EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE

Members present:

Mr SJ Stewart MP (Chair)
Miss VM Barton MP
Mr MA Boothman MP
Mr SL Dickson MP
Mr CG Whiting MP
Mr RA Williams MP

Staff present:

Ms S Cawcutt (Research Director)
Ms M Coorey (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO WORKERS' COMPENSATION AND REHABILITATION (NATIONAL INJURY INSURANCE SCHEME) AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 22 JUNE 2016

Brisbane

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Committee met at 11.56 am

CHAIR: I declare open the committee's public briefing on the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016. I would like to introduce the members of the Education, Tourism, Innovation and Small Business Committee. My name is Scott Stewart, member for Townsville and chair of the committee. Other committee members are Miss Verity Barton, member for Broadwater and deputy chair; Mr Rick Williams, member for Pumicestone; Mr Mark Boothman, member for Albert; Mr Steve Dickson, member for Buderim; and Mr Chris Whiting, member for Murrumba, who joins us in place of Mr Bruce Saunders, member for Maryborough, who is unable to attend today.

The briefing is being transcribed by Hansard and a transcript will be published on the committee's website. Could you please turn off your mobile phones or at least turn them to silent? The committee's proceedings are proceedings of the Queensland parliament and are subject to its standing rules and orders.

On 14 June 2016 the Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs introduced the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016 to the Queensland parliament. The bill was referred to the Education, Tourism, Innovation and Small Business Committee on 16 June 2016 for detailed consideration. The committee is due to report on 19 August 2016. Queensland Treasury will brief us this morning on the bill.

GOLDSBROUGH, Mr Paul, Executive Director, Workers Compensation and Policy Services, Office of Industrial Relations, Queensland Treasury

HILLHOUSE, Ms Janene, Director, Workers Compensation Policy and Tribunal Services, Office of Industrial Relations, Queensland Treasury

SHIELD, Mr Jonathan, Director, Review and Appeals, Office of Industrial Relations, Queensland Treasury

CHAIR: Welcome and good afternoon. We have allowed about an hour to hear from you including questions from members. I remind officials to speak into the microphones and to state your name clearly when you first speak. Mr Goldsbrough, would you like to make an opening statement?

Mr Goldsbrough: Thank you for the opportunity to make an opening statement this morning. The Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016 implements the National Injury Insurance Scheme for workers who are catastrophically injured in workplace accidents connected with Queensland. The bill meets the Queensland government's agreement to implement a lifetime care and support scheme for workplace accidents that meets the national minimum benchmarks, or otherwise Queensland would be responsible for the costs of people who sustain catastrophic injuries from 1 July 2016 because they would enter the National Disability Insurance Scheme.

The bill also introduces amendments to create more flexible self-insurance arrangements to maintain the status quo in the workers compensation scheme and restore the original policy intent following recent court decisions and provide for an alternative indexation method for statutory compensation and common law damages entitlements.

The bill will achieve the government's stated policy objectives by amending the Workers' Compensation and Rehabilitation Act 2003 to ensure that eligible workers who sustain a particular serious personal injury from 1 July 2016 receive the necessary and reasonable treatment, care and support payments for their lifetime regardless of fault. The arrangements in the bill for the National Injury Insurance Scheme for workplace accidents are consistent, subject to jurisdictional differences, with the scheme for motor accidents established by the National Injury Insurance Scheme (Queensland) Act 2016, which I understand the committee has previously considered.

The amendments in the bill provide that workers who have an accepted application for compensation for a specified work related serious personal injury which meets certain eligibility criteria will be entitled to statutory treatment, care and support payments either for an interim period of up to two years or for the worker's lifetime. To ensure workers have independence and choice in assessing the necessary and reasonable treatment, care and support services, they will have individualised support plans or funding agreements where workers can directly apply funds to obtain services they consider best meet their needs.

Where certain seriously injured workers can establish that their employer was at fault in relation to their injury, they are able to elect to opt out of the statutory treatment, care and support payments and accept an award of treatment, care and support common law damages as a lump sum. To ensure adequate safeguards for the worker's election to opt out, a court will be required to sanction the election of workers under a legal disability. A worker will not be able to make the election where there is a reduction for contributory negligence of 50 per cent or more.

To reduce the risk that a worker may exhaust the treatment, care and support damages lump sum prematurely and seek to enter the NDIS, at least five years after accepting the award of damages a worker may apply to the insurer for additional treatment, care and support payments. The insurer may decide to make further statutory payments if satisfied that the damages awarded were not sufficient to meet the worker's necessary and reasonable treatment, care and support needs for the serious personal injury.

