Speech By

Hon. Grace Grace

MEMBER FOR BRISBANE CENTRAL

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WORKERS' COMPENSATION AND REHABILITATION (NATIONAL INJURY INSURANCE SCHEME) AMENDMENT BILL

Hon. G GRACE (Brisbane Central—ALP) (Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs) (5.16 pm), in reply: I thank my colleagues for their valuable contributions on what is a significant piece of legislation. This is the next stage in a process of significant social reform for Queensland which commenced with the establishment by the Palaszczuk government of the National Injury Insurance Scheme Queensland for motor vehicle accidents from 1 July 2016.

The bill implements the NIIS for workplace accidents to provide catastrophically injured workers with a statutory entitlement to treatment, care and support payments basically for the rest of their life if need be. This means that workers who have suffered a catastrophic injury will have access to all the medical treatment, rehabilitation and care they need to go about their daily activities and participate in their community in a way that maximises their independence.

Importantly, the scheme retains fundamental common law rights by enabling workers who are not at fault for their injuries to elect to opt out of the statutory NIIS. Providing these participants meet certain preconditions and safeguards, they will be able to seek a common law lump sum payment for the costs of treatment, care and support. This option will not necessarily be the most suitable one for some participants. When an injured worker does not opt out of the NIIS they will continue to receive treatment, care and support for life. There is absolutely no indication that a worker will not receive benefits under anything proposed in this bill; I want to make that absolutely clear.

In relation to other elements of the bill, the bill will provide self-insurers with greater flexibility and choice with regard to financial securities and, for smaller self-insurers, the opportunity to trial going back into a premium-paying arrangement with WorkCover Queensland at no risk of not being able to return to self-insurance if this does not prove viable. It is very good for local governments in particular because they will benefit from this amendment. We are giving them the opportunity to opt in, but if they find this is not for them they can opt out. This is a very good item in this legislation.

The bill also reverses the effect of the Supreme Court decision in Byrne v People Resourcing by voiding the effect of hold harmless clauses in contracts that allow negligent third parties—these are principal contractors and host employers that are found to be negligent for the injury caused to the injured worker when a subcontractor or labour hire company has their worker in their workplace; these are negligent principal contractors and host employers found to be contributorily negligent—to shift the cost of liabilities arising from their own negligent actions onto the books of WorkCover premium-paying employers. That cannot continue. I will explain why. I advise the member for Broadwater that the reversing of the Byrne decision has absolutely nothing to do with the NIIS legislation.

Mr Bleijie: Why is it in the bill?

Ms GRACE: It is an amendment that is required to be made to the workers compensation legislation. It has to be part of this bill to correct this particular aspect. That is why it is in the bill. If you do not understand that then you should not be in this House.

Mr DEPUTY SPEAKER (Mr Elmes): The minister will direct her comments through the chair.

Ms GRACE: Members opposite believe that the Byrne decision and its resulting increase in workers compensation premium costs is fair and reasonable. The government disagrees. Negligent employers should be held liable and should not be passing on their liability to premium-paying employers. It just should not happen.

Mr Bleijie: They want to meet with you to work out a solution. They want a solution.

Ms GRACE: I agree. Be careful what you interject, member for Kawana. If they want a solution I will work with the MBA and talk with them. There will be a way we can do this. We will cover it. If we do not do this now, the Byrne decision will have significant implications for those left in WorkCover. Unfortunately, the member for Kawana does not understand. I will be at pains to explain it for him.

The bill also makes changes to the way statutory compensation payments are indexed to Queensland ordinary time earnings to ensure that some of the most vulnerable people in our community—injured workers and the dependents of workers killed at work—are not left out of pocket.

I now turn to the matters raised during the debate. I begin with the amendments to implement the National Injury Insurance Scheme for workplace accidents. I note and welcome the fact that the opposition members have expressed their support for introducing no-fault lifetime care and support for those workers who are catastrophically injured at work. This is precisely what the bill does. I thank them for that.

