Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

Submission to the Education, Employment and Small Business Committee in relation to the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal of the Eora Nation.

[1] www.lawyersalliance.com.au.

Introduction

1. The Australian Lawyers Alliance ("ALA") is grateful for the opportunity to make submissions in relation to the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 ("the Bill").

2. The ALA makes no comment in respect of the following aspects of the Bill:

a. Amendment of the *Further Education and Training Act 2014*; and

b. Amendment of the *TAFE Queensland Act 2013*.

3. On the whole, the ALA welcomes the amendments being proposed as they are fair and reasonable for the workers of Queensland. Further, the proposed amendments do not impose any unnecessary red-tape or unreasonable and significant costs on the workers' compensation scheme or employers.

4. This submission will briefly deal with key components of the proposed amendments of the *Workers' Compensation and Rehabilitation Act 2003* ("*WCRA*").

Clause 34 – definition of injury

5. The ALA supports amending the definition of injury in clause 34.

6. It will ensure one definition of injury applies to both physical and psychological injuries. This amendment simplifies the meaning of injury.

7. From stakeholder consultations, the ALA understands that this definitional change will not cause a tide of new claims, however will make administration and decision-making more simple.

Clause 36 – terminal condition

8. The ALA supports the proposed amendment of s.39A of the *WCRA* to extend the entitlement to latent onset terminal benefits.

9. Experience in silicosis claims shows that most terminal conditions are expected to terminate a worker's life within 5 years. The current provision however restricts worker's access to entitlements unless the condition is expected to terminate the worker's life within 2 years.

10. It is unnecessary and unreasonable to make workers wait for entitlements in circumstances where a terminal diagnosis is made, but it is a question of when, not if, the worker will succumb to the condition.

Clauses 39, 78 and 79 – coverage for interns

11. The ALA supports clauses 39, 78 and 79 which extend workers' compensation coverage for interns.

12. There has been an anomalous situation where someone working in a business for work experience without pay, but not as a volunteer, has not been covered for workers' compensation. This is wholly unfair.

13. The extension of coverage to interns will be matched by appropriate premium collection, therefore would not place scheme sustainability at peril.

Clause 42 – payments outside the scheme

14. Section 109 of the *WCRA* provides that an employer cannot make a payment to a worker where that amount is payable as compensation under the scheme. Essentially, the aim is to avoid ex gratia style payments to prevent injured workers from pursuing a claim.

15. Payments made by WorkCover Queensland are already restricted under the *WCRA,* to relevant compensation payments.

16. Clause 42 merely ensures that self-insurers are also appropriately governed and may only make legitimate payments provided for by workers' compensation coverage.

17. The ALA supports this amendment.

Clause 46 – time for applying

18. Section 131 of the WCRA states that an application for compensation must be made within 6 months of an entitlement arising. Essentially that is from when the injury occurs, or if over a period of time from the date of first consulting a doctor.

19. Insurers may waive this time limit in limited circumstances. That is, if the application is lodged out of time due to a mistake, the claimant's absence from Queensland or a reasonable cause.[2]

20. It is common that injured workers do not lodge a workers' compensation claim at or near the time of their injury. This is often because they work through their injury, are concerned about their job security or simply find that the injury actually deteriorates over time, causing them to stop work sometimes long after the injury.

[2] *Workers' Compensation and Rehabilitation Act 2003*, s.131(5).

21. Clause 46 reasonably allows for this situation by balancing the worker's circumstances and fairness to the employer and the scheme. The insurer will be able to waive the 6 month time limit if the worker lodges the claim within 20 business days of being assessed as totally or partially incapacitated for work.

22. The ALA supports this as a sensible, reasonable and fair provision.

Clause 48 – employer reporting of injuries

23. The ALA supports clause 48 which requires all employers to report to the insurer any injury for which compensation may be payable.

24. This clause amends current s.133 of the *WCRA* which is worded similarly, but excludes the need for an employer to report an injury if they are self-insured. Such an exclusion is not justified.

25. The proposed amendment will ensure the ability of WorkCover and self-insurers to better manage claim frequency and prepare for possible new claims. There is no significant burden which would justify the continued exclusion of a self-insured employer from this reporting requirement.