Workers compensation insurers will be liable for funding treatment, care and support payments but will be able to engage the National Injury Insurance Agency, Queensland to perform some or all of their functions and powers in relation to the national injury insurance scheme for workplace accidents. What we were seeking to do was ensure that there was consistent high-quality care offered to these workers. Within the workplace accident stream there is a much smaller cohort of workers we expect each year who will go than motor accidents, so it makes sense to ensure that the assessments for treatment and so on are consistent.

Existing dispute resolution mechanisms within the workers compensation scheme will be used to resolve disputes concerning entitlement to treatment, care and support payments including Medical Assessment Tribunals for medical disputes, internal review by insurers, review rights to the Workers' Compensation Regulator and appeal rights to the Queensland Industrial Relations Commission. In this context, they are treated no differently from any other worker who sustains a work related injury in Queensland.

A stakeholder reference group comprising representatives of employer associations, trade unions, legal representatives, WorkCover Queensland, self-insurers and the Motor Accident Insurance Commission was consulted on arrangements for implementing the workplace accident stream.

The bill will also achieve the government's stated policy objectives by amending the workers compensation act to provide greater flexibility for self-insurers by allowing an alternative self-insurance security in the form of an unconditional financial guarantee to be issued by general insurers and removing the minimum requirement for $5 million value security. The bill also removes barriers for single employer self-insurers who decide to return to WorkCover Queensland insurance policy to return to self-insurance at a later date. It does this by allowing them five years under which they can go out under the conditions that applied when they came in. This will give some surety to some small self-insurers. Members may be aware that in Queensland there is a minimum requirement for 2,000 workers to be a self-insurer. When the self-insurance arrangements were first introduced in the mid-1990s, companies were able to self-insure with 500 workers. This amendment will allow them to come back into the scheme. If they feel they were better off outside, it will allow them to go out with the number of workers they were required to have previously.

The bill will also re-establish the original policy intent of the act and reverse the effects of Byrne v People Resourcing by excluding from coverage under an employer's workers compensation insurance policy any liability flowing from an indemnity granted to a third party in respect of that third party's liability to pay damages. This has been an issue that was previously raised in the 2010 review of the workers compensation scheme and again in 2014.

The Byrne decision was handed down in 2014. Effectively under this decision a principal contractor who may not employ anyone and who has a contractual arrangement with a subcontractor that, if the principal gets sued by any of the contractor's workers, the principal will hold the contractor liable for that payment. The net effect was that you could have a scenario where a principal contractor was not insured with WorkCover but is still liable for a payment where the court found that negligence was on the part of the principal contractor.

The next court decision that the bill addresses is to clarify the situation in relation to the Simon Blackwood v Colin Hinder decision. In that situation it dealt with a fraud related matter, and the court found that the clock starts ticking in terms of the six months in which we have to bring a fraud prosecution before the court when it became known to the insurer in that case and not the regulator. What the bill does is bring back the original policy intent, which was six months from the time that the matter becomes known to the regulator.

The final amendment in the bill is to prevent financial hardship to those relying on workers compensation payments by providing for an indexation method that will not result in a reduction to any payments or amounts as a consequence of a reduction in the value of the Queensland ordinary time earnings, or QOTE, while ensuring that indexation keeps the alignment with QOTE. For the first time since QOTE has been used in the workers compensation scheme, it dipped down for a bit. It is now back up, but the effect of that would have been that payments to people like dependants of deceased workers would have gone down a very small amount. What the bill does is align Queensland with Victoria and I think a couple of other jurisdictions. That concludes my opening statement.

CHAIR: Paul, when we looked at the NIIS specifically with the motor vehicle insurance system they were able to give us some average numbers of how many that legislation would impact per year. Do you have approximate numbers of how many people would be affected by this legislation, just as a guide? I know it is difficult to look into the crystal ball at what the future looks like but just on average.

Mr Goldsbrough: Our worst case modelling would be probably 11 catastrophic injuries in any one year. That was comparable to other jurisdictions, but as those schemes start to develop and this has been implemented they have dropped the numbers back substantially. It is very fluid. It is an actuary's best guess, but I suppose erring on the side of caution and conservatism we have done our modelling based on that scenario.

CHAIR: The next question I have relates to the estimated costs for an employer. Is there an additional cost to the employer for this scheme?