It has been a priority of the Palaszczuk government to ensure that the important social reforms represented by the National Disability Insurance Scheme and the National Injury Insurance Scheme are implemented for the benefit of Queenslanders whose lives are significantly impacted by disability and catastrophic injury. Further, it is the Palaszczuk government that is ensuring the National Injury Insurance Scheme will be in place from 1 July 2016 so that the costs of providing this additional workers compensation benefit are borne by the workers compensation scheme, as they should be, rather than being a cost to the Queensland government and the taxpayer.

There has been widespread consultation with a range of stakeholders about the best model for implementing the National Injury Insurance Scheme for both motor vehicle and workplace accidents. I thank all stakeholders for their vital contributions. We acknowledge that stakeholders have different views—and strongly held views—on the preferred option for implementing the NIIS. However, I must admit that I am a bit puzzled about the position of the LNP on this question. The LNP claims to be the party of freedom of choice. Unfortunately, by opposing the hybrid model, which is implemented by this bill, the LNP seeks to deny freedom of choice to these most vulnerable members of our community.

Let us be clear on what is being proposed. The first point is that the bill proposes a no-fault lifetime care and support scheme. This means that all workers, regardless of fault, are entitled to lifetime treatment, care and support under the NIIS if they suffer a catastrophic injury as a result of a workplace accident. If the employer is found to be at fault, the worker has a choice. They still have the option of staying with the statutory scheme—no ifs, no buts. The worker is entitled to coverage under the NIIS for lifetime treatment, care and support. What is more, the worker can keep their statutory coverage for lifetime treatment, care and support and still claim common law damages for other heads of damages such as pain and suffering. Under the hybrid model, that person also has the option of choosing to exercise their common law rights and seek a common law lump sum for their treatment, care and support.

All we are saying is that workers who find themselves in this extremely difficult situation will have a choice, similar to the NIIS move for motor vehicle accidents. The consequences of catastrophic injuries are very wide. They affect injured workers in a variety of ways. As the member for Townsville said last night, we believe that those who are fully capable of exercising personal choice about the best option for providing their care and support should have the freedom and flexibility to exercise that choice. That is what this bill does.

We recognise the risks inherent in some lump sum recipients managing their lump sum money for the remainder of their lives. That is why we have included a number of safeguards around the awarding of lump sum payments to protect vulnerable workers. These include not enabling access to treatment, care and support damages if there is 50 per cent or more contributory negligence; and requiring the court to approve the worker's decision to opt out of the statutory treatment, care and support payments.

Consistent with the NIIS (Queensland) Act 2016, this bill also includes a re-entry provision for those workers whose lump sum payments are found to be genuinely insufficient to meet their ongoing treatment, care and support needs for the rest of their lives. Even stakeholders who prefer the non-hybrid model have stated that they welcome the safeguards in this bill designed to protect against the watering down of lump sums by some claimants. I emphasise again that, while there is a difference in views about the preferred model, there is bipartisan support for the scheme as an important social reform to provide a safety net for the most vulnerable Queenslanders living with catastrophic injury.

I now turn to a number of statements made by the member for Kawana. There was the usual mixture of diatribe, inaccuracies and mindless repetition, and always with a bit of union bashing thrown in for good measure. It was nothing if not predictable. In relation to the statement by the member for Kawana about improvements in workplace health and safety reductions in serious injury rates, I can advise that the data claimed by the member for Kawana for the period 2002 to 2012—that is 10 years immediately prior to the March 2012 election—relates to all of the efforts of the previous Labor government. We are proud of the 18 per cent reduction, so I thank the member for Kawana for pointing out the excellent work done over the past decade by the previous Labor government, because they are figures that reflect that government's work. I thank him very much.

