

**RETURN TO WORK LEGISLATION AMENDMENT BILL**  
**(Serial 123)**

I thank the scrutiny committee and acknowledge its work on this bill—they were the Members for Katherine, Johnston, Spillett and Araluen. I also thank those stakeholders who made contribution to that committee. There were recommendations and we have taken those on board. There will be some committee stage amendments which I will pass through in the committee stage.

A lot of work was done by the Department of Attorney-General and Justice. The e-Learning program and information on the NT WorkSafe websites will be updated. Key stakeholders will be informed and it is anticipated that this will be commenced by *Gazette* notice in the coming weeks.

Labor governments will always support workers and put the safety of workers at the forefront. Everyone deserves to go to work and come home safely to their loved ones. I thank the hardworking staff in Parliamentary Counsel, Department of Attorney-General and Justice and NT WorkSafe.

I acknowledge the staff in my office, particularly someone who is currently enjoying time with a new baby on maternity leave. Gaby has done a lot of work on this. It was a lot of consultation, this is a big and difficult bill which has taken time.

I thank those who had the courage to stand up. I remind anyone that might be listening or reading Hansard, stand up, have the conviction, come into this parliament and express your thoughts. You will see change, it may be five years in the making—which is disgraceful—but the CLP government turned their back at the time. I acknowledge the United Workers Union and all who had the courage to stand up. This bill recognises your courage.

I commend the bill to the House.

Motion agreed to; bill read a second time.

**Consideration in detail**

Clauses 1 to 4, by leave, taken together and agreed to.

Clause 5:

**Ms FYLES:** Madam Deputy Speaker, I move amendment 1 to clause 5. I move that in the proposed section 3(b)(iii) that the word ‘prescribed’ be inserted before the word ‘member’. I further move that throughout the proposed note for the proposed sub-section (iii) that the word prescribed be inserted before the word ‘member’ whenever it appears.

This is to put in place the recommendation from the Legislation Scrutiny Committee and this will remove the unintended possibility that two classes of immediate family member may be created while ensuring the definition of the act aligns with the definition in the National Injury Insurance Scheme, which is the underlying intent of the original amendment.

Amendment agreed to.

**Madam DEPUTY SPEAKER:** Attorney-General, the advice that has been circulated was amendment 1 to clause 5 proposed section 3(b)(iii).

**Ms FYLES:** I did both.

Clause 5, as amended, agreed to.

Clauses 6:

**Mr WOOD:** Clause 6 I would like to ask some questions about, please. I do not think all my questions, Attorney-General, were totally answered. I am referring to clause 6, but under section 4(1)(a) in addition, an

injury to a worker is taken into a rise out of or in the course of his or her employment if the injury occurs while the worker is travelling et cetera.

My issue still revolves around that. You mentioned that if a FIFO worker is going to work they might be in a plane that is hired by the company, but the other one is that I am the plumber—I am catching a plane to do a contract on Groote Eylandt. If that plane crashes, am I covered, because I am going to do it for a particular company?

**Ms FYLES:** Correct. It is part of your journey so it is covered.

**Mr WOOD:** It is covered in this clause?

**Ms FYLES:** If you are only travelling to that location for work you are covered because that is your journey to work.

**Mr WOOD:** The other one I was going to ask again was about the cyclists—if I can get my phone to work. I mentioned before and did not hear an answer—I gave the example, if I am driving a car and it is not registered and I have a crash and I am injured, my understanding is I am only covered for the medical expenses and I am not necessarily covered for my salary. What happens, for instance, and this is the cycling penalties—there is a penalty for not wearing a helmet or helmet not fastened if you are under 17.

Riding a bike incorrectly is a fine, \$25. Riding within two metres of the rear of a vehicle—so if I am riding behind a vehicle and crash into it and I am found that I was at fault—I presume that an adult riding on the road must wear a helmet as distinct from riding on a bicycle path. If I am riding on the Stuart Highway without a helmet or I am breaking one of these traffic offences for cycling, what is the rule then in relation to insurance?

Can an employer basically say to the employee—no difference than for instance when that employee is working say, in a machine shop and the machine shop says you must wear boots, a helmet and a visibility jacket—if that person on the bike is coming to work, has the employer any rights to say that person they must wear a helmet because they are theoretically working for that employer?

**Ms FYLES:** Member for Nelson, you cannot legislate behaviour. Our changes are making it fair no matter how you get to work, whether that is by car, bike or horse. We are creating that level playing field, it is not within that. If a car is involved it is always MAC in terms of a scheme but this about the fairness in that journey.