Mr Goldsbrough: There will be an additional cost to the scheme, we estimate, based on that scenario I just mentioned of 11 cases of about $16½ million per annum. The big change here and why you see that cost is that Queensland has what is called a short-tail workers compensation scheme. Generally people are on for up to a maximum of two years with catastrophic injuries. They can stay on statutory benefits for up to five years and they usually then rely on a common law damages claim to sustain them going forward. This brings partly a long-tail scheme in for this catastrophically injured cohort so that they will stay on care and support benefits for their natural life—not until 65 like the NDIS but their natural life.

Miss BARTON: Welcome back and lovely to see you again, Paul, albeit in a different committee. I would like to follow on from what the chair asked in terms of the costings. You said that there was no additional cost to employers; is that right?

Mr Goldsbrough: No, I said that the cost of the scheme was about $16.5 million a year. It is difficult to say what that means for individual employers at the moment because, for example, if the numbers do not necessarily go there, this may become a scheme cost that goes into the bucket rather than to individual employers. That is something that the WorkCover Queensland board will look at in due course.

The area it will impact directly on employers is that of self-insured employers. We have 28 self-insured employers in Queensland of which we estimate there will be, on average, one claim a year again in this scenario. This does change the dynamics of the scheme, because historically, like WorkCover, self-insurers have relied on a short tail. They will now be making care and support payments for the natural life of an individual who meets this test. We again have to look, as the regulator, at what robust arrangements we have around that to ensure there is adequate provisioning for this extensive liability. For example, if you have a 16- or 17-year-old apprentice carpenter, we are potentially looking at a liability of 50-plus years.

Miss BARTON: In terms of the reversal of Byrne v People Resourcing and Anor, in the explanatory notes it says that the legislative amendment to reverse the effect of Byrne et cetera will save WorkCover an estimated $40 million per annum. Is that $40 million coming from principal contractors having to pay more into the scheme?

Mr Goldsbrough: That is the worst case scenario cost over time. As you would appreciate, this court case was in 2014. We do not know how wide spread hold harmless clause use is in the industry and at what levels. They are all considerations in the costing on this, but this is the cost that will be directly to WorkCover that they cannot recover from a third party as a result of the Byrne decision. I will ask Ms Hillhouse to comment on that in terms of what WorkCover can recover.

Ms Hillhouse: The cost of the $40 million is not the cost that would be the cost of the principal contractor, as you mentioned earlier. It is actually the costs that are linked back through to an employer, which would be a subcontractor who is actually insured by WorkCover Queensland. Part of that cost would be able to be recovered through premiums. The rest of that cost will end up having to be borne, as Paul said, by the scheme as a whole. It will ultimately be a cost borne by all employers in this game.

Miss BARTON: The Byrne decision came down in 2014. Forgive me, I do not know the date. Was there any consideration given to appealing the decision rather than using a legislative framework to supersede a judicial decision?

Mr Goldsbrough: My understanding is that WorkCover Queensland, who are running that case, did not appeal it.

Miss BARTON: I may have to put this question on notice to WorkCover or perhaps we can invite WorkCover in, but are you aware whether or not either Queensland Treasury or WorkCover received advice on the appropriateness of appealing that decision before making the determination to go down the legislative path?

Mr Goldsbrough: Queensland Treasury certainly did not receive any advice. We were not directly involved in the matter. I am unsure about WorkCover. I can take that on notice and we can come back.

Miss BARTON: If you could, perhaps by close of business tomorrow if that is not too onerous.

Mr Goldsbrough: Yes, that is fine. For the ease of members, it might be useful to ask Ms Hillhouse to explain what Byrne was about in the apportionment just so people can get a sense of—

Ms Hillhouse:—what the case actually involved. In that case the worker was injured in a work accident at Airportlink in 2010 and he claimed damages for his personal injury and loss against his employer, People Resourcing. People Resourcing was a labour hire company that had a contract with Thiess John Holland. Thiess John Holland was the principal contractor. The claim for the personal injuries settled and an agreement was reached that 50 per cent of the common law damages award would be allocated to the employer and 50 per cent would be allocated to the principal contractor.

What ended up being in dispute was that Thiess had put in its contract with People Resourcing a hold harmless clause. That clause basically said that if one of People Resourcing's workers was injured and there was liability to be attached to Thiess, People Resourcing would take on that liability. Basically, they transferred any liability that they may have had for an injury to their subcontractor's workers to the subcontractor themselves.