The significant improvement in the workers compensation reforms addressing common law paved the way for significant workers compensation scheme improvements and cost reductions. I acknowledge the role of the then minister, the Hon. Cameron Dick. He played a significant role in the 2010 reform process. These reforms were achieved without removing or reducing an injured worker's rights or entitlements. This can be compared to how the member for Kawana acted when in charge of Queensland's workers compensation scheme. The member for Kawana sung the virtues of the former government in reducing the average premium rate to $1.20 per $100 of wages paid. What he failed to do was say that this reduction was on the backs of injured workers and the removal of their common law rights. For someone who talked a lot about consultation last night, I bet there was not much public consultation undertaken when those common law rights were taken away from Queensland workers—or when 14,000 public servants were sacked, for that matter. I believe there was zero consultation with regard to those issues. We have obviously reinstated what was taken away, and we are very proud to do that.

In relation to the statement by the member for Kawana that the contractual indemnity is a longstanding industry practice, I am advised that this practice is not currently widespread. In fact, I spoke to MBA last night following those comments. The Byrne decision is a serious issue and I turn to that issue now. The Byrne decision came down in October 2014 and it said that hold harmless clauses are now able to be used and are legally binding.

Mr Bleijie: As they were.

Ms GRACE: Yes, after the decision in 2014, and they proliferated under the watch of the member for Kawana, and what is happening now is that major principal contractors—the big end of town—are putting these clauses upon other subcontractors down the tier and it means that they are responsible for common law action. Let us say a subbie electrician is on a site. In general average terms my understanding is that they will find the principal contractor 75 per cent responsible for the common law and the employer 25 per cent. That means that that employer picks up 100 per cent of the liability and the principal contractor gets away with 75 per cent.

Mr Bleijie: For which they're insured. They're insured. That's what insurance is for.

Ms GRACE: I take that interjection from the member for Kawana. The member for Kawana says, 'They're insured,' but who pays? He raised the issue about who pays. From a party that professes to be the champions of small business, that is who is going to pay and I will explain it very clearly because it is a very important issue that is being misunderstood by those opposite and he may want to check with his small business constituency. The Chamber of Commerce & Industry Queensland supports the proposed amendments. In fact, the MBA supports the proposed amendments. They know that this cannot go on because eventually it will hit other subcontractors. It will go down the line. They want to see something put in place where principals can obtain insurance coverage because it costs too much outside in public liability land. That is the issue here. Let me tell members who is going to solve that problem for them: it will be the Minister for Employment and Industrial Relations—me—because we are working with WorkCover, with the MBA and with the industry to bring about insurance coverage that will cover them in those instances, but not with the Byrne decision. The MBA even says so. The CCIQ says so. It said—

Since the Byrne decision, the costs of claims against principal contractors has in turn been passed on to small and medium operators and subcontractors, thereby exposing those smaller businesses to significant financial risk to which a principal contractor is ultimately contracting out of.

That is what we are trying to fix here. This is a significantly important issue and I plead with those opposite to understand the significance of what we are aiming to do here.

The Byrne decision has a financial impact on WorkCover and all insured employers. On an individual level, all employers' premiums have a $175,000 cap on common law damages that is attributed to the policy per claim. Then there is the rest of it—that is, the remaining damages which they may have been able to claim from the insurance companies. It is a bit like having a motor vehicle accident going to work and you are not at fault at all and you are injured. WorkCover covers you and pays and it then goes after the other vehicle's insurance company because it was their fault. It would be like that vehicle holding themselves harmless for the damages caused to that injured worker. It is the same principle which means that all employers in the premium pool have to pay for those additional costs, because once $175,000 is put against that individual employer's claim the rest of it is distributed amongst the other premium-paying employers.

A government member: Small businesses.

Ms GRACE: Small and medium sized businesses. It means that WorkCover cannot claim. Let us say that someone is awarded $1 million for a catastrophic injury or any injury. They put $175,000 against the premium-paying employer and the rest of the money, if they cannot get it from the principal contractor's public liability insurance, is going to be spread amongst the rest of the employers. That is what the Byrne decision does. Those opposite do not understand it and I plead with them to understand that this is a serious matter and to oppose this will cause significant costs to not only WorkCover but also the very employers that those opposite claim to represent. I implore those opposite to understand what the Byrne decision means. The MBA supports this. Other small businesses support this. The only people who do not support this are the LNP. The legally trained opposition spokesperson in IR does not understand the implications of this decision. I suggest to the member for Kawana that the next time I offer to fully brief him he takes it up, because, as we have seen in this House, those opposite do not understand it.

