

United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)



**Submission regarding the Workers'
Compensation and Rehabilitation and
Other Legislation Amendment Bill 2020**

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Contact:

**John Oliver
General Secretary**



1. United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)

The UFUQ is an industrial organisation of employees registered under the *Industrial Relations Act 2016*, providing representation and coverage to professional and auxiliary firefighters employed by Queensland Fire and Emergency Services (QFES) and also to scientific officers and fire communications officers.

The UFUQ have over 2,500 members, full time, part time and casual who are affected by the Bill. Our members respond to almost every emergency, not only in Queensland but interstate and internationally. Their primary role is to protect life and property, and they are faced with the prospect of encountering a life-threatening or otherwise traumatic event every day they go to work.

2. Request for permission to publish this submission

The UFUQ requests permission from the Education, Employment and Small Business Committee (the committee) to publish this submission, particularly for the information of our members, interstate firefighter unions, and Queensland unions affiliated with the Queensland Council of Unions (the QCU).

We authorise the publication of this submission by the committee.

3. Consultation about the Bill

The UFUQ is pleased to be able to provide this submission about the Bill and request the opportunity to appear before the committee at any scheduled public hearing.

We are satisfied that the timetable for consultation about this Bill provides adequate time to consider and provide submissions to the committee.

4. Statement of support for the Bill

The UFUQ makes this submission in support of the Bill.

In our view, the Queensland workers' compensation scheme should endeavour to be the best in Australia. We understand this is a common aim of WorkCover Queensland (WCQ) and the Queensland State Government. However, with regard to psychological injury, Queensland has been falling behind.

Tasmania and the Northern Territory have already introduced presumptive legislation for Post-traumatic Stress Injury, and the Federal Government is currently considering how presumptive provisions could better support first responders with a psychological injury under the Comcare scheme.

This Bill ensures our members, here in Queensland, have comparable workers' compensation entitlements. The introduction of presumptive legislation will also significantly assist in reducing stigma around Post-traumatic Stress Injury amongst our members and will make the claim lodgement and determination process less daunting. For these reasons, the UFUQ commends the Government for introducing the Bill, and we particularly commend the decision to exclude 'reasonable management action' as a basis for rebuttal.

However, if the Queensland workers' compensation scheme is to be the best in the

country, it should not just include comparable provisions, it should include the best provisions. We therefore provide the following recommendations, at 5. to 9. below, about how the Bill can achieve this and better achieve its objectives.

5. Post-traumatic Stress Injury (PTSI) not Post-traumatic Stress Disorder (PTSD)

While the UFUQ acknowledges that the DSM-5 still uses the term Post-traumatic Stress Disorder (PTSD), there can be no doubt, that in the context of this Bill, what our members will have sustained is a work-related injury. We therefore believe it to be more appropriate for the Bill to use the term Post-traumatic Stress Injury (PTSI).

Globally, unions representing first responders continue to fight for this change, including through lobbying the American Psychiatric Association to change the name in its next edition of the DSM.

Particularly amongst firefighters, there remains a significant stigma associated with the diagnosis of PTSI, and labelling it as a 'disorder' contributes to this stigma.

We are certain the Government would agree that a PTSI diagnosis is nothing to be ashamed of, there is no weakness in asking for help and it does not mean that the injured worker does not bring value to the workplace.

A minor amendment to the language in the Bill would go a long way towards reinforcing this message and combatting the stigma of psychological injury for first responders here at home.

It also provides Queensland with the opportunity to be at the forefront of this change.

6. All trauma-related psychological injury should be included

The scope of this Bill should not be limited to just PTSI. It should include all psychological injuries that have been diagnosed as work related, as a result of exposure to a traumatic event or cumulative traumatic events (i.e. over a period of time).

In our experience, these may include (in addition to PTSI) –

- Acute Stress Disorder,
- Adjustment Disorder,
- Anxiety, and
- Depression.

We note the DSM-5 chapter related to Trauma and Stressor-related Disorders includes PTSI, Acute Stress Disorder and Adjustment Disorder.

In our experience, PTSI is not unique. The same barriers to accessing compensation exist for other trauma-related psychological injury, such as concerns regarding stigma, workplace culture, the claims determination process and the potentially limited return to work opportunities. The workers' compensation process is just as daunting for our members irrespective of the trauma-related psychological injury they have sustained.

The inclusion of all trauma-related psychological injury would also further assist in reducing stigma around mental illness amongst our members.

7. Diagnosis by a psychologist should be included (requirement to be diagnosed by a psychiatrist is prohibitive)

Diagnosis by a psychiatrist significantly limits the application of the Bill and may have the unintended consequence of preventing our members from receiving early intervention and/or early access to the workers' compensation scheme.

In our experience, the upfront cost, and the length of time our members may be required to wait for an appointment, as well as issues accessing psychiatric care in rural communities, are relevant barriers associated with diagnosis by a psychiatrist.

Most of our members are diagnosed in the first instance by a psychologist that they have accessed either via their employer's Employee Assistance Program or through a mental health care plan following an appointment with their General Practitioner. A requirement for them to then be referred to a psychiatrist and wait for the appointment to be eligible for a 'presumption of injury' claim is unnecessarily prohibitive.

We anticipate that this will likely result in one of two outcomes. Our members may elect to delay their application until they have been diagnosed by a psychiatrist, to avoid difficulties in proving the legislative test for 'injury'. In this scenario, our members are effectively prevented or discouraged from receiving early intervention and/or early access to the workers' compensation scheme due to the typically long wait times associated with accessing the services of a psychiatrist.

Alternatively, our members may proceed to lodge a claim without the diagnosis of a psychiatrist. In this case they will most likely be directed to attend an independent medical examination at the expense of the insurer, rendering the 'presumption of injury' framework essentially redundant.

In our view, the Bill should require a diagnosis by either a psychologist or a psychiatrist. We note the Bill's Explanatory Notes refer to the many Canadian jurisdictions that have taken this approach (including Alberta, Manitoba, New Brunswick, Ontario, Saskatchewan, Yukon and Nova Scotia) and we strongly recommend that the Queensland workers' compensation scheme follows their lead.

8. 'First responders' and 'Eligible employees' Schedules should be included in the Act rather than regulation

The UFUQ is concerned that the Bill, as currently drafted, does not provide adequate protection against any future attempt to reduce the scope of the presumptive legislation.

In our view, the 'First responders' and 'Eligible employees' Schedules should be included in the Act rather than through the regulation. This would be consistent with the approach taken for the existing presumptive legislation in the Act (i.e. Schedule 4A – Specified diseases).

To ensure additional occupations and/or eligible employees could be easily added at a future time, we suggest that the Schedules could be amended to include an additional provision to include 'any other' first responder or eligible employee (as the case may be) 'as prescribed under a regulation'.

9. Rebuttal should only be permitted when demonstrable and reasonable evidence can be provided

It is common for our members, who have sustained a psychological injury, to experience difficulties in proving the legislative test for 'injury' because of several unsubstantiated, personal and/or unrelated matters that have been reported to WCQ by their employer in an attempt to contend that their employment was not a significant contributing factor to their injury. Through discussions with other unions, we recognise that this is not a problem unique to our members, it is a problem experienced by many workers within the Queensland workers' compensation scheme.

The UFUQ is concerned that the Bill, as currently drafted, does little to alleviate this problem. The current wording at section 36ED(4) of clause 3 of the Bill provides employers with the opportunity to continue their current practice.

In our view, amendments should be made to the wording of section 36ED(4) to ensure that only demonstrable and reasonable evidence may be relied upon to rebut a 'presumption of injury' claim.