The court actually validated the use of that hold harmless clause. It also said that due to the wording of the workers compensation legislation in part WorkCover Queensland was actually required to indemnify the principal contractor, Thiess, for that amount even though it was a liability that attached to a contract rather than attached to the employer through any responsibility the employer had to the worker.

Miss BARTON: Sorry, I am trying to get my head around it. In terms of what happened then in that circumstance, the person who was injured worked for People Resourcing who were contracted by Thiess to complete the work, and Thiess had included a legitimate term in their contract which had been upheld by the court which said that if a person was injured, then People Resourcing were responsible for any liability that arose out of that injury?

Ms Hillhouse: Yes.

Miss BARTON: If we are going to now assume that that clause, which has been legitimately held up by a court and deemed valid, is now moot and you cannot have hold harmless clauses—is that what you call them?

Ms Hillhouse: Yes.

Miss BARTON: The contractor would, therefore, be liable. So in this circumstance ordinarily Thiess would be. I do not understand then how Thiess and other contractors would not have additional liability as a result of this legislation now invalidating any hold harmless clauses and I do not understand how they are not going to be responsible for some of that $40 million.

Mr Goldsbrough: In fact, they will be and that is the government's stated policy intention. You have a scenario potentially happening at the moment where you can have a large principal contractor that does not employ anyone. They can have labour hire for the few administration staff they have

got; the architects and engineers are all engaged by different companies. They might not even have a policy with WorkCover Queensland. Under the Byrne decision, which WorkCover is required to follow, you could have a situation at the moment where there is negligence on the part of the principal contractor and because of the hold harmless or the contractual arrangement, WorkCover then becomes liable—it could be even 75 per cent of the claim. WorkCover becomes liable for that payment which is paid by employers within the construction part of the workers compensation scheme through their premiums for an employer that is not actually insured with WorkCover. This cost will go back to principal contractors. This is a complex area because you have civil liability legislation that applies to this and workers compensation legislation and it is where the two meet. Since the Byrne decision, potentially the cost of those claims against principals is flowing down to medium and smaller tiered contractors within the construction industry classification.

Miss BARTON: Just to clarify that, $40 million comes from principal contractors, then?

Mr Goldsbrough: As I said, that is a worst case scenario and it is building; it depends on the year. We estimate about four per cent of claims are impacted in this area. It will depend on the quantum of negligence that is apportioned to the principal versus another contractor. Certainly at the moment if this legislation was passed by parliament, then the cost of all those third-party claims where it has been apportioned back to the contractor would go back to the principal; that is correct.

Mr DICKSON: I wish to clarify a couple of things you said earlier. Was the number of people affected definitely 11? Is that what I heard?

Mr Goldsbrough: That is the worst case; it is an estimate and it is done by the actuaries. Could I ask Mr Shield to comment on that?

Mr Shield: That estimate would not include journey claims and recess claims, which were excluded under the minimum benchmarks, and also where there is a motor accident involved with the injury—that would have been costed under the National Injury Insurance Scheme Queensland.

Mr DICKSON: Yes, it is a separate facility; they can claim from that. That is fine. Also the cost you said re the employer was $16.5 million. I am just going to take up what my colleague was talking about. Roughly that is $40 million. In relation to WorkCover, how much did you used to have to pay compared to where we are going to be after this proposed legislation goes through? X amount would have been allotted to WorkCover; how much will be allotted to private enterprise?

Mr Goldsbrough: The $16.5 million—WorkCover can look at this depending on how these catastrophic injury claims play out. With large employers, it may be apportioned back ongoing in their premium or it can just be treated from the pool. For example, with asbestos claims, because of the latent nature of the disease—someone might front up 40 years after they have been working—it is allocated against the scheme not a specific employer, so it does not affect an employer's premium year on year. It is just part of the bill for the average premium rate. Currently the average premium rate in Queensland is $1.20 per $100 of wages paid, and that is the lowest in Australia.

Mr DICKSON: In terms of retrospectivity, will that come into play at all as far as the implications of this bill are concerned, particularly relating to the legal arguments that were spoken about earlier?

Mr Goldsbrough: In terms of the catastrophically injured workers, the legislation will apply to all injuries after 1 July, which the minister announced in her introductory speech. In relation to the other legislative provisions dealing with the court decisions, I will ask Ms Hillhouse to comment.

Ms Hillhouse: In relation to the amendment for Byrne, it will apply post commencement to any claim that may actually be on foot that is seeking to rely on that decision as long as that claim has not been settled or has not had a hearing or a trial at court.

