

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing

Short title

The short title of the Bill is the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020*.

Policy objectives of the Amendments and the reasons for them

On 12 February 2021, the Education, Employment and Training Committee (the Committee) released Report No. 3 following its consideration of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill* (the Bill).

The Committee made a number of recommendations and these proposed amendments respond, in part, to Recommendation 2 of the Committee's report. This recommended clarifying the inclusion of mines rescue team members under the *Coal Mining Safety and Health Act 1999* and the *Coal Mining Safety and Health Regulation 2017*; and an employee of a local government whose duties correspond to that of an ambulance officer or a fire service officer under the presumptive pathway.

Mines rescue team members and local government workers performing first responder roles were always intended to be captured by the Bill. The amendments clarify the inclusion of these workers by prescribing them as a first responder in the *Workers' Compensation and Rehabilitation Regulation 2014* (the Regulation). To ensure equity with those in the coal mining industry, the proposed amendments also clarify the inclusion of workers performing mines rescue functions under the *Mining and Quarrying Safety and Health Act 1999*.

Achievement of policy objectives

The amendments support the Bill to achieve its policy objectives of introducing presumptive workers' compensation for first responders by clarifying that mines rescue team members and local government workers in like-for-like first responder roles (i.e. ambulance officer or a fire service officer) can access the presumptive pathway for claims determination.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives other than by legislative amendment.

Estimated cost for government implementation

Claims in scope of the presumption, including this proposed clarification, are already compensable in the worker's compensation scheme.

The Bill and this proposed amendment do not change or increase the entitlements available, but instead provide an alternative pathway for decision-making by reversing the onus of proof to promote early claims acceptance. The original explanatory notes prepared for the Bill note this may potentially result in behavioural change which, in turn, may increase the number of workers' compensation claims lodged and accepted for claims within the scope of this Bill. The impact of any behavioural change will be borne through workers' compensation insurance premiums.

Consistency with fundamental legislative principles

The Bill raises one potential infringement of the fundamental legislative principle (FLP) of allowing the delegation of legislative power in appropriate cases and to appropriate persons under section 4(4)(a) of the *Legislative Standards Act 1992*.

The Bill proposes specifying a limited head of power in the Act which details the types of duties a worker must perform to be a first responder with the list of occupations and employers qualifying under this head of power to be prescribed in the Regulation. The proposed amendments clarify the inclusion of mines rescue team members and local government workers by also prescribing these occupations by regulation.

The reason occupations and employers are proposed to be prescribed in regulation, rather than the Act, is that it has been identified the type of roles and occupations that meet the tests under the head of power may naturally change and evolve over time due to:

- PTSD becoming identified as prevalent within a different cohort, indicating new occupations or employers being within scope;
- changes to role titles or employers (e.g. machinery of government changes and legislative changes defining roles within departments);
- increasing and changing role responsibilities which may bring a new role into scope. For example, in its appearance before the Committee at the public hearing, the United

Firefighters Union of Queensland acknowledged the role of a first responder can change over time, such as firefighters who now have a greater role in rescue activities; or

- changes in technology and behaviour that occur over time. For example, recent technological changes have led to a number of different policing challenges, including cybercrime, changes in forensic practices, proliferation of child pornography, and availability of surveillance (which can be, at times, extremely graphic); all of which may place workers at a greater risk of trauma exposure.

In recognising the significance of delegating legislative power, the head of power provides clear and transparent limitations to the types of duties performed to qualify as a prescribed occupation. Given the nature of the Bill, any changes to the regulation are likely to be considered significant and will be subject to ongoing regulatory and parliamentary scrutiny.

The proposed amendments are intended to be beneficial in nature as they reduce the evidential claims burden on mines rescue workers and first responder local government workers by allowing their claim to be determined under the presumptive pathway.

As the proposed amendments provide certainty, safeguards for workers' rights through transparent and accountable legislative processes and timeliness to facilitate a more agile response compared to amendments to the Act, the delegation of legislative power is considered appropriate and justifiable.

Consultation

The amendments respond to one of the recommendations of the Committee and to issues raised by submissions during the Committee process.

The Office of Industrial Relations extended invitations to discuss the proposal to clarify the inclusion of first responders in local government and mines rescue roles to all impacted local government and mining self-insurers (including the Local Government Association of Queensland); the Association of Self-Insured Employers of Queensland; the Australian Lawyers Alliance; the Australian Workers' Union (Queensland); the Construction, Forestry, Maritime, Mining and Energy Union of Employees (Queensland); the Queensland Council of Unions; the Queensland Law Society; the Queensland Resources Council; Queensland Mines Rescue Service; Resources Safety and Health Queensland; the Services Union (Queensland) and WorkCover Queensland.

Consistency with legislation of other jurisdictions

The scope of the Bill remains comparable with similar approaches taken in Tasmania, the Northern Territory and Canada to introduce presumptive legislation for certain classes of workers, including first responders, with PTSD.

Notes on provisions

Clause 1 inserts three further occupations in new Schedule 6A of the *Workers' Compensation and Rehabilitation Regulation 2014*.

The inclusion of local government workers performing roles corresponding with ambulance officers and fire service officers, as well as coal mine and other mine workers performing rescue functions in mines, responds to a recommendation of the Education, Employment and Training Parliamentary Committee to clarify these workers and relevant volunteers are first responders.