**Mr WOOD:** I understand that. Under the MAC Scheme if you crash your car on the way to work and that car is unregistered you have been driving with a vehicle you should not have on the road, so you are breaking the law, so you are not covered for MAC. You are now including someone riding a bike. There is two questions there. One is, if you are riding that bike against the law—you do not have your helmet on—you are riding up behind a car, for instance, and you have an accident, are you covered by this insurance for both salary and for medical expenses?

Second, if you are saying a person riding to work is basically the responsibility from the time the person leaves their house to the time the person comes home to their house there are being employed. Has the employer the right to say how you should turn up? In other words, how you should be on your bike? They could say, 'We do not want you riding in thongs, we want you to ride in boots and we want to make sure you have a helmet on your head', the same as if they were at work and are required to wear gloves, boots, protective goggles and a helmet.

**Ms FYLES:** It is a case-by-case basis. If someone is engaging in unlawful activity—for example, alcohol or drugs—the, obviously, that would have an impact. It is the same as you cannot say, 'You need to be in a brand new car that has airbags'. We are making a level playing field in the mode of riding, walking or car. In those other aspects, it would come down to a case-by-case basis.

**Mr WOOD:** But I am not saying that. If the car has been registered then you are not breaking the law. Right? You are driving your car to work, if you have a crash you will be covered by MAC. If the car is not roadworthy—it has a yellow sticker on it or is unregistered—and you have a crash, my understanding is you are not covered, except for medical expenses.

I am saying that we have now made a decision—forget the car for a minute—that you start work as soon as you take your cycle from your house to the job and back home again. You are under the employer—you are being paid for that ...

**Ms FYLES:** You are under the scheme.

**Mr WOOD:** No, you are being paid for that, because that is why you are bringing this in. He is paying the insurance, therefore, does the employer not have the right to say, 'Well, if you will ride your bike then you must do it according to the rules'. If you do not, what happens? If a person falls off their bike—no helmet—are they only covered for medical expenses or are they covered for their salary?

**Ms FYLES:** I believe I have answered the question. A final point from me. New South Wales, Queensland, South Australia and ACT all have journey claims. As I explained, it is case-by-case. This is about the fairness in the way to getting people to work.

**Mr WOOD:** I am not arguing that ...

**Ms FYLES:** You are.

**Mr WOOD:** I am not arguing that. I am not arguing about the unfairness or fairness of what you are doing, I am saying this is a practical outcome. You are saying a person is covered going to work. I am saying, okay, that person goes to work without a helmet—which is against the law—and crashes onto the roadway and causes himself a serious injury, what are the practical outcomes? Will they be covered for medical insurance? Will they be covered for their salary, which is covered under MAC? Will they be covered if they ride a bike and have an accident when they are riding without the requirements of the law?

**Ms FYLES:** How long is a piece of string?

**Madam DEPUTY SPEAKER:** Member for Nelson, the Attorney-General believes she has answered that question. We will now move on ...

**Mr WOOD:** A point of order, Madam Deputy Speaker! I have heard this before in this House. The question has not been answered. Another question has been answered in general ...

**Ms FYLES:** It is a case-by-case—I have said it five times.

**Madam DEPUTY SPEAKER:** The answer from the Attorney-General is that it is a case-by-case basis.

**Mr WOOD:** I know that, but I am asking a specific question. Surely, I can get a specific answer? We are not getting a specific answer. That is what this committee stage is about. I ask a specific question and the specific question is: if I ride by bike to this Assembly—I am working here—and I crash and because I was not wearing my helmet I am hurt, will I be covered for medical expenses and will my salary be covered as well? Simple question.

**Madam DEPUTY SPEAKER:** I understand that question. You have asked it a number of times ...

**Mr WOOD:** Well, why can I not get an answer?

**Madam DEPUTY SPEAKER:** ... Member for Nelson, and the answer has been delivered, so we are moving on to other ...

**Mr WOOD:** A point of order, Madam Deputy Speaker! I do not agree, that is why I am asking if I could get an answer on whether you are covered or not. That is simple.