Clause 61 – rehabilitation and return to work

26. The ALA supports the proposal to improve on, and clarify, an insurer's obligations to provide rehabilitation and return to work assistance to injured workers, subject to a number of points dealt with below.

27. It is imperative that such rehabilitation and return to work programs are informed, and approved, by the worker's treating practitioners, who are in the most appropriate position to understand the nature and extent of the injury, and its impacts. The proposed plan must also be meaningful; that is, it must genuinely utilise an injured worker's skillsets to allow them to return to their pre-injury role or, if that is not possible, to another substantive role suitable to their injuries.

28. In order for a treating practitioners to provide such advice, they must themselves be properly informed of the nature of the return to work program and duties to be performed.

29. If there is a divergence of views in relation to the suitability of a rehabilitation or return to work plan, we would recommend the Regulator develop protocols for WorkCover Queensland and self-insurers to follow. This should involve the use of reputable, independent Occupational Therapists to resolve any issues and to optimise the rehabilitation and return to work plan. Moreover, those independent Occupational Therapists should then monitor and adjust the plans as implemented.

30. Whilst the amendment to s.220(7) of the *WCRA* as proposed in clause 61 refers to rehabilitation and return to work plans being "*developed in consultation*" with the treating practitioners, amongst others, The ALA submits that the Committee should consider requiring that they be "*approved by*" the treating practitioners. Further, that the insurer be required to provide the treating practitioner the details of the proposed rehabilitation and return to work plan, and the nature of the duties to be performed.

31. The proposed amended section also allows a worker to request that the insurer refer them to an accredited rehabilitation and return to work program. There is however no time limit specified for an insurer to make a decision and inform the worker. The ALA recommends that the clause be amended to require insurers be required to make a decision, and inform the worker in writing, within 10 business days. This will avoid unreasonable delays and ensure injured workers are placed in the best position to be rehabilitated and return to work quickly.

32. The ALA further recommends that the worker be given the right to choose an rehabilitation and return to work program or provider of their choice. People should have the right to choice and control over their own rehabilitation providers.

Clause 63 – notification of appointment of rehabilitation and return to work coordinator

33. Clause 63 requires employers to notify the insurer of the appointment of a rehabilitation and return to work coordinator within 12 months of the appointment. If the details of the coordinator change, this must be notified within 12 months of such change as well.

34. Whilst the ALA supports the requirement to provide this notification, we believe that a period of 12 months is excessive.

35. It is conceivable that by the time of notification a coordinator has been employed, has left, and subsequently been replaced by another coordinator. Such a timeframe therefore risks leading to dated and incorrect information.

36. There is no reasonable justification for such a lengthy period. The ALA recommends that the notification period be no more than 3 months. This is not a significant administrative or cost burden to any employer.

Clause 65 – support for psychological injuries

37. Section 134 of the *WCRA* requires that a decision in relation to an Application for Compensation is required to be made by an insurer within 20 business days.

38. Yet, the average time for making a decision on an Application for Compensation relation to a psychological injury averaged 34 business days in the 2018 financial year.[3] Such delays are seriously detrimental to the mental health and wellbeing of injured workers, who may already be struggling with stress, anxiety and depression.

39. Delays in decision-making may lead to exacerbation of symptoms and delayed rehabilitation. They are often a predictor of poor prospects of recovery and return to work outcomes.

40. Accordingly, the ALA supports the provision of early intervention for psychological injury claims. Clause 65 provides an appropriate balance between an injured worker and the insurer, by limiting the requirement to provide early intervention to reasonable services.

Clause 69 – expressions of regret and apologies

41. The ALA supports the ability for apologies or expressions of regret without it constituting an admission of liability.

42. The provisions reflect similar provisions concerning apologies in the *Civil Liability Act 2003* and therefore will bring the workers' compensation scheme in line with the law relating to motor vehicle accident and public liability claims.

Conclusion

The ALA welcomes the opportunity to have an input and would be pleased to participate in any hearings or further stakeholder consultations relating to the Bill. Please do not hesitate in making contact with me via [redacted] or at [redacted] if we can assist in this way.

Yours sincerely,

Greg Spinda
Queensland President
Australian Lawyers Alliance

[3] Office of Industrial Relations, Queensland Workers' Compensation Scheme Statistics 2017-18, 17 https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0003/167628/wcr-stat-report-2017-18.pdf