Speech by

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MEMBER FOR BRISBANE CENTRAL

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WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL

Ms GRACE (Brisbane Central—ALP) (8.06 pm): I rise to speak in support of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2010. Throughout my career of 27 years in the union movement, workers compensation was something that I had been involved in and I never considered for one minute giving up my role in policy formation and implementation. When it comes to providing benefits for workers injured in the workplace and providing entitlements to affected families, the union movement and Labor governments in Queensland have a proud history. In 1916, it was a TJ Ryan led Labor government that introduced Queensland's first compulsory workers compensation scheme, which was based on no fault and access to common law rights and entitlements. It is interesting to note that, at the time, my understanding is that the opposition voted against such a bill being introduced into this House. Yet if you listened to the member for Southern Downs you would think that they had been for this legislation since 1916.

But the members opposite have a legacy in workers compensation. We do not have to go back too far to know exactly what they intended to do with workers compensation entitlements. I remember being elected assistant general secretary of the QCU in 1995. One of the first things that hit my desk was the then Borbidge government's draft changes to the workers compensation act. They were not about mucking around with common law; they were about knocking it out completely. At that time they went to an election promising to maintain common law. However, when they got into power, I give credit to the member for Gladstone because she held them to that promise they made during the election campaign and stopped them knocking out common law. I am sure she will remember that, because the then government had negotiations with the member for Gladstone. That is their legacy—not about trying to fix it up but about knocking common law out completely—and they were only stopped at that time because they did not have the majority. Yet they come in here crying about what we are doing here based upon their legacy.

But that was not the only thing they tried to do. They changed the definition of worker, restricting the number of workers who had access to common law. They restricted the definition of injury where employment had to be the major significant factor. That absolutely smashed the number of workers who had entitlements to workers compensation. Unless a person was able to prove that work was the major contributing factor, it was such a hard test that not many workers went through. I see the member for Kawana smiling over there.

Mr Bleijie: I was just thinking go to the future. Let's talk about the future.

Ms GRACE: He is a legal person and maybe he understands exactly what it means. I take the interjection from the member for Kawana about looking to the future. We were given a history lesson by the member for Southern Downs, and I think it is about time that we gave a history lesson and gave the facts when it comes to the opposition's intentions in relation to workers compensation. Not only did it change the definition of injury, it then reduced the income that workers get from 39 to 26 weeks. It introduced self-insurance to employers of 500 or more employees but without any sort of occupational health and safety management system whatsoever. The member for Southern Downs comes into this House and goes on

about occupational health and safety. Those opposite allowed employers to self-insure without any record of their occupational health and safety systems. That is what those opposite introduced in 1996. It was a disgrace. We changed it.

What the opposition then did was insidious. It tried to knock out journey claims altogether. Once again, because it did not have the majority, that was knocked out as well. What was put in was that they had to access journey claims from the most convenient, direct and shortest route. Its intention was to do two of the most hideous things to workers under workers compensation: knock out journey claims and knock out common law. That is the history lesson that we have in this House. That is what those opposite should be talking about, not giving us a history lesson on TJ Ryan.

Let us talk about the future. I am pleased that this bill continues these principles of a no-fault statutory scheme together with maintaining the rights of injured workers to pursue common law claims and entitlements. We are the only state in Australia that still maintains common law rights. I am proud to have been part of ensuring that this has been maintained over the many years that changes have been made to the WorkCover legislation. If one looks at the history there have been many changes. I see some of the staff from the department on the fringes of the House. We have had many meetings in the past years over changes to workers compensation. However, I want to focus on the future of the Queensland workers compensation scheme and its sustainability in good times and, of course, in bad. When I say that, I acknowledge that the global financial crisis represents the very worst of times and hopefully we are putting that behind us at last. But the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2010 sets up the Queensland scheme for a strong future because it addresses issues associated not only with the economic woes of Wall Street and beyond but also increases in common law claims and the cost of those claims that require laws to be updated and improved from time to time. We know that we have had many instances where we have been in this House because of this situation occurring from time to time. The bill before us does just that and ensures the scheme remains sustainable well into the future. It offers protection for workers and their families, but it also offers a fair and balanced approach to compensation issues that, along with the global financial crisis, could threaten WorkCover Queensland's bottom line to some extent if action had not been taken. It was not in the exaggerated dire strait as the member for Southern Downs pointed out. The Deloitte review found WorkCover was experiencing a rise in common law claims and payouts and that premiums were not keeping pace with this growth. These factors resulted in a loss of $381 million before tax in 2007-08, followed by a loss of $894 million in 2008-09. These are not small figures. However, sound board management over the last decade had built up a healthy reserve and that was used to absorb these losses. Obviously the situation could not be allowed to continue. I must stress that the scheme remained fully funded as at 30 June 2009 with a positive funding ratio of 127 per cent, the highest in the country; not the exaggerated position as outlined by the member for Southern Downs.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill harmonises damages arrangements with the Civil Liability Act 2003. This will see a capping of payout amounts and changes to common law damages, particularly liability and contributory negligence. General damages, pain and suffering will be capped at approximately $300,000 and damages for economic loss will be capped at three times Queensland ordinary time earnings or, currently, $176,607. This will be the maximum annual earnings a court will be able to take into account when calculating loss of future earnings.