**Madam DEPUTY SPEAKER:** And the answer was ...

**Ms FYLES:** Case-by-case.

**Madam DEPUTY SPEAKER:** ... on a case-by-case basis.

**Mr WOOD:** Which means what?

**Ms Nelson:** On a case-by-case basis.

**Members** interjecting.

**Mr WOOD:** Oh, very good.

**Ms Finocchiaro:** In determining it, who makes that decision?

**Ms Nelson:** We cannot be more specific. How long is a piece of string, Member for Nelson?

**Members** interjecting.

**Mr WOOD:** Madam Deputy Speaker ...

**Madam DEPUTY SPEAKER:** The answer has been put into record.. Are there any further questions in regard to ...

**Members** interjecting.

**Mr WOOD:** All I asked is what does a case-by-case ...

**Madam DEPUTY SPEAKER:** Order!

**Ms Nelson** interjecting.

**Mr WOOD:** Oh, thank you very much! Fall off your horse!

**Madam DEPUTY SPEAKER:** Okay. We are still looking at clauses 6 to 12. Are there any other questions in relation to clauses 6 to 12?

**Mrs FINOCCHIARO:** Does the insurer determine, on a case-by-case basis, if the person travelling to work was involved in an incident whilst not complying with the law?

**Mr WOOD:** It is a simple question. It is not a case-by-case. There is a principle here. Obviously not recommended ...

**Ms FYLES:** I will say again, it is a case-by-case basis and there are a number of factors. It is simply, as I pointed out, that there are those behavioural factors of whether they had been drinking or had any of those aspects. It is a case-by-case situation.

**Mrs FINOCCHIARO:** The insurer would have to make that decision?

**Ms FYLES:** Yes, correct.

**Mr WOOD:** We dealt with this with ATVs—this issue came into this legislation. If you are driving an ATV on Gunn Point beach, you are illegal and if you have an accident, we were told, you are not covered for salary but only medical expenses. Surely that is a clear-cut, not case-by-case? That is a decision that I believe is how it should be. Is that what would happen with a cycle rider who is not wearing a helmet, surely?

**Mrs FINOCCHIARO:** Is there any positive onus required on the part of the employer—similar to what the Member for Nelson was saying and Attorney-General you commented you cannot legislate behaviour. If the employer is responsible from when the person leaves home to when they reach the boundary of their place of employment—including small deviations along the way—is there any requirement on the employer to proactively ensure that is done as safely as possible?

**Ms FYLES:** There is no requirement, but they can do it if they want.

**Mr WOOD:** Are they working from the time they leave their house to the time they get to work?

**Ms FYLES:** It is a ‘journey claim’ so it is considered a journey to work, which is now covered under this scheme.

**Mr WOOD:** Are they regarded at work, once they start that journey?

**Ms FYLES:** It is exactly as I just said, it is a definition of a ‘journey claim’, it is now covered under this scheme and it is called a ‘journey claim’.

**Mr WOOD:** The employer pays that insurance, is that correct?

**Ms FYLES:** Yes, it says that in the bill. I read out the numbers.

**Mr WOOD:** That is right, I am just asking the question, I am trying to clarify something. Therefore, the person is working from the time they start the journey to the time they finish. Is that correct?

**Ms FYLES:** I have answered the question.

Clauses 6 agreed to.

Clauses 7 to 12, by leave, taken together and agreed to.

Clause 13:

**Ms FYLES:** I move amendment 2 to clause 13 that omits the current clause and replaces it with a clause that inserts section 75A and new sub-section (6)(a) after section 75A(6). I move the new sub-section 6A to read as follows: ‘to avoid doubt the giving of a proposal for a return to work plan under sub-section (1)(c) is not providing a program type of mentioned in section 75B(1A)’.

I further move that I note that sub-section (6)(a)(b) inserted to read as following: ‘employee may elect to use an accredited Vocational Rehabilitation provider to prepare a proposal for return-to-work plan but it is not necessary if the employer does not wish to do so’.

This proposal addresses recommendation 3 of the committee’s report on its inquiry into the bill. The committee recommended that clause 13 be amended to omit the current clause and replace it with a clause that inserts into section 75A(1) a new sub-section to that effect, notwithstanding section 50 and section 75B and employer may but is not required to use accredited Vocational Rehabilitation provider for the purpose of section 75A(1C). To ensure the effect of the committee’s recommendation, the drafter has provided an avoidance of doubt clause that meets the intent of the committee’s recommendations.

Amendment agreed to.

Clause 13, as amended, agreed to.

Clauses 14 to 25, by leave, taken together and agreed to.

Clause 26:

**Ms FYLES:** I move amendment 3 to clause 26, that 3B(4) be omitted and in its place 3B(3) and (4) be inserted. This addresses scrutiny committee recommendation 2.

Amendment agreed to.

Clause 26, as amended, agreed to.

Remainder of the bill, by leave, taken together and agreed to.

Bill, as amended, agreed to.

**Ms FYLES (Attorney-General and Justice):** Madam Deputy Speaker, I move that the bill be now read a third time.

Motion agreed to; bill read a third time.