WORKERS COMPENSATION AMENDMENT (PROTECTION OF INJURED WORKERS) BILL 2017

First Reading

Bill introduced on motion by Mr Clayton Barr, read a first time and printed.

Second Reading

Mr CLAYTON BARR (Cessnock) (10:42): I move:

That this bill be now read a second time.

I introduced the Workers Compensation Amendment (Protection of Injured Workers) Bill 2017 because it is the right thing to do. It is not for the purpose of political pointscoring, but I know that is what critics will say. If the Government would like to introduce a similar bill I will happily withdraw mine. I do not want accolades; I just want what is right for injured workers across the State. No-one should be under the illusion that the amendments proposed in this bill will result in fairness for all injured workers. The amendments will not do that. Returning fairness and equity to workers compensation would require a complete overhaul. The 2012 reforms changed the scheme from one that looked after all injured workers to one that looked after some injured workers for some of the time. That fundamental change turned the scheme on its head, which is why the scheme requires a complete overhaul. This bill proposes modest changes that will help those in most need.

The Workers Compensation Amendment (Protection of Injured Workers) Bill 2017 will amend four key provisions in the current scheme, which I will deal with in my contribution. The first key provision relates to the five-year cut-off date for injured workers. The maths are quite simple: these changes were made in 2012 and it is now 2017. The most crucial element in this bill is the five-year cut-off date for injured workers. We must deal with this issue immediately or, at the very least, before the Parliament rises at the end of the year. The five-year cut-off date will affect 4,223 injured workers between September 2017 and December 2017. They will be kicked out of the workers compensation scheme and put onto the Federal taxpayer-funded Centrelink scheme; in other words, they will go on the dole. How do we identify those 4,223 workers? They are workers who have suffered an injury, who continue to be plagued by that injury and who have 1 per cent to 20 per cent whole body impairment.

Most people who were injured and who have whole body impairment between 1 per cent and 20 per cent were kicked out of the scheme after just 2½ years, or 130 weeks, because their condition was not complex or debilitating enough. Ninety-five per cent of those injured workers with 1 per cent to 20 per cent whole body impairment are already living on Centrelink benefits and are unable to work as a result of their injuries. Those 4,223 injured workers managed to remain in the scheme beyond the first 2½ years, or 130 weeks, because they were able to prove under section 38 (2) of the Act that they had no current work capacity. Equally, under section 38 (3) (c) of the Act, they were deemed to be "likely to continue indefinitely to be incapable of undertaking further additional employment" on top of the 15 hours that they were working.

There is no light at the end of the tunnel for people with complicated injuries. Things will not get better for them. These injured workers, who have 1 per cent to 20 per cent whole body impairment, have satisfied myriad doctors, lawyers and insurers that their future is so bleak their payments should continue beyond the 2½ years. No matter their prognosis, under current legislation their payments will be cut in the coming months. There is no scientific research or medical reason to support this five-year termination of payments.

Five years is simply a commercial figure—an insurer's figure—so that they know when they can close the file. Long-term injuries that show no signs of improvement are known in the scheme as the "tail". The purpose of the 2012 legislative changes was simply to cut the tail off the scheme—or at least 99 per cent of it. That is what led to injured workers being thrown out the scheme and onto

the scrap heap of Centrelink and why the scheme went from an alleged $4.1 billion deficit to a $2.4 billion surplus in just three years. Those are the Government's own figures.

Under current legislation the Government is offering the 4,223 injured workers who are about to be scrapped a cruel Christmas gift. Some 1,882 of those workers will receive their final workers compensation payment during the week of Christmas. That will hardly make for a merry time. In addition to those 4,223 workers, an estimated 1,500 will be kicked off the scheme between January and June next year. In total almost 6,000 workers, their families and their children will be thrown on the scrap heap as a result of the existing legislation. The nasty five-year cut-off was established by legislation. It can be undone by legislation and the amendments in this bill. That is the choice before the House. Each and every one of us can choose.

