

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



**Queensland
Council of Unions**

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Introduction

The Queensland Council of Unions (QCU) makes this submission in support of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020* (the Bill). A number of QCU affiliated unions have been involved in the consultation that led to the introduction of the Bill. The QCU supports the submissions of these unions with significant membership in the areas of employment proposed to be covered by the Bill.

This submission includes case studies in support of this submission. It also includes some commentary about how the objectives of the Bill might be better achieved.

By introducing presumptive workers' compensation laws for first responders diagnosed with post-traumatic stress disorder (PTSD), the Bill recognises the difficulties associated with psycho-social claims within the workers' compensation system. These difficulties include the obstacles placed in the way of a claimant who has received a psycho-social injury at work. Primary amongst these obstacles has been the defence of reasonable management action (RMA), which has been used in variety of ways to exclude claims that, in our submission, would have otherwise met all criteria for a successful claim. In this regard, we are pleased to note in the Bill's Explanatory Notes that:

... the presumption cannot be rebutted on the basis the first responder's injury arose out of reasonable management action taken in a reasonable way. Excluding reasonable management action as a basis for rebuttal is appropriate as a psychiatric diagnosis of PTSD requires exposure to specific traumatic incidents which cannot arise from reasonable management action taken in a reasonable way.

Moreover, it is the experience of affiliated unions that their members find the claims process to be an ordeal in itself. This issue is recognised in the Beyond Blue study *Answering the Call* which is referenced in the Bill's Explanatory Notes wherein three-quarters of respondents in that study found that the workers compensation claims process is detrimental to their recovery. The Bill will hopefully alleviate this counterproductive process associated with psycho-social claims.

Case Studies

The QCU runs the Workers' Compensation Advisory Service and the Workers' Psychological Support Service under a grant from WorkCover Queensland. The following case studies have been included to provide a level of detail in support of our submission.

The Workers' Compensation Advisory Service Deals with approximately 391 workers per quarter, with about half of these being for psychological or psychiatric injuries. About 60 per cent of these are dealing with workers' requests for assistance with reviews due to rejected claims from both Workcover and private Insurers.

Experience with these rejected claims shows two primary issues with acceptance:

- (a) inability to show that work was the "significant contributing factor"; and
- (b) the issues related to provisions of section 32(5) (Reasonable Management Action and related exemptions) of the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

The following deidentified case studies are currently under review. Whilst there is a chance of the claims being eventually accepted, they demonstrate the existing problems associated with PTSD claims. As previously discussed, these delays contribute to the adverse psychological effects of the claims process on workers already suffering as a result of trauma.

In respect to the lack of ability to prove that employment is a significant contributing factor (under s.32 of the Act "meaning of injury"), the following case studies are selected as typical examples of this type of situation where events are not witnessed.

Case Study 1 - Inability to prove event

In this case, the worker deals with at risk clients (domestic violence and child abuse). The worker was threatened by a weapon and there were no witnesses. The worker was upset and told their manager but did not complete an incident report at the time. At a later date, the worker encountered another client with a weapon. The worker was triggered when a "temperature gun" was pointed at workers for a Coronavirus check. The worker then went off work with PTSD.

The workers' compensation claim was rejected under s.32 of the Act on lack of evidence. "The onus is on the person making the claim to substantiate that the events did in fact occur".

Case Study 2 – Insurer not recognising vicarious trauma

The worker's doctor's diagnosis was that PTSD was caused by chronic "exposure to various traumatic situations/stories with a limited ability to solve/make changes".

The claim was rejected under s.32 of the Act when the worker could not prove that employment was a significant contributing factor. The Insurer stated in the verbal communication report with the worker: "to be successful in a WCQ claim, you must have witnessed the event – merely being told stories/gossip is not enough".

Case Study 3 – Reasonable Management Action

In respect to reasonable management action, the following example is of a PTSD claim rejected due to reasonable management action.

The worker in question is repeatedly threatened by members of the public, and in particular by one member of the public who threatened the worker for a period of time. This could be proven to the insurer. Historically, dealing with this member of the public would have been accompanied by the police, however, this no longer occurs. The worker was given an instruction by the employer to deal with this member of the public again, however the worker declared that they felt unsafe. This fear of approaching the member of the public caused the worker to decompensate and apply for workers' compensation.

In this case, both the GP or the Psychiatrist stated that the cause of the injury was the interaction and the fear of future interaction with the member of the public.

In this instance, the claim was rejected given that the insurer applied the provisions of s.32(5) of the Act and rejected the claim on the basis of "reasonable management action", largely because it was judged appropriate that he had been directed to deal with the member of the public by his manager since it was part of his job and was therefore a reasonable instruction. In this instance, it would have been welcome if the diagnosis of PTSD excluded the possibility of invoking section 32(5) of the Act.

The Bill

The current drafting of the Bill includes a range of occupations to be included in regulations. It is noted that the Bill extends the application of the presumptive workers' compensation laws to a group of workers not necessarily considered as "first responders" in its traditional usage. This is the result of the consultation process prior to the drafting of the Bill and the Palaszczuk Government and the respective unions should be commended for this extension. The concern is however that there might be other occupations that might arise as being in the same circumstances as those currently covered by the Bill. We are however concerned that by including the occupations in the regulations, that it might be open to reduce the scope of presumptive workers' compensation laws in the future. To meet the contingency of any additional occupations and to also ensure the maintenance of the existing coverage, we would suggest including the listed occupations in the Act, with the additional provision to include other occupations as prescribed by regulation.

Recommendation 1 Include specific occupations in the Act rather than the regulations with the capacity to cover other additional occupations by regulation.

Whilst we are pleased to see the presumptive workers' compensation laws for first responders diagnosed with PTSD, there is some concern that there are other psycho-social injuries that should also be treated equivalently. It would appear arbitrary that PTSD is included in the Bill to be treated presumptively for the purpose of workers' compensation, but it is one of a range of outcomes that can occur from exposure to trauma in the course of employment. In our view, it would be more equitable to extend the presumption to all psycho-social illnesses and injuries.

Recommendation 2 Extend presumptive workers' compensation laws to include all psycho-social illnesses and injuries.

The Bill as draft requires diagnosis of PTSD from a psychiatrist. The experience of affiliated unions is that waiting periods to see a psychiatrist can be detrimental to a claimant. Under the Better Access to Mental Health Care scheme, patients can access psychological assessment and therapy services provided by clinical psychologists through Medicare. This provides a potentially quicker and less expensive option to obtain a diagnosis of PTSD or other illness or injury. In our submission a clinical psychologist should be able to provide the diagnosis necessary to produce a presumptive workers' compensation claim.

Recommendation 3 Include clinical psychologist as being able to provide the diagnosis necessary for the presumptive legislation.