

15:10 **TRANSPORT ACCIDENT AND ACCIDENT
COMPENSATION AMENDMENT BILL**

Statement of compatibility

**Mr HOLDING (Minister for Finance, WorkCover
and the Transport Accident Commission) tabled
following statement in accordance with Charter of
Human Rights and Responsibilities Act:**

In accordance with section 28 of the Charter of Human Rights and Responsibilities ('the Charter'), I make this statement of compatibility with respect to the Transport Accident and Accident Compensation Amendment Bill 2007.

In my opinion, the Transport Accident and Accident Compensation Amendment Bill 2007, as introduced to the Legislative Assembly, is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The proposed bill:

improves benefits under the Transport Accident Act 1986 ('the TA Act');

improves the efficiency of the operation of the Transport Accident Commission (TAC) scheme;

ensures that people who suffer permanent spinal injuries in the workplace or in a transport accident are provided with compensation on the basis of their permanent impairment;

confirms that superannuation is not included for the purpose of calculating weekly payments for people injured in the workplace or in a transport accident.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

The right not to be deprived of property other than in accordance with law — section 20 of the Charter.

The property right protected by the charter is a limited one. There must be some 'property' and it must be deprived other than in accordance with law.

Assessment of permanent impairment

The proposed bill changes the way in which permanent impairment is assessed for injured workers with spinal injuries who have surgery. For some injured workers, the assessment under the new provisions may result in less compensation. For others it may result in more. Property rights could arise by reason of existing entitlements or existing proceedings challenging those entitlements. Insofar as any injured workers could be said to have property rights, the proposed bill does not deprive any person of that property. Injured workers who have already been assessed for compensation for non-economic loss under section 98C of the Accident Compensation Act 1985 will receive compensation in accordance with that assessment, and will have any

proceedings disputing the assessment considered under the existing law.

In relation to any injured workers who are yet to have their impairment assessed (as well as all people injured in a transport accident), there is no property to be affected by these amendments.

Accordingly, the provisions do not limit the property right in section 20 of the Charter.

Exclusion of employer paid superannuation from the definition of pre-injury average weekly earnings

This amendment seeks to clarify what has always been the position in Victoria — namely, that for the purposes of assessing the quantum of weekly benefits paid to people injured in the workplace or in a transport accident, employer paid superannuation is not included. In preserving the status quo, the amendment cannot be said to unlawfully deprive people injured in the workplace or in a transport accident of their property.

People who have legal proceedings on foot challenging the longstanding approach by the VWA or the TAC to the calculation of weekly benefits may be said to have limited property rights in respect of those proceedings. However, any existing legal proceedings seeking the determination of a court on this question will not be captured under the amendment.

Accordingly, the provisions do not limit the property right in section 20 of the Charter.

Conclusion

I consider that the proposed bill is compatible with the Charter of Human Rights and Responsibilities. Although it may raise human rights issues, it clearly does not limit any human rights.

TIM HOLDING, MP

Minister for Finance, WorkCover and the Transport Accident Commission

Second reading

**Mr HOLDING (Minister for Finance, WorkCover
and the Transport Accident Commission) — I move:**

That this bill be now read a second time.

The main purpose of the bill is to improve the benefits available under the Transport Accident Act 1986. The bill also provides clarity on two important issues relating to Victoria's transport accident and workers compensation schemes.

The changes are consistent with the government's commitment to maintaining fair and financially viable statutory compensation schemes and, where affordable, introducing benefit improvements.