

Australian Industry Group

Amendment of the Workers' Compensation and Rehabilitation Act 2003

Submission to
Education, Employment and Small
Business Committee

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QUEENSLAND

AMENDMENT OF THE WORKERS' COMPENSATION AND REHABILITATION ACT 2003

Introduction

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

We have ongoing contact with employers of all sizes, through the provision of membership, consulting and training services, with a strong focus on workplace relations, work health and safety and workers' compensation. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact.

An important part of our role is to develop strong relationships with governments and regulators across the country to provide a voice for employers when legislative and policy issues are being considered. Ai Group is a member of Safe Work Australia (SWA) and its related Strategic Issues Group – Workers' Compensation.

In the QLD context we are in regular contact with senior staff within WorkCover, the Workers' Compensation Regulator and the Office of Industrial Relations. Our legally qualified legal staff also represent employers in dispute resolution processes and support and assist them when common law damages actions are on foot.

We appreciated the opportunity to contribute to the Independent Review of the Act that occurred in 2018, and in being involved in consultation processes as the recommendations of the review have been considered.

The Amending Bill

Ai Group notes that the objective of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 Bill (the Bill) is to implement 12 of the legislative recommendations made by the 2018 Five Year Review of the Act, as summarised in the Explanatory Notes.

- clarifying WorkCover Queensland's ability to fund and provide programs and incentives that support employers improving health and safety performance, after consulting with the regulator under the *Work Health and Safety Act 2011* or any other relevant health and safety regulator;
- exempting expressions of regret and apologies provided by employers following a workplace injury from being considered in any assessment of liability for damages brought under the *Workers' Compensation and Rehabilitation Act 2003* to align with the approach taken in the *Civil Liability Act 2003*; Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019
- providing an additional way that employers can ensure that rehabilitation and return to work coordinators are appropriately qualified, and requiring employers to provide details of their rehabilitation and return to work coordinators to insurers, to support compliance and the provision of advisory services to coordinators;
- requiring insurers to provide ongoing rehabilitation and return to work services if the injured worker has been unable to return to work after their entitlement to weekly benefits and medical expenses ceases. The employer's obligations for rehabilitation and return to work are also aligned with their insurer's obligations;
- requiring self-insured employers to report injuries and any payments made to injured workers to their insurer, aligning their obligations with the existing obligations on employers insured with WorkCover Queensland;
- clarifying that insurers have a discretion to accept claims submitted more than six months after the injury is diagnosed, if the injured worker has lodged a claim within 20 days of developing an incapacity for work from their injury;
- extending workers' compensation coverage to unpaid interns;
- amending the meaning of injury for a psychiatric or psychological disorder to remove 'the major' as a qualifier for employment's 'significant contribution' to the injury; and
- requiring insurers to take all reasonable steps to provide claimants with psychiatric or psychological injuries access to reasonable support services relating to their injury during claim determination.

Ai Group is comfortable with most of the amendments being made by the Bill. Our comments are focusing on areas of concern that relate to either the amendments themselves or the practical implementation of those amendments.

Meaning of rehabilitation and return to work coordinator (RRTWC)

It is proposed that section 41 will be amended by clause 37 by adding a new subsection (2). The new provision will state:

- (1) A rehabilitation and return to work coordinator is a person who—
 - (a) is appropriately qualified to perform the functions of a rehabilitation and return to work coordinator under this Act; and
 - (b) has the functions prescribed under a regulation.
- (2) A person is taken to be appropriately qualified to perform the functions of a rehabilitation and return to work coordinator under this Act if the person has completed a training course approved by the Regulator.

Ai Group is concerned that the wording of this will lead employers to believe that attendance at specific training courses will be the only way that they can demonstrate that the RRTWC is appropriately qualified. This will be particularly problematic in situations where RRTWCs have attended other forms of training since the amendments to the Act which removed the requirement for prescribed training.

