

Legislative Council

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WORKERS REHABILITATION AND COMPENSATION (REINSTATEMENT OF ENTITLEMENTS) AMENDMENT BILL

The Hon. A. BRESSINGTON (16:43): I move:

That this bill be now read a second time.

As the name suggests, this bill seeks to reinsert in the Workers Rehabilitation and Compensation Act certain entitlements that injured workers have had taken from them over time. Members will need no reminding that just over two years ago the rights and entitlements of injured workers were slashed in the name of propping up the ailing scheme and to reduce the employer levy. However, this was only one of a number of assaults on injured workers, with various entitlements having been previously lost.

This bill seeks to reinstate what I consider are three fundamental entitlements that this parliament has compromised away or simply taken: the right of an injured worker to sue a negligent employer for damages; the right of an injured worker to be covered by workers compensation when travelling to and from work; and the right of an injured worker to continue to be paid compensation payments when disputing the compensating authority's decision to discontinue payments. By no means do I suggest that I am the first member to propose the reinstatement of these entitlements, and for that reason my speech today shall be brief.

I do, however, consider it important that pressure continue to be applied and that injured workers are aware that they have not been forgotten. Starting with the most recent entitlement to have been discarded, clause 6 of the bill will re-establish the right of an injured worker to continue to be paid weekly payments when disputing a decision of the compensating authority to discontinue those payments under section 36 of the act. If it is found that, following a determination of the Workers Compensation Tribunal, the decision to terminate was in accordance with the act, the corporation can recover amounts paid in the disputed period as a debt, or set off that amount against other liabilities under the act.

This is identical to what existed prior to the Workers Rehabilitation and Compensation (Scheme Review) Act 2008. Section 36 of the act as it currently stands makes the assumption that workers are often vexatious when they dispute decisions around their entitlement to weekly payments. This is a false assumption. Arbitrary decisions by the compensating authority to cease weekly payments that are not in accordance with the requirements in section 36(1) of the act are not uncommon, and disputes are often resolved in favour of the injured worker. That a worker who has likely been on the scheme for some time and eaten through their savings is forced to go without weekly payments while they fight for their resumption in such circumstances is abhorrent.

I am aware that many in the Labor Party desire the reinstatement of this entitlement, with a motion moved at last year's state conference compelling the government to introduce a bill to this effect being passed. With this sitting year coming to an end, it is clear that the government intends to defy this motion—somewhat surprisingly, I might add. However, by moving this bill, I provide the government the opportunity to support this worthwhile reform. The second entitlement that the bill seeks to reinstate is cover for employees travelling to and from work, that is, journey cover. I introduced this knowing full well that it is not supported

by business and that it will increase costs to the scheme and place upward pressure on employer levies.

This is a matter of principle to me. If a worker is travelling to work (as most are required to do as part of their employment) or home from work and is injured, that injury has arisen in the course of employment and as such should be covered by workers compensation. The reinstatement of journey cover has long been advocated for by the unions, and many arguments have been raised in support. These include the ability for the corporation to pursue damages claims under common law against negligent parties and in doing so recoup a considerable amount of the compensation paid to the worker; and that coverage under the Workers Rehabilitation and Compensation Act would place greater emphasis on that worker's return to work, which would ultimately be beneficial to the employer.

I repeat: journey cover is a matter of principle, as is the re-establishment of common law entitlements for injured workers as a result of their employer's negligence. I made clear in my contribution to the Workers Rehabilitation and Compensation (Scheme Review) Bill that I support permanently disabled injured workers being able to pursue their employers for damages. Lengthy debate was had on the merits of common law during the second reading and committee stage of that bill, with the Hon. Mark Parnell moving amendments to reinstate common law access, which I supported.

As is my understanding, access to common law was bargained away in 1992 in return for improved statutory benefits, including increased lump sum payments. However, as we have seen, the balance struck—if it ever was—has since been whittled away by successive attacks on the rights of injured workers. Partial reinstatement of common law access will remedy this imbalance. While not in keeping with the no-fault system, it is my position that where blame exists employers should be held accountable, and not for the benefit of government revenue but for the benefit of the injured workers.

In the words of Mr Anthony Kerin, the South Australian President of the Australian Lawyers Alliance, it is completely inappropriate that workplace penalties are being reaped in by government through fines and yet rarely, and even then on a limited basis, is compensation awarded to the injured worker. Mr Kerin has written to me supporting the reinstatement of common law entitlements.

The model of common law access and the associated insurance regime I propose today are by no means set in stone. I make clear that I am more than open to amendments by members. Under the bill at present an injured worker who has suffered a permanent impairment in accordance with section 43A of the act, equalling 15 per cent or more of their entire person, as a result of the negligence, intentional tort or breach of statutory duty by their employer, will have access to common law. While it was suggested that access be limited by setting the standard required to gross negligence, I have chosen not to do so.

As I have said, these reforms are by no way new, and I do not introduce this bill with the expectation that it will pass. However, if it places just some pressure on this government to rethink its current 'business first, injured workers second' approach to workers compensation, then it will have achieved its goal. I commend the bill to the council.

Debate adjourned on motion of Hon. R.P. Wortley.