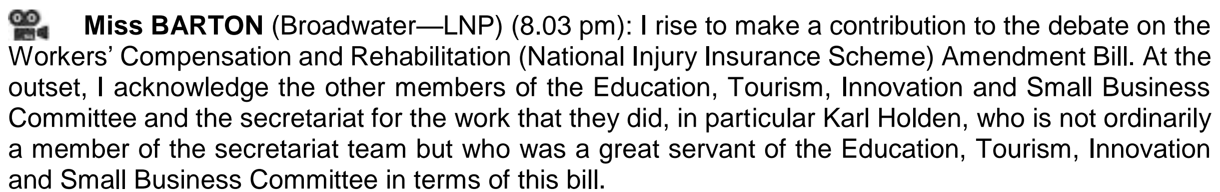
Speech By

Verity Barton

MEMBER FOR BROADWATER

Record of Proceedings, 30 August 2016

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



Miss BARTON (Broadwater—LNP) (8.03 pm): I rise to make a contribution to the debate on the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill. At the outset, I acknowledge the other members of the Education, Tourism, Innovation and Small Business Committee and the secretariat for the work that they did, in particular Karl Holden, who is not ordinarily a member of the secretariat team but who was a great servant of the Education, Tourism, Innovation and Small Business Committee in terms of this bill.

I follow on from what the shadow minister said and reaffirm the opposition's support for the concept of the National Injury Insurance Scheme. All members of the committee were of the view that extending the National Injury Insurance Scheme to those who are catastrophically injured at work is a good thing. We might have some differences of opinion about the right kind of model. That is the reality of six people trying to agree.

Stakeholders and those who are at the coalface had indicated that they were very concerned about sum dissipation. It was thought only appropriate by the non-government members that we should mention it in our statement of reservation. However, the concept of the National Injury Insurance Scheme is one that we support. As was highlighted by the member for Kawana, it was the LNP in government that agreed to the National Injury Insurance Scheme and the National Disability Insurance Scheme. We want to make sure that those who are catastrophically injured and who are going to be in need of lifetime care, treatment and support are able to be properly cared for.

A couple of issues were raised in the statement of reservation by the non-government members of the committee and they have been touched on by the shadow minister. In my contribution I intend to touch on the consultation—or, really, the lack thereof—on clause 5 and the Byrne amendments. I think it was very telling that the government members of the committee agreed to committee comment that condemned the lack of consultation on this issue. The non-government members acknowledged that there was an industry round table set up and that there was consultation with respect to the expansion of the NIIS to those who are catastrophically injured at work. However, it is incredibly disappointing that on the Byrne provisions, and in particular clause 5, there was absolutely no consultation done with any of the industry stakeholders. In particular, the committee heard Warwick Temby from the Housing Industry Association—he was a member of the stakeholder reference group—particularly highlight that they did not have an opportunity to even discuss the changes in the Byrne amendment. I quote from the public hearing that was held in this very chamber on 18 July—

There was consultation on the NIIS aspects of the bill, but absolutely none on the Byrne issue.

Not only was the Housing Industry Association not consulted, even though they were a member of the stakeholder reference group that was set up to be consulted with on the bill, but also Master Builders Queensland, which is another very important stakeholder in this area, was not consulted. Corlia Roos of Master Builders said—

We have not been consulted on the bill, on the drafting of the wording or on the bill itself, until it was posted on the parliamentary website.

Mr Costigan interjected.

Miss BARTON: I take that interjection from the member for Whitsunday. It is bad form. As he is being an aficionado of sport, I am sure that he knows all about form—good and bad.

We have seen a complete lack of consultation with the important industry stakeholders on this bill. It is continued hypocrisy from this government, because time and time again members of this government stand up to say that they are going to be a consultative government. If that is not hyperbole then I do not what is, because it is true, rank hypocrisy for them to stand up in this House and say that they are a consultative government yet refuse to consult with the people who are impacted by the clause. I note that, in acknowledging recommendation 3, the government has said that it will now consult. It seems a bit of a waste of time after the fact, but I suppose at least the government has acknowledged that it has some work to do. We have seen a really simple solution not taken up.

In speaking to both WorkCover and industry stakeholders such as Master Builders and the Housing Industry Association, we discovered that they would be perfectly happy to be a participant of WorkCover. They would have no issue removing hold harmless clauses from the contract between principal contractors and subcontractors if they were allowed to participate in the WorkCover scheme. Ultimately, every member of this House wants workers who are catastrophically injured at work to be assured of lifetime care, treatment and support.

This is not about big business, medium business or small business; this is about the workers who are going to be unfortunately catastrophically injured at work and who will be in need of lifetime care, treatment and support. It is disappointing that we have a government that is refusing to work with the opposition and industry stakeholders to find a way to effectively plug the hole, fill the gap, to make sure that those catastrophically injured workers are assured of coverage. The situation that we have now, if this bill passes in its current form tonight without amendment, is that hold harmless clauses, which have been used in practice for many years and which have been held valid by the Supreme Court in the Byrne decision—valid contractual clauses that have been entered into with offer, acceptance and consideration—will be retrospectively deemed to be invalid.

What happens in that gap between the hold harmless clause having been entered into and the ability for someone to get insurance? Whilst we might be able to retrospectively change the law, we cannot retrospectively enter into an insurance contract. What happens if a contract was entered into three years ago and someone in between then and now, or in between then and an opportunity for the principal contractor to get insurance, is paralysed from the neck down and there is no insurance? That is what we are talking about. It is those people who will be left without the proper coverage. It is really disappointing that the Labor Party, whose members stand up in this House and across Queensland and say that they stand up for workers in this state, could be doing something really simple but it is not doing it. Tonight there is an opportunity for the government to move an amendment to withdraw clause 5 and go back to the table and work with industry stakeholders and WorkCover Queensland to find the appropriate measure to ensure that all injured workers in Queensland are covered. That is what this is about.

