

ASBESTOS DISEASE VICTIMS — FATAL ACCIDENTS ACT 1959 AMENDMENT

Grievance

MR R.C. KUCERA (Yokine) [9.25 am]: Madam Deputy Speaker, my grievance this morning is to the Attorney General. It relates to a proposed urgent amendment to the Fatal Accidents Act 1959 in relation to claims for damages made by victims of asbestos disease and, in particular, the payment of compensation to their beneficiaries should the claimant die during the course of the action.

I was very proud to be part of the Gallop government in 2002 when we thought that we had fixed these problems when, in support of these victims and their families, we introduced and passed the Law Reform (Miscellaneous Provisions (Asbestos Diseases)) Bill. Prior to the passage of that bill, the tragedy that was Wittenoom and blue asbestos had become a blot on the legal landscape of this nation. I acknowledge the 14 widows seated in the public gallery today whose husbands have died as a result of either being born at Wittenoom, working at Wittenoom or working with asbestos. I have just spent one of the most harrowing hours of my life listening to some of their stories, including that of Robyn, whose husband died at 48 years of age. Her husband was one of a family of nine, all of whom have now died as a result of living at Wittenoom. Robyn is such a courageous person, yet she is having to fight a legal morass that we thought we had got rid off in 2002, because of a decision of the New South Wales Court of Appeal, a decision referred to as the Strikwerder decision.

I will take members back to 2002, when the victims' stories and their attempts to gain recompense were being played out across Western Australian courts. If the claimants died during the course of litigation, the statutes of the day did not allow a claim for general damages arising out of their death. Desperately ill victims of asbestos diseases struggled to hang on to life while they fought for recognition of their claims in an attempt to ensure their and their families' futures. Due to the insidious and aggressive nature of this disease—it kills very quickly—the general damages claim usually represents the most substantial component of the compensation available in many of these cases. However, there was a very strong incentive for defendants to delay, to obfuscate and to stop these people from getting where they needed to go, in the hope that they would die during these cases. We thought that we had stopped this. These delays were deliberate and done to try to avoid payment of general damages. Before 2002, these victims had also endured years of denial about asbestos and its health effects. They endured years of denial, cover-ups and lies by multinational companies, agencies and governments of all persuasions. Had it not been for the courage and persistence of the likes of Robert and Rosemary Vojakovic and the Asbestos Diseases Society, people like Professor Eric Saint, and Dr Greg Deleuil, who has virtually given his life to looking after these people, and two tenacious legal practitioners, John and Peter Gordon from Slater and Gordon, these people would have continued to be ignored. I take my hat off to them.

Successive governments of all persuasions have virtually been dragged kicking and screaming into recognising the plight of these victims, and that is why I was so proud in 2002 when we thought we had fixed the problem. Even previous Labor governments had failed the very people who year after year elected them—the ordinary people and the workers. We hear a lot of people knocking the Construction, Forestry, Mining and Energy Union, but I am pleased to see one of its representatives, Darren Kavanagh, in the public gallery today. The CFMEU fought for those people who worked in the mining and construction industries and the myriad other industries that used this deadly product. Over the many years they went on striving and eventually got the recognition that they wanted. Equally important, until this legislation went through, not only would victims' families continue to lose their fathers, husbands and brothers and, in many instances, their mothers, but also they would continue to be denied the compensation that they were entitled to. We saw those disgraceful cases in which highly paid legal counsel dragged out interminable arguments. I might say that we should think about the current deputy leader of the federal Liberal Party, Hon Julie Bishop, and her part in that—but, of course, she was simply doing her job.

We amended the Law Reform (Miscellaneous Provisions) Act in 2002 and it put an end to those disgraceful practices, but the effect of the so-called Strikwerder principle flowed on into Western Australian cases in 2006. Essentially, it put us back to where we were in 2002. The effect is that the money that flows to the widows is in two components—one component is general damages, to which they are entitled, and the other component would normally flow to the beneficiary of the estate of the dead husband or mother. The principle in the Strikwerder case was that they were no longer entitled to that component; it had to be deducted. Some of these women are now facing a situation in which they could lose up to \$200 000 from their claims because of that case. Other states are considering amending their legislation. South Australia has already amended its legislation.

Currently, 31 cases are pending. Those cases involve 24 widows and one widower who already have lost, or stand to lose, more than \$4 million in damages to which they are rightly entitled because of the nature of this insidious disease and the way it has been inflicted upon them. All living victims have been placed under enormous pressure to accept inadequate offers and are being intimidated by legal firms that are making the parties settle based on the principle that was set by the New South Wales Court of Appeal. We desperately need an amendment to the Western Australian Fatal Accidents Act 1959.

I thank the Attorney General for listening to me earlier last year. He is aware that his office has been given a complete brief with a very simple amendment that could be passed very quickly to fix this problem. It is a well-researched amendment and it is based on the South Australian and New South Wales examples.

