9 September 2019

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By Email: eesbc@parliament.qld.gov.au

Dear Madam,

Re: Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019

The Association of Self Insured Employers of Queensland (ASIEQ) thanks the committee for the opportunity to make a submission to the Inquiry into the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019*.

ASIEQ is a representative group acting primarily for self-insured employers within the Queensland workers' compensation environment. The association's current membership includes 28 self-insured licensees that comprise over 250 employers that cover approximately 10% of workers' compensation claims in the Queensland scheme.

The membership of the association consists of a diverse range of large organisations and businesses that operate across a wide array of industries that contribute significantly to the Queensland economy and community. From the remote North West through central Queensland to all major cities and towns, every Queenslander benefit's in some way from the services provided by our members. Our membership includes local government authorities, national companies and Global/multinational corporations that employ over 200,000 workers in the state and stimulate significant economic opportunities and growth for the Queensland economy. Although the industries and businesses vastly differ, there is a common thread between members in regard to a strategic commitment to injury prevention and responsive injury management. Our members have developed unique injury management and insurance models having regard to their individual circumstances.

ASIEQ is represented on the Stakeholder Reference Group (SRG) that considered the legislative amendments arising from the second five-year review of the operation of the Queensland workers' compensation scheme. We take this opportunity to thank the government for allowing us to participate in the SRG process. Although the legislative changes to the scheme are not ones that were proposed by us, we are thankful that our input was utilised in making the changes more workable.

Our thanks also go to Professor David Peetz for giving time to ASIEQ to meet with him during the five-year review process. ASIEQ made extensive submissions to the review however none of these were accepted in the final Bill.

This five-year review was conducted differently to the previous review in 2012/2013. That review was conducted by the Finance and Administration Committee of parliament and 246 written submissions were made by stakeholders and numerous public forums, public briefings, and public hearings were conducted. The submissions are still available on the parliamentary website. In other words, the whole review process was very transparent. ASIEQ members felt that the 2018 review was conducted with less transparency. Stakeholders have made written submissions that are not publicly visible. Stakeholders were permitted to meet with Professor Peetz however there is no public record of the ideas and comments raised in these meetings.

In Chapter 9 of Professor Peetz report, it states that:

There are both advantages and disadvantages to the system from having self-insurance available. On the positive side, direct involvement by the employer in rehabilitation is one of the better ways to promote rehabilitation. On the negative side, the same cost incentives that promote active involvement in rehabilitation also encourage self-insurers to disguise or dismiss workplace injuries. This is mostly the case for less serious injuries or injuries that take some time to manifest themselves fully.

Furthermore, it is stated in paragraph two:

Thus several stakeholders told of self-insurers who discouraged injured workers from recognising that their injury was work-related or from lodging a claim or obtaining expensive treatment, and provided evidence in support of this.

The first time that self-insurers heard of these allegations was through the report and we were not given the specifics of the allegations nor were we given the opportunity to respond. This is not procedural fairness. Furthermore, it has not been established whether the allegations involve isolated incidents or systemic issues.

What is of greater concern is that some of the legislative amendments proposed in the Bill have arisen from these uncorroborated allegations.

We offer the following submissions in regard to some of the amendments proposed by the Bill.

Rehabilitation and Return to Work Coordinators – Clause 37

ASIEQ's has no objection to the principles of these amendments.

We would like to note that no evidence was published to support the review findings about the "quality" of Rehabilitation and Return to Work Coordinators (RRTWC).

ASIEQ's members urge the regulator to be flexible in the application of these provisions. Many large employers already have sound training and development strategies for RRTWC's.

Insurers' responsibility for rehabilitation and return to work

The Bill proposes a mandatory requirement to refer an injured worker to an accredited rehabilitation and return to work program if the worker's entitlement to compensation has ceased and the worker has not returned to work. Insurers will continue to have the ability to refer a worker to an accredited program at any earlier stage in the claim process.

One of the key features of the Queensland scheme is that it's "short-tail" in nature. In other words, there are various mechanisms in place for ceasing workers compensation claims. This has enabled the scheme to be affordable and fully funded. This is in contrast to many other Australian schemes that are long-tail in nature and struggle to maintain full funding. These amendments put the short-tail nature of scheme's at risk.

The amendments impose obligations on insurers and employers. This disregards the fact that rehabilitation is, on occasion, hindered by the attitude and motivations of injured workers. ASIEQ has made submissions to previous Inquiries expressing concern that workers with a litigation mindset tend to lose their focus on rehabilitation and, in some instances, this is motivated by the legal fraternity. The Queensland scheme gives workers full common law rights for their injuries but the incentive is there to maximise the financial payout through minimal effort to return to work.

Self-insurers already have a vested interest in giving workers every opportunity to return to work and commence the rehabilitation process as soon as possible after the injury is reported. If a worker has not returned to work at the end of a claim, this is unlikely to stem from a lack of effort of the self-insurer.