Mr DICKSON: With the knowledge that you would have, how far would that actually take us back? What would be the furthermost time a claim is still sitting before the court or on the books?

Ms Hillhouse: It could be anywhere up to maybe three years.

Mr DICKSON: Thank you very much. I may have some more questions depending on how the—

Miss BARTON: The reversal of the Byrne decision will impact legal contracts that have been agreed to on the basis of the Byrne decision before the announcement by the government of its intention to reverse the Byrne decision.

Mr Goldsbrough: No—

Miss BARTON: If a contract was entered into two days before the minister announced the introduction of the bill and it included a hold harmless clause and both parties agreed to it in full knowledge of the Byrne decision and its implications for the smaller contractor, if there were to be a

claim, in spite of the contract having been validly entered into before the government even announced its intention to reverse the Byrne decision through amendments to the legislation, this legislation will supersede a contract that has been legally entered into that had offer, acceptance and consideration?

Ms Hillhouse: Yes. After the legislation commences any of those clauses will not have any impact or effect.

CHAIR: Once the legislation—

Ms Hillhouse:—once the legislation commences.

Mr Goldsbrough: Could I add WorkCover will then not have a liability to employers who have not insured for that or who are uninsured.

Mr WHITING: I am continuing on with that issue of the reversing of the effect of the Byrne decision. Just clarifying the effect of that to prohibit the contractual transfer of liability from principals to contractors, you said it would only involve about four per cent of current claims; is that right?

Mr Goldsbrough: I believe that is correct. That is correct, is it not?

Ms Hillhouse: Yes.

Mr WHITING: There are a couple of other questions on a couple of other issues as well which I might go into at the moment. Just turning back, I have looked at the issue of self-insurance as well. I understand here that the bill gives an alternative form of self-insurance security in the form of unconditional financial guarantee issued by general insurers. Am I right in assuming that those self-insurers do have the capacity to reinsure with another insurance agency?

Mr Goldsbrough: Yes.

Ms Hillhouse: The issue of reinsurance is separate to what we are looking at achieving here. At the moment a self-insurer has a requirement to actually reinsure for claims above a certain excess point and it is to protect the self-insurer as well as to protect the scheme more generally.

What we are talking about here is the protections that are offered to WorkCover Queensland and to the scheme overall in relation to any risk that a self-insurer may actually collapse or be unable to fulfil its obligations and that that self-insurer has to return back to the scheme or their workers have to return back to the scheme. What we require is that WorkCover holds a financial security. At the moment that is in the nature of either a cash deposit or a bank guarantee. That is for either the value of $5 million or 150 per cent of their estimated claims liability.

What we are looking at here is actually providing another option for the self-insurers aside from simply a bank guarantee. They could go to a general insurer and be offered a product of exactly the same nature, so that it is irrevocable, unconditional and immediately payable in the event that it is required to be called upon by the scheme in the event that the self-insurer is unable to meet its responsibilities.

Mr Goldsbrough: The other thing we are doing is removing the requirement of $5 million or 150 per cent. The intention there was that the self-insurers came to the government and said, 'We have a lot of capital tied up here that we can use for employing people and so on, and that 150 per cent of the outstanding liability will be adequate to meet that need.' It does free it up. It also recognises the extensive liability that they can potentially take on as a result of the introduction of the NIIS scheme.

Mr WHITING: I think that covers me for the moment on that, but I wanted to clarify something. You said before there are 28 self-insurers here in Queensland.

Mr Goldsbrough: That is correct.

Mr WHITING: Obviously these are all large operators.

Mr Goldsbrough: In the main, yes. There is a group licence with the Local Government Association of Queensland, so you have got bigger and smaller councils in that. Generally, they are larger employers. Yes, that is correct.

Mr BOOTHMAN: Out of curiosity, what are other jurisdictions doing with this same matter? We actually had the NIIS on another committee not so long ago. Western Australia likes to be a bit different so I am curious about what the other jurisdictions are doing in their areas. Can you give us an overview of that?

Mr Goldsbrough: In terms of NDIS, I will ask Mr Shield to respond to that.