I implore the Attorney General to, when we pass this amendment, backdate it to include those cases which are currently before the court and which have not been settled, otherwise all those women in the public gallery today will stand to lose a substantial amount of what they are entitled to. I applaud all those women for their courage. This is fundamental bread and butter for a Labor government and an absolute priority for governments that pride themselves on supporting the workers and their families.

Finally, I again applaud the courage of every woman who has come here today. I also thank Robert Vojakovic and his volunteers and Darren Kavanagh for giving me the opportunity to bring this matter to the attention of the Parliament. I implore the Attorney General to ensure that an appropriate amendment comes before this house as soon as is humanly possible.

MR J.A. McGINTY (Fremantle — Attorney General) [9.33 am]: I thank the member for Yokine for raising this very important matter in the Parliament today and I particularly thank the very brave widows and their families who have come along today to listen to this debate.

Until the member for Yokine raised the matter with me, I was not aware of the change in the law resulting from the 2005 decision of the Court of Appeal in New South Wales. Prior to 2002, the dependants of an asbestosis sufferer could not continue a claim after the victim's death for damages for pain and suffering, bodily or mental harm and the curtailment of life expectation. The amendments that we made in 2002 through the Law Reform (Miscellaneous Provisions (Asbestos Diseases)) Act changed the law to allow the family of someone suffering an asbestos-related illness to continue a claim already begun for those kinds of damages after the victim's death. Those changes allowed the family of someone who died from an asbestos-related injury some sense of justice without the previously obscene requirement to rush into an early settlement before the onset of death.

In 2005 there was an unfortunate decision by the New South Wales Court of Appeal and, since that time, general damages for pain and suffering and loss of enjoyment of life under a common law damages award to a victim are offset against any award made to the family under the Fatal Accidents Act. I am told that the offsetting of those benefits has meant that, on average, about \$160 000 has been taken out of each settlement that has been made since 2005. The families which have been beset by this tragic disease and which have had to put up with the death of, generally speaking, a husband or father have suffered enough without incurring the indignity of having their damages reduced, which damages are critical in providing ongoing support to their families. It is time that we moved to make sure that this reduction in the compensation that is paid is reversed.

Since the 2005 decision, four families of Western Australian asbestos victims have had their compensations slashed by up to one-third. It is money that, in many cases, would have eased the lives of the victims, spouses and children. It has also encouraged the very thing that we sought to avoid in 2002; that is, defendants prolonging compensation cases to reduce liability after the death of the victim. That is disgraceful.

When the matter was raised with me by the member for Yokine, I undertook to give consideration to this matter. The argument in favour of reversing the 2005 decision of the New South Wales Court of Appeal by amending the Western Australian legislation to ensure that the widows and families of mesothelioma victims got their full compensation to which they were entitled under law became so compelling that I took a proposition to cabinet. Cabinet has authorised legislation to reverse that decision of the Court of Appeal in 2005.

Members: Hear, hear!

Mr J.A. McGINTY: The new legislation will achieve exactly that. Cabinet has approved the proposed legislation. It will not be a complicated amendment to the Fatal Accidents Act. Member for Yokine, it is something that I undertake to expedite and bring into this house as soon as is reasonably practicable once it is drafted. I appreciate the information the member has provided to the house this morning that more than 30 cases are pending. The widows and families of asbestos sufferers will suffer a very immediate effect as the compensation to which they are entitled under the Fatal Accidents Act will be reduced. It is important that the matter be dealt with expeditiously. I certainly give my undertaking to do exactly that.

Mr R.C. Kucera: A case is diagnosed almost daily. As each widow's case is dealt with, yet another case arises.

Mr J.A. McGINTY: I appreciate that it is an ongoing problem. Western Australia, because of the existence of the Wittenoom asbestos mine, has become the focal point in Australia for this problem; Western Australians are more detrimentally affected than are people in other states.

Mr R.C. Kucera: In fact, worldwide. Unfortunately, we are now seen as the world leader in this insidious disease.

Mr J.A. McGINTY: That makes it all the more appropriate that our legislation set the pattern for what should occur elsewhere. I am aware that offsetting does not occur in the Northern Territory and South Australia. However, offsetting does occur for the unfortunate victims of asbestosis and mesothelioma on the eastern seaboard and in the major states of Australia—New South Wales, Victoria and Queensland.

I thank the member for Yokine for raising this very important matter. I will bring legislation to this house, and I hope it will enjoy bipartisan support for both the content of the law and its expeditious passage to ensure that justice is done, that this unfortunate decision by the New South Wales Court of Appeal is reversed and that the victims of mesothelioma get the compensation to which they are justly entitled.

Dr K.D. Hames: Attorney General, you will have our full support.

Mr J.A. McGINTY: Thank you.