

**Legislative Council**

**Tuesday, 11 May 2010**

**WORKERS COMPENSATION TRIBUNAL**

**The Hon. A. BRESSINGTON** (15:04): I seek leave to make a brief explanation before asking the Minister for Industrial Relations a question about the rules of the Workers Compensation Tribunal.

Leave granted.

**The Hon. A. BRESSINGTON:** All parties to proceedings in the Workers Compensation Tribunal are bound by the rules of the tribunal. However, from evidence presented to my office, 'all parties' does not appear to include WorkCover, the compensating authority. One such example of WorkCover deliberately breaching tribunal rules for its own benefit is the use of redemption agreements drafted by its lawyers, instead of the redemption proforma, known as form 5, required by rule 23 of the 1996 tribunal rules, which relevantly reads, under subsection (2):

In the case of an agreement the agreement must be in accordance with form 5 and must include all particulars of all relevant parties.

I have made numerous inquiries into the use of form 5, and I have been unable to find any evidence of its use post mid-1997. Additionally, a prominent advocate for injured workers submitted a 107B request to WorkCover for her 1999 redemption agreement—specifically, her form 5—to be told that not only did it not exist but the officer responsible for her request had never heard of form 5. However, rule 23 of the tribunal was not amended until 2005, and no practice direction was issued by the President of the Workers Compensation Tribunal, as provided for by rule 24, setting aside the requirement to use a form 5.

WorkCover's constructed redemption agreements include privacy and confidentiality provisions, whereas form 5 does not. In addition, the constructed agreements—unlike form 5—do not require the compensating authority to receive a written copy of the financial and legal advice required prior to the redemption by section 42(2) of the Workers Rehabilitation and Compensation Act 1986 and, rather, simply sought certificates certifying that advice had been given. This potentially relieved WorkCover of the responsibility, and any associated liability, for ensuring that this advice was competent and that it had fully informed injured workers of their rights and the implications of redemption agreement as required by the act.

My questions are:

1. How many redemptions that fell within the purview of the tribunal were executed between 1996 and 2005? Of those, how many were recorded on a form 5?
2. Given that subsequent agreements were recorded on documents drafted by the legal representatives of the compensating authority, what involvement did the compensating authority have in ceasing to comply with the requirements of rule 23?

3. Was advice received by the compensating authority regarding the requirements of rule 23? If so, will the minister make this available to the council?
4. Is the minister concerned that injured workers were seemingly negatively impacted by the noncompliance with the requirement to use form 5?
5. Will the minister initiate an investigation into noncompliance with the tribunal rules by WorkCover, the claims agents and the tribunal?

**The Hon. P. HOLLOWAY** (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:07): The honourable member has asked for detailed information going back to 1996. Obviously, I will have to take that part of the question on notice, see what information is available and get back to her.

The Hon. D.W. Ridgway interjecting:

**The Hon. P. HOLLOWAY:** No, it was actually six years before we were elected to government.

The Hon. A. Bressington: 2005 wasn't.

**The Hon. P. HOLLOWAY:** No, but I will have to get the information. The honourable member suggested that WorkCover was not abiding by the rules of the tribunal. I am sure the tribunal is well capable of protecting the rules under which it operates and that if there is any noncompliance the tribunal is able to deal with that.

The other day I was reading about some of the cases that have been before the tribunal, and I understand that at least one case involved a challenge to the procedures that were being used. If the tribunal believes that is not the case, it is certainly capable of taking the appropriate action. However, I will investigate the matters raised by the honourable member and bring back a reply.