Members of the Labor Party generally land on a position of support or opposition for bills that come before this Parliament and, yes, we bind together; we all vote the same way. Members of the Liberal Party and The Nationals often use that fact as an insult or a slur against Labor. They proclaim their ability to vote independently, choose their own path and make up their own minds on legislation. This is their day of reckoning. If they are capable of independently weighing up an issue and choosing which way to vote, what will their choice be on this bill? Will they independently choose to support injured workers who will otherwise be kicked off the workers compensation scheme? Or do they believe, having weighed up the arguments, that kicking them off the scheme is the right thing to do?

I make that point at some length because I know Government members often tell their electorates that they have put up a fight in the party room but lost. They do not tell their local communities that despite supposedly losing the fight in the party room they are still able to support a cause with their vote. In the coming months I will be travelling around the State and asking local communities to contact their members to see how they will vote on this bill. I will be telling their communities that Government members have a choice about how to vote, no matter what their party room decides.

There is another important detail that we all need to know. In 2012 Government members' communities probably took their word for it when they were told that the scheme was $4.1 billion in deficit. I do not want to debate the truth or otherwise of that figure, but I make the point that a justification used in 2012 was that the Government wanted to avoid a 28 per cent increase in workers compensation premiums. I am sure we will hear that raised in debate on this bill. Interestingly, in 2015 the Government also declared that the real figure it should have promoted in 2012 was 16 per cent. But let us put that aside and stick with 28 per cent as the supposed increase to premiums.

At the time the premiums paid by business were on average 1.6 per cent of wages—that is, they paid on average $1.60 in every $100 for workers compensation cover. An increase of 28 per cent would have equated to an additional 44¢ in every $100. That means that if the 28 per cent figure was accurate in a worst case scenario businesses would have paid not $1.60 per $100 but $2.04. Credit where credit is due: The Government used the 28 per cent figure and scared most people. It was sneaky and deceptive. It was a choice of language. Government members could have told people that the increase would be 44¢ in every $100, but they did not. They also could have told people that a 28 per cent slice would only be paid on a 1.6 per cent margin, but they did not.

I do not want to dwell on history; I just wanted to make that point so that Government members know exactly what they did at that time. Despite the fact that they spoke in support of the bill in this Chamber I am quite sure they did not understand that 44¢ in every $100 was the worst case scenario. The most important financial matter is that today the scheme is $1.5 billion in surplus, as the Minister noted during budget estimates hearings a few weeks ago. In 2015 it was $2.4 billion in surplus before the Government made some very minor changes—dare I say improvements—at that time. After those changes the sky did not fall in; the scheme did not plunge into the abyss.

Today I am asking the Government to make some additional affordable changes under the funding stream in the current system.

Explaining cruel workers compensation legislation in 2017 will be a completely different challenge for each and every Government member. In 2012 they might have been able to convince their voters that there was a $4.1 billion deficit and there could be a possible premium rise of 28 per cent. They might have been able to use that fear to justify their end. But in 2017, with a $1.5 billion surplus in the scheme and no threat of premium increases, how will they justify continuing to be cruel to injured workers and their families by not supporting this bill? Throughout this debate I will listen with interest as to what they will say to those in their communities who will see family and friends dumped off a scheme that was designed to protect them.

I turn now to the detail of the bill. The Workers Compensation Amendment (Protection of Injured Workers) Bill 2017 is designed to effect four key changes, with one change separated into two parts. The first change, as set out in paragraph (a) of the objects of the bill, is to remove restrictions on the entitlement of a worker to make a journey claim. The second change, as set out in paragraph (b), is to remove restrictions on what constitutes suitable employment. The third change, which is set out in paragraphs (c) and (d), is to remove the five-year cut-off period for weekly payments and remove the provision that limits payment of an injured worker's medical expenses. The fourth change, which is set out in paragraph (e) of the objects of the bill, is to make it an offence for an employer to dismiss at any time an injured worker.