The reason principal contractors have hold harmless clauses is that they are not able to enter into the WorkCover scheme, something that was acknowledged by Tony Hawkins from WorkCover Queensland. In this chamber when we held a public hearing with WorkCover Queensland, Tony Hawkins acknowledged that this was something that they had been looking at. They acknowledged that it was an issue. I am sure that my friends and colleagues the members for Buderim and Albert would agree with me. On that day Mr Hawkins acknowledged that it was a very significant issue and something that he had been looking to do. Obviously there is a reason that the government has not been prepared to look at a simple solution that will ensure adequate coverage for injured workers in Queensland. That is really disappointing.

There were a number of concerns raised by Master Builders in particular. Master Builders acknowledged that they have their own insurance arm and they could absolutely, if they wanted to, have said nothing on this issue and realised that there was an opportunity for their private insurance

arm, but they are an advocacy group for their industry. They acknowledge that there is a gap that needs to be filled. Tonight there is an opportunity for this government to fill that gap and to plug that hole to ensure that those workers in Queensland who are catastrophically injured are assured of receiving the appropriate lifetime care and coverage that they need. What we do know is that principal contractors, if they were given an opportunity to enter into the WorkCover scheme—something we know they are not able to do because WorkCover Queensland themselves acknowledged it—there would be no need for hold harmless clauses.

We talk about the hypocrisy of this government when it comes to consultation, but let us also reflect on the hypocrisy of this government when it comes to retrospective legislation. I have lost track of how many times members of the Labor Party in the public domain and in the parliamentary chamber have said that they abhor retrospectivity, yet how many times have we seen the Labor Party introduce retrospective legislation in this state? Time and time again! Like the hypocrisy when it comes to consultation, clearly this government are hypocrites when it comes to retrospective legislation in this state. Ultimately the losers in all of this are those who are in desperate need of lifetime care and support after they are catastrophically injured at work.

I find it confusing that the government would, in recommendation 3, acknowledge that it needs to do more work yet would allow the bill to pass with clause 5. Once you pull the genie out of the bottle I am not sure how you can put it back in. The moment one says that hold harmless clauses are not valid, overturning what was a lawful judgement of the Supreme Court—an independent Supreme Court in this state—the genie cannot be put back in the bottle. Unfortunately, one never knows what might happen to one person in between the genie being pulled out of the bottle and this minister trying to put it back in. As I said, the people who are most at risk are Queensland workers who may be catastrophically injured at work, and that is really disappointing.

Even the government members of the committee acknowledge that the Byrne decision was a significant one for stakeholders. What I did not understand was why an organisation like the Australian Lawyers Alliance would have no issue with retrospectivity, would have no issue with the government coming in and superseding a perfectly valid judgement of the Supreme Court but then suggest, ‘Oh, there wouldn’t be too many contracts that would have these hold harmless contracts, I wouldn’t have thought.’ That is what they said to the committee. I asked Master Builders whether or not it was standard industry practice and they said absolutely it was, which is why it is really disappointing that this government has failed to consult with them.

When non-government members pushed the departmental officials on why there was a lack of consultation we were told that there were some pre-2010 discussions. There have been two elections since then. In those six or seven years since those discussions have happened there have probably been a few changes of personnel in the department and probably in the industry stakeholder groups as well. It is really disappointing that this government, which claims to be consultative and wants to work with Queenslanders, is refusing to consult on an issue as basic and as simple as making sure that Queensland workers are adequately protected.

We tried to negotiate with the government members on the committee. We said that we would love to support this bill because we appreciate the importance of the National Injury Insurance Scheme and we want to make sure that catastrophically injured workers are truly covered, but while this invidious clause 5 remains we cannot support this bill because it pulls a genie out of the bottle and it means that the people who are most at risk are catastrophically injured Queenslanders who are in desperate need of lifetime care and support.

As I say, that is what this is about. It is not about big business, medium business or small business; it is about making sure that those who are injured at work and who are in need of lifetime care, treatment and support are assured of getting it. That is why it is disappointing that this minister is refusing to engage with stakeholders and is refusing to talk to people like Master Builders and the Housing Industry Association and other representatives of principal contractors in this state.

Mrs Stuckey: They are not unions.

Miss BARTON: I take the interjection from the member for Currumbin. Maybe it is because they are not unions. If we are going to force principal contractors to take out private insurance in a limited market, a real concern is what happens if they cannot afford the excess? What happens if they skip a premium payment? What happens to the injured worker then? That is really disappointing. Because of this government’s reluctance to work with business and this government’s reluctance to do the right thing, the only people who are at risk are injured Queenslanders. It is just disgraceful. We hear the

hyperbole all the time from the Labor Party about how they are the ones who truly care about the workers. If they did then they would do the right thing when it came to this bill: they would ensure that principal contractors are able to enter into the WorkCover scheme as they are willing and able to do so if changes are made. The reason they have hold harmless clauses in contracts is that the government does not allow principal contractors to enter into the WorkCover scheme.

There is a simple way to fix this, but the arrogance of this government means that they are not prepared to consult with anyone outside of the union movement, they are not prepared to back down when they are wrong and all we see is hypocrisy and hyperbole. It is a shame that the people who will be at risk are not the members of the Labor Party or their union donors but the people at the coalface. It is the workers who are going to be at risk of catastrophic injury. It is really disappointing that in this parliament we cannot work together because the government is not prepared to come to the table on what is a very simple and basic thing, to make it right and proper. They do not consult, they are not prepared to do what is right and the only people who are at risk are Queensland workers, and that is really disappointing.