could be quite late in the year. However, the onus will be on the committee to get that information to the House in time for the debate.

Hon NORMAN MOORE: In the motion there is no time by which the committee has to report, so I suppose it is helpful in that sense. However, I have never seen a committee of this House report ahead of time. In fact, 999 times out of 1 000 the first report of a committee is actually whether it can extend its time for reporting. It would be quite ludicrous to start debating the Workers' Compensation Reform Bill when a committee is looking into it and has not yet reported. The Leader of the House says that the onus will be on the committee to provide an interim report. If it cannot or will not, then it would be crazy for the Government to bring on the Bill for debate beforehand. I want some indication from the Leader of the House that, as far as he is concerned, we ought to have the benefit of the committee's deliberations before we debate the Workers' Compensation Reform Bill.

Hon Kim Chance: Certainly before the committee stage of the debate. I think that is reasonable.

Hon NORMAN MOORE: One can only assume that commonsense will prevail in this instance. My view is that the Bill should have been sent to a standing committee and looked at during the break so that we could all have had the benefit of the work being done by the committee. I am told there are reasons for that not happening, and I accept that.

I will raise the matter at the time if it transpires that the debate on this Bill should come on ahead of any report from the select committee. That may affect the way in which the Opposition deals with the Bill at the time. As the Leader of the House knows, sometimes things can take longer than they need to.

Hon Kim Chance: At the same time, if we were to proceed through this legislation without some kind of committee referral, it would take a lot of time in debate in the House. There is a trade-off between spending some time in committee and spending some time in the House.

Hon NORMAN MOORE: I accept that, but we can only have a trade-off if we have some advice from the committee before we start debating the Bill itself. That could then lead to a shorter debate. My point is that if the committee has not reported -

Hon Kim Chance: We are in trouble.

Hon NORMAN MOORE: - the debate will take longer. That is the point I am trying to make. I wonder why there is no report date for the final report of the committee. It is usual to have one for these matters. We will not support the amendment moved by Hon John Fischer for the reasons that I have pointed out. I seek an assurance that the Queensland issue will be considered. I am interested to know why there is no reporting date.

Amendment put and negatived.

Motion Resumed

HON KIM CHANCE (Agricultural - Leader of the House) [3.27 pm]: I respond to the Leader of the Opposition's question about the insertion of a reporting date. I may need your assistance, Mr Deputy President, but it seems to me that when we insert a reporting date in the reference of a matter to a committee, we can insert a date only for the final report from that committee. In terms of the task with which this committee will be charged, it is reasonable to anticipate that the final report will take considerable time to put together. It is not the final report that is relevant to -

Hon Norman Moore: I understand that, but normally a select committee has a time limit. If this is to go on for eternity, what is the point?

Hon KIM CHANCE: The more important date would be the timing of the interim report on those matters that are relevant to this Bill.

Hon Norman Moore: Why not put in an interim reporting date?

Hon KIM CHANCE: That is why I looked to the Deputy President for advice on whether I am able to include in the motion a date relating to an interim report from the committee about a specified matter.

The DEPUTY PRESIDENT (Hon George Cash): The Leader of the House can amend his motion, or someone else can amend his motion, to put in a date for an interim report. Perhaps he could add certain words to clause (4).

Amendment to Motion

Hon KIM CHANCE: In that case, I move -

That the following words be inserted at the end of paragraph (4) -

The committee shall provide an interim report on matters relevant to the Workers' Compensation Reform Bill 2004 on, or before, 15 September 2004.

Amendment put and passed.

Motion, as Amended

Question put and passed.

Appointment of Members

On motion without notice by Hon Kim Chance (Leader of the House), resolved -

That Hon Sue Ellery, Hon Ray Halligan and Hon Jim Scott be appointed to the Select Committee on Workers' Compensation.