Current information on the [website](#) states:

This means new and existing RRTWCs have the flexibility to attain the skills and abilities required to fulfil this role through a variety of methods including on the job training and by completing a qualification in areas of injury management, rehabilitation and return to work.

It is essential that WorkCover QLD guidance continues to emphasise the intention that the legislation provides flexibility and that attending a specific approved course of training is one way that that can be demonstrated.

We note also that the Explanatory Notes state on page 5, that the amendments will allow the Workers' Compensation Regulator "to approve a list of training courses or qualifications for RRTWC relevant to the industry of the employer". It is Ai Group's experience that introductory training for RRTWCs does not need to be industry specific. Since the 2013 amendments we have been delivering a one-day course which has effectively provided knowledge and skills across a broad range of industries. In fact, we find that the participants learn valuable insights when sharing with those from other industries. It is important that consideration is given to approving general courses, rather than only ones with a specific industry focus.

Providing details of the RRTWC to the employer's insurer

Ai Group's initial response to the requirement to provide details of the RRTWC was concern about the potential for inadvertent breach of this requirement, particularly if there is a change of RRTWC.

However, we are comfortable that the requirement will be to notify within 12 months, allowing the requirement to be linked to the annual premium renewal process.

New section 226(6)(b) will require that the notification to the insurer requires "details of how the person is appropriately qualified". If the qualification is achieved other than through attendance at a course of training, it may be difficult for an employer to articulate this clearly and accurately. It is important that this requirement does not become too burdensome for employers, or they may conclude, wrongly, that training is the only option to demonstrate compliance.

Unpaid Interns

Clause 78 of the Bill will amend the Act to include unpaid interns as a worker for the purposes of creating an entitlement to compensation.

Subsequently, clause 39 establishes an ability for WorkCover to charge "an amount it considers necessary" to provide for compensation for interns and to cover the administration of the Act in relation to interns.

Ai Group recognises the importance of employers paying a premium if an intern is to be covered for workers' compensation. However, the lack of detail provided about how the upfront amount might be set is concerning. It is also unclear how the payments made to an injured unpaid intern will be considered in the employer's premium, particularly in relation to weekly payments that may be taking into account income from other employers (as required by regulation 100).

Ai Group will seek to engage with WorkCover Queensland to participate in consultation on how an appropriate premium will be set.

It will also be important to provide employers with information about the full potential impacts of engaging an unpaid intern, including possible weekly compensation payments, rehabilitation and return to work obligations and potential premium impacts.

We note that the Explanatory Notes state, at page 10:

It is expected that claim costs for extending workers' compensation coverage to interns would be minor with an estimated maximum cost to the scheme of approximately \$140,000 to \$185,000. This cost will be fully borne by employers with interns and is unlikely to significantly impact premium.

These estimates seem to be very low. It is not clear how these figures have been derived, and whether they have factored in the potential for weekly compensation payments (in line with regulation 100) and other claim costs such as permanent impairment payments and common law claims.

Meaning of psychiatric and or psychological disorder

Ai Group does not support the amendment that will change the qualifying requirement for a psychiatric or psychological disorder from one that requires work to be "the major significant contributing factor" to work being "a significant contributing factor".

We acknowledge that the government has accepted this recommendation and will not further consider the issue. However, we continue to put forward the view that there often needs to be detailed assessment of psychiatric and psychological injuries to determine entitlement and the input and engagement of employers in this process is crucial.

Support for workers with psychiatric or psychological injuries

Ai Group supports the provision of early support services for workers with a psychiatric or psychological injury, for the reasons outlined in the explanatory notes.

We understand from the wording of new section 232AB(4), and information provided on page 11 of the Explanatory Notes, that the cost of these support services will only be used in the premium calculation of an individual employer if the claim is accepted. This is crucial to ensure the acceptance by employers of these additional costs being paid.

It is Ai Group's strong recommendation that WorkCover QLD maintains records of the costs and circumstances of payments made on claims that are subsequently not allowed, to enable the financial impact of this initiative to be properly assessed after 12 months operation.