Although I accept that this is not the ideal situation, and I accept that no-one really likes caps, I believe that, in view of the need to improve the workers compensation WorkCover fund, these amendments present a fair and reasonable outcome. WorkCover's actuary, PricewaterhouseCoopers, says that these measures should reduce the frequency of common law claims and reduce the size of settlements paid, particularly for minor or less severe injuries or lower end of the scale injuries, and benefit more seriously injured workers, which is really what we are all about. Injured workers continue to receive fair benefits through the unchanged statutory scheme. I also note quantum and liability restrictions will apply if a worker pursues a common law claim, with a court able to award costs against a worker where a claim is dismissed. My understanding is that this is actually correcting an anomaly which exists under the current bill.

Importantly, the bill before us addresses the issue which has arisen since the decision in the Queensland Court of Appeal in Bourk v Power Serve Pty Ltd & Anor. This decision effectively meant that if a worker is injured at work and there is a casual connection between the injury and work the employer has breached its duty under the Workplace Health and Safety Act 1995. Common law claims increased after this decision based on the perception that strict liability attaches to an employer if a work injury has occurred regardless of fault, which was not the government's policy intent. The amendments address this. Workers need to show that an employer breached a duty to take precautions against a risk of harm that was foreseeable, not insignificant, and in circumstances in which a reasonable person would have taken the precautions.

Another sustainable change that should ensure the future financial strength of the fund is the fact that the bill also increases employer excesses from 65 per cent of Queensland ordinary time earnings to 100 per cent or one week of compensation. I believe that this is a win-win situation. I think that employers will take notice when they actually have to put their hand in their pocket for the first week of workers compensation, thus hopefully changing the culture to improve worker health outcomes because it is an incentive to employers to improve injury rates and cut their costs.

A financially sound WorkCover Queensland is vital for all Queenslanders and our economy. Therefore, in conclusion, I wish to make three important points regarding this bill. Firstly, the bill maintains access to common law damages for all injured workers, a uniquely Queensland entitlement, whilst maintaining a no-fault, generous statutory scheme. Secondly, the bill balances good benefits for injured workers with affordable premiums for employers, which are currently the lowest premiums in Australia and which could not be sustained for the viability of the fund. We had to increase the premiums. Everyone was saying they were far too low. I must confess that when we brought them down to that level when I was QCU general secretary I said we had gone too far. I said that we would be here trying to amend it. It saddens me that my words actually came true.

Mr Springborg: Who said that? You?

Ms GRACE: I said that and I think the member for Southern Downs may have said the same. Thirdly, I welcome the proposal to further review the scheme in two years time to be completed by 31 December 2012 by which time the effects of the GFC should have diminished significantly and the impacts of implementation of amendments in line with the Civil Liability Act will be known. I really do welcome a review in two years time.

I commend the minister and staff, together with all members of the stakeholder reference group, particularly union and employer organisations, who gave so generously of their time and commitment to find a solution and for participating in an open and cooperative approach to ensuring that this state maintains a strong, viable and fair workers compensation scheme, a WorkCover scheme in Queensland that leads Australia. I commend the bill to the House.