Mr Shield: In relation to how other jurisdictions deal with it in the workers compensation sphere, a number of jurisdictions, such as New South Wales and Victoria, already have long-tail schemes so they will have access to benefits for injured workers which are considered to be

equivalent to what is available for treatment, care and support payments under this bill. Jurisdictions such as Queensland, Western Australia and Tasmania are considered not to meet the minimum benchmarks for workplace accidents. The issues that impact on that might be the ability to commute your entitlement to benefits into a lump sum payment or into lump sum damages, or there might be a capping of the medical expenses that you are entitled to. That is the analysis that has been done at a national level. There will be those variations between jurisdictions as to the mix of benefits that are available and the extent to which particular jurisdictions will meet the benchmarks.

Mr Goldsbrough: Can I add to that. In terms of the care of the catastrophically injured, we very much looked at Victoria because they have had a longstanding arrangement between their Traffic Accident Commission, TAC, and WorkSafe Victoria where the care and support was provided by TAC which had the skilled people to do it. That was one of the considerations that we took up from other jurisdictions in the design of this arrangement.

Mr BOOTHMAN: Going back to the member for Buderim's question about the retrospective nature of the legislation, how many cases would be involved in that three-year period? You probably do not have the answer now but it would be nice if we could get the answer on notice.

Mr Goldsbrough: Do you mean the number of catastrophically injured over three years?

Mr BOOTHMAN: Yes.

Mr Goldsbrough: What we have done is based it on actuarial estimates. We can come back to you with the actuarial estimates for the last three years but, on average, worst case, it is 11 claims per year. It is substantially below the motor accident insurance scheme. We would be looking at around 30, 33 claims but we will come back on that.

Mr WILLIAMS: We were looking at the greater than the 50 per cent contributory negligence factors. Can somebody elaborate on that a bit more?

Mr Shield: The provisions around contributory negligence are included as a safeguard for the worker's election to opt out of receiving treatment, care and support statutory payments for their lifetime. The intention around that is that, if there is a finding that there is contributory negligence by the worker which will have the impact of reducing their entitlement under the other heads of damage by 50 per cent or more, then they will be excluded from opting out and taking the treatment, care and support head of damage to avoid the situation where that reduction would have an impact on the amount of damages that would be available. It ensures that there is an amount of funding available to meet the injured worker's treatment, care and support needs over their lifetime by keeping them in the statutory scheme.

Miss BARTON: Can I clarify that because I was trying to get my head around this with the original NIIS in its first instance. If you are found to have a minimum of 50 per cent contributory negligence, you are not allowed to seek a lump sum per this bill; you are required to stay in the lifetime care and support model. Is that what you were saying?

Mr Shield: For the treatment, care and support head of damages, then any election you have made to seek that head of damages will be taken not to have been made, but you can still claim for damages for other heads of damage.

Miss BARTON: Like economic and non-economic loss.

Mr Shield: Yes, general damages, pain and suffering.

Mr Goldsbrough: If I could just point out one difference in our bill to the other scheme. When the minimum benchmarks were considered nationally, the one issue that was ruled out was where a worker acts wilfully and is catastrophically injured. Under the minimum benchmarks, they are excluded. They are picked up by the NDIS. I wanted to point that out. That is the one difference. Again, this comes back to employer liability and so on, which you do not necessarily have in a motor accident insurance scheme, so wilful action is excluded.

CHAIR: That is where they have willingly gone out and injured themselves purposefully for whatever reason.

Mr Goldsbrough: The rare situations it occurs.

CHAIR: They would be excluded. There would certainly be the need to provide sufficient proof and evidence to substantiate that.

Mr Goldsbrough: Absolutely.

Ms Hillhouse: It would not include where they have engaged in that behaviour at either the express or implied direction of their employer as well. It does not cover that situation.

CHAIR: Sure.

Miss BARTON: Turning to page 5 and 6 of the explanatory notes, I note that in terms of the consultation and the industry stakeholders it states the Law Society, the Bar Association and the ALA. In terms of the employer groups there is CCIQ, AIG and the Housing Industry Association. Was there any consideration given to consultation with other entities, like the Master Builders Association?

Mr Goldsbrough: Historically, we talk to them on these things as we do most employers. What we needed was a manageable stakeholder group in the sense that you did not have a roomful of people to work through some of these issues. I suppose the issue you are alluding to again is the Byrne decision. We have had extensive discussions since pre 2010 in relation to third party indemnities and liability in those areas with the Master Builders.

Miss BARTON: I appreciate this might take some time to put together, but are you able to provide some detail of the ongoing discussions you have had with entities?

Mr Goldsbrough: We can certainly provide detail of the body of work and the submissions that were done to the 2010 and 2013 workers compensation scheme reviews. That is certainly available.

