

WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023
WORKERS COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2023

Second Reading — Cognate Debate

Resumed from 29 March.

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [10.34 am] — in reply: Thank you very much, Acting Speaker. I think you were in the chair yesterday when I was interrupted and we moved on to other matters. Welcome back.

The ACTING SPEAKER (Mr D.A.E. Scaife): The same to you, minister.

Mr W.J. JOHNSTON: I was going through the issues that were raised by the member for Cottesloe. The next one is about pre-employment screening. New employers can of course require people to take pre-employment medicals and have knowledge of their capacity to perform the work that they are engaging them to do, but whether they have had a prior workers compensation claim is not a relevant issue, and that is why we will prohibit it from being included in a pre-employment screening. If a person has a disability and, therefore, cannot perform the duties of the job, clearly employers take that into account in their hiring practices, subject to the laws of Australia that restrict discrimination, but the fact that there has been a workers comp claim is neither here nor there. If a person has an injury that was caused by a non-work-related challenge, they would be in exactly the same position as a person with a work-based challenge. Therefore, it is not relevant that a compensation claim had been made, or even that the claim had been agreed to; it is a question of the person's capacity to perform the duties. As I say, employers are entitled to take whatever action they deem appropriate, subject to Australian and Western Australian law, to screen a person for their suitability for a particular job, but the way that the disability or injury or whatever was incurred is not relevant to them. We are fixing that up.

We heard from a number of members about their personal experiences, or those of people they know, of being discriminated against not because of their capacity to perform the duties of a job they applied for but because they had had a workers comp claim, leading them to take a different approach.

As I outlined, quite a number of government members spoke on the bill. I highlighted the member for Mirrabooka's contribution. I should also acknowledge the member for Bassendean, who was the secretary of a very large trade union before coming into Parliament. He is a strong advocate for the interests of working people. The member for Hillarys talked about silicosis and the engineered stone industry. The changes included in this legislation will provide additional protections to silicosis victims because the once-and-for-all common-law challenges will be amended, as will the Limitation Act. The duration before a person can make a claim will be dealt with, as was previously done for people suffering from asbestosis who then get mesothelioma.

The members for Bassendean and Bateman talked about the increase in the cap on medical insurance. I talked about this briefly yesterday. That is not a particularly expensive part of the changes because people already have access to a higher cap. At the moment, they have to go through a process that includes demonstrating their capacity to pay, which is not really a relevant issue. That is an important reform for the dignity of working people that will make sure they have access to the medical support they need to deal with any injury they suffer through their work. Whether that is a physical injury or a psychological injury, the medical assistance will still be there.

The member for Victoria Park talked about the challenges with labour hire arrangements. Of course, this legislation will simplify the challenges of labour hire because of the improved definition of "worker". It is important to remember that workers compensation has always been about workers not employees. Therefore, we will continue that with this legislation. There are many workers who are not employees. That does not mean they are not covered by workers compensation. This bill will improve the definition of a "worker" and has a provision to allow us to further define it, if we need to, over time. The member for Riverton, a former general practitioner himself and the owner of medical practices, and a very successful businessman before coming into Parliament, emphasised the questions around privacy in medical treatment and drew on his personal experience as a doctor. He highlighted the reasons for and the benefits of the improvements included in the legislation.

Without reflecting on anything in the chair, Mr Acting Speaker, I note that the member for Cockburn talked about how this legislation sets out a clearer pathway for workers compensation. He talked about other entitlements that are clarified in the bill, including making sure that industrial entitlements are clearly understood under the legislation so there is no misunderstanding. The member for Cockburn highlighted some cases that provided inspiration for his hard work and effort on behalf of his community. I note those contributions.

The member for Willagee brutally cut short his speech when he was on a roll. He should have kept going! I even drew attention to standing order 102, which could have been used quite easily to allow him to continue with his speech, but he cruelly reduced the length of his speech; that was very disappointing when he was talking about

what a good job the minister is doing! He talked about a number of experiences of his constituents and leave issues. He talked about the benefit of the simplification of the act and about how important the legislation will be.

The member for Mirrabooka again drew on her own experiences as a union official and leader of the union movement. She acknowledged that the government has a deep commitment to improving circumstances for working people. That is something I hope people notice. One of the things I was quite proud of in 2017 was improving the benefits payable to families of deceased workers and clarifying and improving entitlements for children of deceased workers. We did that very quickly, even before proceeding with this greater rewrite of the legislation. That is another demonstration of the government's commitment to assisting working people.

The member for Landsdale talked about the fact the legislation includes provisions for deemed diseases being included by regulation and therefore improving the operation of the act so that we can respond to changing circumstances in the community. That is exactly why we have done that. We made some amendments during the COVID period that then allowed us to include new occupations in the deemed diseases area. This will give us more flexibility in the future. It will not have to return to Parliament; it is still a disallowable instrument so the Parliament still has primacy, but it can be done in a much faster time line.

The member for South Perth referred to his experience as a union delegate in high school. The member for Nedlands again talked about experiences of people she knew and her experience. The member for Collie–Preston gave an important contribution on behalf of people in the mining industry and set out some stories she found out about from the end of the nineteenth century. The members for Joondalup and Churchlands also made contributions of note again drawing on their experience. One thing we can see from all that is the wide variety of experiences that Labor members have. We come from a whole range of different backgrounds. One of the strengths of the Labor caucus is that we represent many different histories. There are many different pathways to get members into the Labor caucus. There is room for fat, old bald blokes —

The ACTING SPEAKER: And lawyers!