ASIEQ believe this amendment is unnecessary and the focus should be on ensuring all parties to a claim maximise their rehabilitation endeavours *during* the claim. Stronger provisions to encourage workers to participate in rehabilitation and mitigate their loss would support this aim. ASIEQ would be willing to work with the government to develop such legislative amendments.

We appreciate the fact that our concerns during the SRG process led to a number of practical limits and exclusions being included on the application of these amendments. However, we also believe that another exclusion should be the scenario where the injured has received a lump sum for permanent impairment. It contradicts the short-tail nature of the scheme to enable workers to receive a lump sum and then still require the insurer to provide rehabilitation services.

Notification of injuries

When self-insurance was introduced into the legislation in 1997, section 133 and 133A were amended to specifically exclude self-insured employers. This is because for self-insurers, the "employer" and the insurer" are the one and the same entity. These amendments create an illogical requirement that an organisation must report an injury and its costs to itself. For a self-insurer, the employer pays the costs related to an injury as required by section 109. (In contrast, WorkCover pay the injury costs of other employers.)

ASIEQ is concerned about the efficacy of these amendments due to lack of factual information supporting their need. Information was requested at the SRG about the effectiveness of the provisions for non-self-insured employers and none was able to be provided. It appears that the existing provisions are not being enforced. The question then becomes why expand the provisions to include self-insured employers, who are large organisations with a vested interested in providing early intervention services to their injured employees.

The broad wording of these provisions could jeopardise many preventative and early intervention programs, including Employee Assist Programs, voluntary health screening, on-site medical services, and rapid referral to treatment providers. This would be counter intuitive to encourage employers to prevent and reduce the impact of injuries on workers.

Time to lodge an application for compensation

This amendment is a reaction to a claim for black lung being denied by the insurer due to the disease being diagnosed by a doctor more than six months prior to the claim being lodged. Stakeholders raised concerns with Professor Peetz that the current interpretation of section 131 and 141 has negatively impacted workers with chronic, insidious or psychiatric injuries who attempt to manage their injury at work before deteriorating, and do not lodge a claim when they are assessed by the doctor but at a later time when they become incapacitated for work.

ASIEQ believe the amendment should make an exception specifically for chronic, insidious or psychiatric injuries. The proposed amendment, in its current form will potentially have serious unintended consequences. If a long period of time has elapsed between the alleged event and the incapacity, it is a disadvantage to both the worker, with whom the onus of proof rests, and the employer or insurer to investigate the veracity of claims.

ASIEQ recommend an amendment that a claim must be lodged within six months of the worker reporting a work injury to the employer.

Definition of psychiatric and psychological injuries

This amendment will potentially allow workers compensation coverage for psychiatric and psychological injuries with a tenuous connection to employment.

Legislative definitions of injury in most other states require "more than a significant contribution from employment" and instead "require employment to have the greatest contribution to the injury". This was demonstrated in papers distributed in the SRG process.

Psychiatric and psychological injuries are already a significant cost to the scheme and it would have be detrimental to hold employers responsible for injuries that may only have a minimal connection to employment.

ASIEQ strongly urge the committee to remove this amendment.

Early intervention in psychological and psychiatric injury claims

Over 60% of psychiatric and psychological injuries are rejected. This amendment will require payment of treatment for injuries that will often be rejected. This adds a significant cost leakage to the scheme and the economy.

Self-insured employers often provided treatment to workers with psychiatric and psychological injuries before their claim is determined. (This is often part of early intervention and employee assistance programs.) However, these employers can use some discretion where such treatment is not helpful or where the injury is not work related.

Our members have experienced "stress" claims being lodged by workers who do not have an injury; rather, they have a grievance and use the workers compensation claim to vent it.

Through the SRG process, ASIEQ argued that some limits needed to be placed on pre-payment of treatment for psychological and psychiatric treatment. Professor Peetz also recommended this occur. (Workers with accepted claims have limits placed on these treatments though the Table of Costs). We are grateful that limits were included.

Whilst the limits have been included, ASIEQ urge the committee to reject this legislative amendment based on the unintended consequences this amendment will have.

Employer Excess

The amendments include provisions for self-insured employers to be required to pay the excess. It is uncertain what benefit this is to either the employer or the worker. Self-insured employers pay all costs associated with the injury regardless of the existence of an excess. The same employer will still be paying the costs and there is no benefit to the worker. It creates an unnecessary administrative step for employers who have elected to self-insure, potentially delaying payment of the excess period as notification is sent to the employer to pay.

ASIEQ recommends rejection of this legislative amendment.

Conclusion

Should clarification or further details be required regarding this submission, please feel free to contact our office via the details on page one.

Yours faithfully

David Gomulka
ASIEQ Executive Member
SRG Member