Journey claims are covered under section 10 of the Act. My bill will omit section 10 (3A). Currently journey claims are dealt with as a definition under section 10 (1D) and (3A) of the Act. Journey claims make up an incredibly small element of the broader workers compensation scheme, representing around 2.5 per cent of all claims. This bill seeks to remove the definition at section 10 (3A) that requires the victim to prove a "real and substantial connection between the employment and the accident or incident".

Since the definition of journey claims was changed in 2012 the media has covered a number of cases of workers involved in car accidents after working long and unreasonable hours where fatigue at the wheel was believed to be a factor. To date, only one or two of those accidents have been accepted as bearing a real and substantial connection to employment, meaning that journey claims in effect have ceased to be made. Possibly more importantly, journey claims are relevant for workers with a disability who often catch public transport and have to grapple with the various uneven surfaces and moving parts of transport infrastructure as well as their disability. Journey claims will bring fairness and equity to those with disabilities. Representing only 2.5 per cent of all claims, it seems reasonable to allow such claims to be made in a scheme with a $1.5 billion surplus.

Suitable employment is defined in division 2, section 32A of the Act. My bill proposes to omit the definition of suitable employment in the current legislation and insert a new definition.

The new definition is in eight parts. I will not go through each part at length; those interested should refer to the bill. But I will summarise what they do. The changes to the definition of "suitable employment" simply means that a job deemed suitable must have three qualities: it has to exist; the type of work has to be available; and the work has to be available within a reasonable proximity to the family home. I am proposing those three changes. Importantly, under the current Act there is no requirement for the proposed suitable employment job to actually exist, or be available, or to be anywhere near a person's home. Under the current Act, a job could be literally thousands of kilometres away and yet still deemed "suitable employment". That is inherently unfair and unjustifiable. In fact, it borders on insane. We can fix that today with the definition of "suitable employment" in this bill.

The next element is weekly payments and medical expenses. My bill proposes that sections 39 and 59A be omitted from the current Act. Both sections deal with time limits imposed on the

injured worker. It is absurd that a scheme designed to support a person with an injury would, at some senseless point in time, terminate that support despite the injury continuing to exist. It does not make any sense that a purpose-built scheme, funded and in surplus, would push people out of the scheme and onto the taxpayer-funded schemes of Centrelink and Medicare. Logic predicts that if a person is injured in the workplace, then the workplace should fund their recovery ongoing. It should not be funded by already stretched taxpayer funds through Centrelink and Medicare. Section 248 of the current Act is titled, "Dismissal within 6 months of injury an offence". My bill proposes to omit section 248 (1) and (2) and insert instead:

> (1)An employer of an injured worker who dismisses the worker is guilty of an offence if the worker is dismissed because the worker is not fit for employment as a result of the injury.
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> Maximum penalty: 100 penalty units.

Employers of all shapes and sizes are winding down the clock on injured workers by using current section 248 to terminate an employee after six months. My changes will make it crystal clear to all employers that termination is not an option. I emphasise that there are a host of good employers that do not use this clause for termination. The great bulk are caring, socially just employers. But we would be fools and ignorant of the facts if we were to suggest that no employers are terminating their injured workers simply to take care of the bottom line. Those employers are heartless and irresponsible and driven more by profit than humanity. Some of the companies that frequently use current section 248 are the country's biggest employers, including our duopoly supermarket chains and New South Wales government departments.

In conclusion, we cannot hide behind the 2012 changes or the 2015 amendments. We cannot hide behind an alleged deficit because the fund is in surplus. I repeat, those opposite cannot hide behind a party room decision. We all have a choice to make. However, collectively we can make the lives of the seriously injured workers better. We can do that by keeping them on the purpose-built and fully funded scheme, instead of throwing them to the last bastion of societies safety net—the taxpayer. I commend the bill to the House.

Debate adjourned.