CHAIR: Can I very quickly make a ruling here. Under schedule 8 of the standing rules and orders of parliament, if that information has been made public, you certainly can detail that. If it is in confidence, then you will not be able to detail that at all.

Mr Goldsbrough: Thank you, Chair. That is why I referred to the two specific reviews because there is public information on those. I am happy to provide that information.

CHAIR: Just while I am making a ruling, there was a previous question on notice as well with regard to information about workers compensation whether they would pursue a further appeal. Again, I would use the same schedule 8 with that. If that information has not been made public, you will not be able to provide that.

Mr Goldsbrough: Thank you, Chair.

Miss BARTON: To clarify, the reason that organisations like Master Builders were not consulted on this particular bill is that you did not want too big a working group that would become unworkable?

Mr Goldsbrough: That is right. Usually we will approach different groups to see who is interested and so on to participate in those. Generally, the construction industry is only ever interested in its particular issues, as other groups are only interested in theirs. What we normally do in reference groups is that we will go to those that have the broadest coverage in them. For example, at the moment we are doing some consultation and we have a stakeholder group on a new medical certificate for the workers compensation scheme so we have gone to groups like CCIQ, Ai Group and the doctor groups.

Miss BARTON: Did you ask Master Builders whether or not they would be interested in being part of the stakeholder reference group?

Mr Goldsbrough: In this instance, I do not believe we did but I will check that and come back to you.

Miss BARTON: You talked about the 2013 review that the Finance and Administration Committee did in the last parliament. I am happy to provide some more detail if I need to but one of the recommendations that came out of that—and I imagine, Paul, you have longevity in this area and experience in this area, so to speak—was recommendation 32 which is on page 223 of that report. It says—

The Committee recommends that the Attorney-General and Minister for Justice investigate the financial implications of the suggested alternative methods offered before addressing this anomaly.

That was with respect to issues with host employers and principal contractors. At the time the report was considered by the parliament and when it was part of the subsequent legislative changes that were then considered by the parliament, there was bipartisan support for that recommendation from both the then government and the then opposition. Has the department had a chance to consider what economic modelling or advice there was with respect to the changes that are being made?

Mr Goldsbrough: That matter relates to a previous government, but what I would say is that the proposition that was floated in 2013 was for WorkCover to indemnify those employers that had a policy of insurance with them in this regard. They had to be an employing entity that had a policy of insurance that had a hold harmless clause with another contractor. What the Byrne decision did was

go much broader than that, as I previously said. It opened it up so principal contractors that did not even have a policy of insurance with WorkCover could be potentially indemnified by WorkCover through the contractual arrangement with the subcontractor. The ground rules changed dramatically.

Miss BARTON: I only ask because at the time the then opposition, which are now in government, had given their bipartisan support for the recommendation. Given that they had publicly announced their support for it, I wondered whether or not economic modelling had been done—given that they had made a public statement with respect to it.

Mr WHITING: I have a question on the consultation as well. I see here that the Housing Industry Association was consulted. I am assuming that that group would include a number of different organisations such as plumbers, electricians and perhaps Master Builders. How broad is that group, the Housing Industry Association?

Mr Goldsbrough: It is a wideranging group. It covers a range of tradespeople in single unit dwelling construction and domestic housing, which is similar to the Master Builders, who also have coverage of that area. It is quite broad. They pick up electricians, concreters, chippies and so on.

Miss BARTON: Following on from that, you would acknowledge, though, that entities like Master Plumbers' Association, the Master Electricians association and the Master Builders Association are separate entities that are not represented by the Housing Industry Association.

Mr Goldsbrough: That is correct.

Miss BARTON: And they, of their own accord, particularly represent their members' interests.

Mr Goldsbrough: That is correct. At times we have, for example, the Master Builders on a consultative group or the Master Electricians that we consult regularly, and you do get a sense of the impacts across the industry by talking to any one of those groups.

Mr DICKSON: Relating to the consultation that took place and the people who have also not been consulted, was there any push back at all from the industry relating to the cost impact? What did they have to say?

Mr Goldsbrough: In relation to NIIS?

Mr DICKSON: Relating to the new cost impact that will be imposed upon the building industry as a whole.

Mr Goldsbrough: Certainly the Master Builders have indicated to me that they have some concerns about the impact.

Mr DICKSON: They did not go through the public consultation, though, did they?

Mr Goldsbrough: No.

Mr DICKSON: How did you get that information?