Mr W.J. JOHNSTON: There is also room for lawyers, but there is plenty of room for other people in the Labor Party's caucus, which is a real tribute to the many different backgrounds people bring here.

I want to address some controversy happening outside the chamber regarding this legislation. A plaintiff lawyer's firm has criticised the legislation, and I want to make some comments about that. That criticism is entirely misdirected. The legislation does only what we say it does; that is, it takes the existing regime and translates it into a simpler process with a better written and more thorough process, and it is not intended to change the underlying entitlements. We are improving entitlements in a number of specific areas based on the Labor Party's 2021 election commitments. We are fully implementing those. We are translating the existing arrangements to new arrangements. It is simply not correct to say that this is the worst level of compensation available to workers. The Productivity Commission, I think, undertakes a review—I think I have the wrong commission but a federal government agency reviews all workers compensation systems and makes comparisons. I had a briefing note from the agency the other day; I was reading it only last week. It makes clear that Western Australia's entitlements are well within the standard deviation of entitlements across the country. In some areas, we are superior; in some areas, we are average. But it is simply not correct to say that we are the worst scheme in the country.

It may be that plaintiff lawyers want greater access to common law. Quite frankly, back in the old days when I was a union official when there was complete access to common law without any gate, lawyers had a much larger role to play. As a union official, we effectively referred all our cases to law firms. In fact, if you were lucky enough to win the work of a trade union as a plaintiff law firm, it was a major source of income because, effectively, 100 per cent of cases went to plaintiff law firms. That is not the scheme in Western Australia. To be frank, I do not know whether that was the best pathway for workers. A scheme that is not based 100 per cent on plaintiff lawyers does not make it a bad scheme. I know it means there will be fewer opportunities to be part of the scheme—I understand that—but that does not reduce the effectiveness of the scheme.

The judgement of the scheme will be how many workers are compensated for the injuries they receive and to an adequate level. That is the whole thing here. We will improve the step-down from 13 weeks to 26 weeks, which means increasingly workers will receive their continued average pay into the future. We are significantly improving the opportunity for workers to receive more compensation for their injuries. Of course, the reason that it will not be particularly expensive is that it will involve the minority of workers. Most workers will not have more than 13 weeks off for their workers compensation injuries.

It is in the interests of a worker to have a scheme that concentrates on return to work. As a former union official handling workers comp cases, I can tell members that sometimes, unfortunately, for workers on long-duration claims, the claim itself becomes their life rather than life being their life. To get a worker reconnected with their workplace, doing something valuable in the workplace, is an important aim of the legislation. The reason it is an aim of the legislation is that it is in the interests of working people. The idea that a scheme is judged only by its access

to common law, and therefore the relevance of a plaintiff lawyer, is not a proper basis. Given that the Acting Speaker used to be my solicitor, I am not going to criticise plaintiff lawyers! One of my great disappointments when Fran Logan came to cabinet and told us he was retiring was that he said he would be supporting David Scaife to come into Parliament. I told cabinet it was disappointing because I would have to find a new solicitor!

The ACTING SPEAKER (Mr D.A.E. Scaife): I was never a plaintiff personal injuries lawyer, though.

Mr W.J. JOHNSTON: Yes, as you said in your speech during the second reading debate.

The point I make is that John Fiocco has been a good friend of mine for many years. I met him through the union because he was our lawyer prior to the changes made to the act back in the 1990s. Tim Hammond was Bernie Banton's lawyer. These are all people whom I consider friends. I am not criticising plaintiff lawyers; they play an essential role in society. The fact that the Attorney General has opened up the class action scheme in Western Australia to make it more accessible and available to people, and the fact that the new federal government has discontinued the attack on litigation funding, are all important changes. As I have said, plaintiff lawyers play an important part in society. However, they are not the measure of the workers compensation system. The measure of the workers compensation system is how it treats workers. Under this scheme, workers will be treated well. There is always room for improvement, and that is what we are doing in this legislation.

This legislation is principally about translating the existing rules to make them more simple. This morning, I ran into a prominent advocate for working people who was in the foyer of this building. I will let that person speak for themselves. That person could not believe the attack that had been made on this legislation by plaintiff lawyers. During the process of this bill, I met with plaintiff lawyers on a number of occasions. They also made many submissions at each stage of the review of the legislation. We took account of the issues they raised. There were 81 issues that we needed to resolve between the final draft of the bill and the draft that was presented to Parliament. A number of those issues were raised by plaintiff lawyers. We agreed with some of the things that were raised in their submissions; on other issues, we did not agree. Therefore, I do not understand why plaintiff lawyers have taken this over-the-top step of attacking this legislation in the way that they have.

I am proud of the fact that my job is to help working people. That is what we are trying to do through this legislation. I want to congratulate all the members who made contributions to the second reading debate. It is good that we have support across the chamber for this legislation. I am proud of the fact that even though this process has taken longer than I would have liked, the legislation is finally at this stage.

I commend the bill to the house.

Question put and passed.

Bill (Workers Compensation and Injury Management Bill 2023) read a second time.

[Leave denied to proceed forthwith to third reading.]