Speech By

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MEMBER FOR TOWNSVILLE

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

Mr STEWART (Townsville—ALP) (7.53 pm): This evening I rise to speak in support of the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016 as chair of the Education, Tourism, Innovation and Small Business Committee, whose responsibility it was to examine the bill in detail. Firstly I want to acknowledge the many groups and organisations that made submissions and those who spoke to the committee at the various public hearings over the duration of the inquiry. I also want to thank members from both sides of the House who are members of the committee and the secretariat staff for their involvement in the examination of the bill.

This bill has been introduced to implement a workable and sustainable system for compensation payments for lifetime treatment, care and support into Queensland's workers compensation scheme and to implement the National Injury Insurance Scheme for workers who are catastrophically injured in workplace accidents connected with Queensland. In 2013 the Newman-Nicholls government signed a national heads of agreement with the Commonwealth which committed Queensland to either implement a lifetime care and support scheme for workplace accidents to meet the national minimum benchmarks or be 100 per cent responsible for the costs of people who sustain catastrophic injuries from 1 July this year.

On 21 March this year the Education, Tourism, Innovation and Small Business Committee tabled in the Legislative Assembly its report on its inquiry into a sustainable model for the implementation of NIIS for motor vehicle accidents. The committee recommended that the government consider the National Injury Insurance Scheme for motor vehicle accidents serving as a platform for other proposed National Injury Insurance Scheme arrangements in Queensland.

Consistent with the committee's recommendation, this bill proposes arrangements for treatment, care and support payments within Queensland's workers compensation scheme which align with the arrangements under the National Injury Insurance Scheme Queensland for motor vehicle accidents, established under the NIIS (Queensland) Act 2016. These arrangements involve extending existing no-fault statutory compensation entitlements for injured workers who sustain serious personal injuries on or after 1 July this year while retaining common law rights to claim damages for treatment, care and support of injured workers who can establish their employer was at fault in causing their injury.

I do not doubt for one moment that there is not a person in this room who does not support the long-term care and treatment of workers catastrophically injured while performing their job. There is not one person in this room today who does not want to see workers go to work in the morning and return home safely at night to their families after doing a fair day's work for a fair day's pay. Members on both sides of the chamber no doubt will be questioning, then, the role of workers compensation when injury happens at work.

The workers compensation scheme provides that workers who are injured in workplace accidents are entitled to statutory compensation, which includes weekly income replacement benefits while the worker is unable to work as well as cover for medical, rehabilitation and other expenses. Under the workers compensation scheme, entitlements or benefits cease when incapacity due to work related injury stops or the period for benefits paid to an injured worker reaches the maximum time of five years or weekly benefits reach the maximum amount of $314,920. In addition, if a worker suffers a permanent impairment from the injury and their employer was at fault, they may be entitled to a lump sum payment under common law. Other benefits and compensation under the scheme cease once a lump sum payment is made.

The construct of this bill affords the individual person an option: their ability to exercise their right to pursue a common law claim for catastrophic injuries to access a lump sum payment. What this lump sum payment does is respect the dignity and rights of a responsible and capable person to manage their own lifetime care and support. A lump sum payment affords the individual to make a decision for them and by them on their care and support in exactly the same way that the NDIS will do. The ability for an individual to choose to pursue their common law right to claim a lump sum compensation payout under this bill is dependent on a number of filters that would preclude the individual from advancing through the legal system. These filters include initially obtaining legal advice of their possible lump sum payment. Secondly, it would be dependent on the level of contributory negligence to allow them to proceed. Finally, a court would need to determine that the individual was capable of managing a lump sum payment before progressing to a settlement judgement.

Perhaps the most significant point of contention during the inquiry into the bill was the Byrne judgement amendments. The Byrne judgement validates the use of hold harmless clauses in contracts which transfer a third party's—typically a principal contractor or host employer—liability for their negligence in injuring a worker to the worker's employer, usually a subcontractor. The Byrne judgement also provided that WorkCover as the employer's insurer was liable for this additional cost, so WorkCover also becomes liable while not being contributed to by the host employer. It is a bit like putting in an insurance claim but never paying a premium.

This bill reverses the effect of the Byrne judgement by prohibiting the contractual transfer of liability for injury cost from a third party—again, the principal contractors or the host employers—to employers with a workers compensation insurance policy, for example subcontractors. The bill also provides that WorkCover is not liable to indemnify an employer for a liability to pay damages incurred by a third-party contractor under a contractual arrangement.

The QNU, United Voice, the QCA, the ALA and the Chamber of Commerce & Industry Queensland—or, as we have heard from the member for Kawana, the CCIQ—supported the amendments. The CCIQ supported these amendments. Submitters considered that the amendments would encourage employers to maintain health and safety standards and a more secure compensation agreement for workers and restore the policy intention that an insurer is liable to indemnify an employer only for its legal liability to pay damages to the worker.

Submitters also considered that the amendments would encourage employers to maintain health and safety standards and a more secure compensation scheme for the workers and restore the policy intention that an insurer is only liable to indemnify an employer for its legal liability to pay damages to the worker. They also considered that the amendments are a positive step towards clarifying that negligent employers who follow unsafe work practices will be unable to transfer liability to another related party. They are not able to dodge a bullet.

Submitters also said that the amendments will raise an estimated $40 million in savings for WorkCover, thereby increasing the capacity of WorkCover to maintain competitive workers compensation insurance premiums. However, Master Builders Queensland considered—

> ... the proposed amendments do not resolve the underlying issue of uninsured or underinsured Principal Contractors and subcontractors but in actual fact may exacerbate the problem.

Other submitters expressed the following views about the amendments: the approach of voiding contractual indemnities is neither an appropriate nor a reasonable policy response to situations where more than one business entity has a level of responsibility over the occurrence of a workplace injury—a particularly common arrangement in the construction and transport industries—and that the amendments discriminate against principal contractors and host employers. However, the department advised the committee—

> ... the Byrne decision has the effect of encouraging the use of hold harmless clauses which allows third party contributors to avoid liability, encouraging further negligence; and makes WorkCover Queensland jointly and severally liable for all damages despite there being fully solvent third parties to join the claim.

In fact, these principal contractors are passing on the responsibility to those small business mum-and-dad contractors who work hard every single day. The department also went on to say—

> As WorkCover is unable to recover the cost from the negligent principal contractor or host employer this cost is allocated to the premium of the employer and potentially across all other WorkCover premium paying employers.

Mr Power: They hate small business.

Mr STEWART: I take that interjection. In terms of this bill, they certainly hate the small business owners who work in this particular area.

As businesses and industries compete in local and global markets, our workforce is ever changing, with workforces becoming more and more flexible to meet these demands. According to Independent Contractors Australia, in 2013 around 17.2 per cent of the Australian workforce were contractors. I imagine that since that time the percentage would have increased.

Although I appreciate and acknowledge the views of the building and construction industry, as well as the concerns of the Queensland Trucking Association, this bill will affect every workforce that employs contractors—not just in those industries but across the broader context. This bill will impact upon those workers not only now but also in the future. It is essential that we protect our workers by ensuring that principal contractors or host employers maintain a safe work environment and by ensuring that in the event a worker sustains a catastrophic injury in their workplace they can rest assured that their treatment, lifetime care and support needs will be assured. For those reasons, I commend this bill to the House.