The member for Broadwater then suggested that workers are not going to be covered under this legislation because of the Byrne decision, which has absolutely nothing to do with the NIIS. I point out that the member for Broadwater knew full well that this was not the case because the member asked the same question to the CEO of WorkCover during a public hearing on the bill of the Education, Tourism, Innovation and Small Business Committee. In response to the question about whether workers would be covered, WorkCover CEO, Mr Tony Hawkins, stated—

No, they will still get the 100 per cent from us.

He confirmed that they will be 100 per cent covered because WorkCover will pay it. If they do not recoup the difference of the amount that they put against the employer, they spread it across all of the premium-paying employers in that industry which puts up their premium rate. That is what they do and those at fault walk away scot-free. I might sound passionate about this issue because I am passionate about it, because if we do not do this it will be the tip of the iceberg. If this does not go through, this could have significant ramifications not only because WorkCover has to pay those additional costs but it will have no ability to claim it from principal or host employers, making it much more expensive and putting the fund, which is the best in Australia, at risk. This side of the House will not let that happen. We will not stand for it.

Consistent with the recommendations of the committee, there will be broad consultation. Last night I rang Grant Galvin from the MBA. He is well aware that we are on the path to putting in place a system which can cover these principal contractors and host employers. We do not want to see these hold harmless clauses being used as a weapon for shifting risk and then it can continue on down because, at the end of the day, the people whom those opposite propose to represent will be those paying the bill. If there is a way that those opposite can counteract what I am saying, I invite them to do so, because they do not understand the Byrne decision even though I am explaining it to them as best as I possibly can. By implementing the National Injury Insurance Scheme for workplace accidents in Queensland, this bill continues to build on the Palaszczuk government's significant reforms providing greater support and opportunities for the most vulnerable members in our community. The bill is based on the principles of choice, flexibility and independence.

In the time left I want to address the issue of retrospectivity. There is nothing retrospective in this bill. What has happened has happened. We are not claiming that WorkCover can go back and interrupt any cases that have already been decided. That is what retrospectivity is.

Mr Bleijie: That's not true. Look at page 5 of your explanatory notes.

Ms GRACE: The member is incorrect; I take the interjection. He still does not understand the bill. The member for Kawana still does not understand the bill and it will not be going back. What will happen is that it will occur from the date of its operation and there is no retrospectivity. I can guarantee the member for Kawana that that is not the case and it is not included in this bill. I can advise the member for Kawana and the member for Broadwater that claims which have been finalised before commencement will not be affected by the amendments. As such, they will not have retrospective application to previous claims where issues of liability and contribution have already been determined. They are the ones with regard to retrospectivity.

Mr Bleijie: What about not finalised? Yes, you won't answer that—take that interjection.

Ms GRACE: If something is not finalised, it cannot be retrospective.

Mr Bleijie interjected.

Mr DEPUTY SPEAKER (Mr Elmes): Order! Member for Kawana, you are being repetitive.

Ms GRACE: I remember that during estimates the member was trying to get an interpretation of an act from the deputy director-general. He is a legally trained person. Most of the questions he asked were to try to get an interpretation of sections 423 and 424, because he still did not understand them. He cut that questioning short because he was advised that he had been briefed about that particular section. He quickly changed the subject. Obviously, he was suffering from amnesia or something like that.

This bill before the House is yet another part of Labor's proud tradition of progressive social reform in support of those who need it the most. I ask members to understand the significance of the Byrne decision. I implore those opposite to support that amendment. It is crucial for the wellbeing and ongoing sustainability of WorkCover. I commend the bill to the House and thank everyone for their contributions to the debate.