Mr Goldsbrough: We talk to groups all the time. Master Builders were not formally consulted in the actual build of the legislation. There was some consultation with them when we were starting to form the policy late last year and then we have spoken to them subsequent just prior to the bill being introduced into the House.

Mr DICKSON: What sort of pushback was that? What did they have to say?

Mr Goldsbrough: At that stage it was just informed. Naturally they raised concerns at both occasions, as I said, with the complexity between the civil liability and how the workers compensation laws come together. It is a complex area and it is an issue around the country.

Mr DICKSON: But the cost itself, the imposition of an extra cost? They did not talk about that?

Mr Goldsbrough: That was not—

Mr DICKSON: Not worried about it?

Mr Goldsbrough: I am not sure that they were not worried about it, but I cannot recall that being a key point of the discussion.

Mr DICKSON: Did any other people who did go through the consultation process have any concerns about extra cost?

Mr Goldsbrough: Naturally what you do is you put forward the costings, as we have of the $16 million for the NIIS. People will see that as a big sum of money. In the context of the scheme it is not a big amount of money. I am not sure what you are actually asking.

Mr DICKSON: I am just trying to ascertain whether or not people are very supportive of this or they are concerned with an extra cost impost. We cop it regularly. We have gone through a couple of bills in recent times, whether it was this committee or the health committee that I was on previously a

few weeks ago. When there is an extra cost people either say, 'It is a great idea. We are going to get a whole lot of benefit from this,' or, 'Gee, that is going to make things tough and business is doing it hard at the moment. Why?'

Mr Goldsbrough: My comment to that would be generally in terms of the National Injury Insurance Scheme the groups that we have consulted have been quite positive that this is the right thing to do. As you see from consultation with groups like the Chamber of Commerce & Industry Queensland and the Australian Industry Group, it is fair to say those people representing the principal contractors and people who use many hold harmless clauses at the moment have that liability absolved by WorkCover or taken up by other employers in the scheme and I would expect that they will not be happy about seeing that transfer. As the Master Builders have said to me in recent days, they would be keen to look at what some of the alternatives are in terms of how we can provide coverage or what is available to those people.

Mr DICKSON: Paul, thank you very much for your time.

Miss BARTON: Following on from what Steve said with respect to CCIQ and AiG, are you able to give us their general feedback as part of the stakeholder reference group in terms of whether or not they were supportive of the bill as part of the stakeholder reference group?

CHAIR: They will probably submit, I would imagine.

Mr Goldsbrough: I would feel very uncomfortable to speak on their behalf.

Miss BARTON: We can ask CCIQ and AiG themselves. You mentioned in your opening remarks or at some other point what the average workers compensation premium is in Queensland. I think it is $1.20 at the moment. Is that $1.20 per 100 expected to change as a result of these provisions?

Mr Goldsbrough: If the worst case scenario happened and you had an increased expenditure of $16 million in the next year, that is the equivalent of adding one cent to the average premium rate—around one cent. Technically it would jump up to $1.21. What the WorkCover board's decision would be then is do we absorb that given we have significant reserves or do we increase the average premium rate. That is a board decision down the track and they make those decisions in about May of each year.

Miss BARTON: I might suggest as a committee that we get them in to talk about it, but I understand as a result of government decisions last year the percentage of solvency that they have is significantly reducing over the next five years and the reserves themselves will not be, in five years time as a percentage, what they are today as a result of government decisions with respect to their solvency. Is that correct?

Mr Goldsbrough: My understanding is that the board's solvency levels are high. They are higher than the budget estimates. The common law claims are well below budget estimates which, of course, has driven some solvency in the scheme. As you say, that is probably a more appropriate question directed at WorkCover. What I would undertake to do is to seek to get some information from the WorkCover board on that, in confidence or confidential because it is commercial-in-confidence information, and provide that to the committee so that the committee can reassure itself of WorkCover's financial position.

Miss BARTON: Thank you.

CHAIR: Thank you very much for your time today. There is that ruling that I made regarding that first question if it is not public knowledge. Then there was another one with regard to numbers, the retrospectivity with regard to those three years.

Mr Goldsbrough: Then there is the financial position of WorkCover.

CHAIR: Yes, subject again to confidentiality. Thank you very much. I thank the officials from Queensland Treasury. A transcript of this briefing will be published on the committee's web wage in due course. I declare this briefing of the Education, Tourism, Innovation and Small Business Committee closed.

Committee adjourned at 12.54 pm