



EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP (Chair)
Mr J Lister MP (via teleconference)
Mr MA Boothman MP (via teleconference)
Mr N Dametto MP (via teleconference)
Mr DJ Brown MP
Mr JA Sullivan MP

Staff present:

Mr R Hansen (Committee Secretary)
Ms R Duncan (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 16 DECEMBER 2020

Brisbane

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The committee met at 3.56 pm.

CHAIR: Good afternoon. I declare open this public briefing for the committee's inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020. My name is Kim Richards. I am the member for Redlands and chair of the Education, Employment and Training Committee. I acknowledge that we are meeting on custodial land of the oldest living civilisation in the world. I pay my respects to both the Jagera people and the Turrbal people and their elders past, present and emerging. With me here today from the committee are Jimmy Sullivan, the member for Stafford, and Don Brown, the member for Capalaba, who is substituting today for the member for Rockhampton, Barry O'Rourke. On the phone we have James Lister, the member for Southern Downs and deputy chair; Mark Boothman, the member for Theodore; and Nick Dametto, the member for Hinchinbrook.

On 26 November 2020 the Minister for Education, Minister for Industrial Relations and Minister for Racing, the Hon. Grace Grace, introduced the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to the parliament. The parliament subsequently referred the bill to this committee for examination, with a reporting date of 12 February 2021. The purpose of the briefing today is to provide an opportunity for the department to respond to issues raised by submitters and any further issues committee members wish to raise to assist the committee's consideration of the bill.

The committee's proceedings are proceedings of the Queensland parliament and subject to its standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to, or excluded from, the hearing at the discretion of the committee. Only the committee and invited witnesses may participate in these proceedings. Witnesses are not required to give evidence under oath, but I remind everyone that intentionally misleading the committee is a serious offence. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff. All those present today should note that it is possible you may be filmed or photographed by the media and images of you may appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode.

I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. I also ask that responses to questions taken on notice today be provided to the committee by noon on Wednesday, 6 January 2021. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

ALLEN, Mr Craig, Deputy Director-General, Office of Industrial Relations, Department of Education

BICK, Mr Bradley, Director, Workers' Compensation Policy, Office of Industrial Relations, Department of Education

HILLHOUSE, Ms Janene, Executive Director, Workers' Compensation and Regulatory Services, Office of Industrial Relations, Department of Education

CHAIR: I welcome officers from the Department of Education. Would you care to make an opening statement and address any issues raised during our hearing before we go to questions?

Mr Allen: Thank you for the opportunity to make an opening statement today about the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020. The bill is a culmination of many years work by the Queensland government to ensure our first responders are supported by the workers compensation scheme if they are injured at work.

In January 2018 we responded to a request by the former minister for police and minister for corrective services, the Hon. Mark Ryan MP, to examine workers compensation data to ensure Queensland police officers with PTSD were being supported through the workers compensation claim

process. In May 2018 the Queensland government engaged Phoenix Australia, Centre for Posttraumatic Mental Health, to independently review the Queensland workers compensation scheme for all first responders who claim for psychological injury. Although Phoenix's review acknowledged numerous commendable practices within the Queensland workers compensation scheme, they also made practical recommendations to improve the claims management practices, communication and return to work for first responders.

Around the same time, national reviews into first responders' mental health by Beyond Blue and an independent Senate committee inquiry noted an increased risk of experiencing conditions such as PTSD and suggested presumptive laws may have a positive impact on their claims experience. In January 2019 the then minister for education and minister for industrial relations, Grace Grace, established a stakeholder reference group to consider the Phoenix review and the relative findings from Beyond Blue and the Senate committee report. The Office of Industrial Relations facilitated this group over many months and members included key unions—the Queensland Police Commissioned Officers' Union, the Queensland Police Union, Together Queensland, United Workers Union and United Firefighters Union of Queensland—relevant government agencies, the Department of the Premier and Cabinet, Queensland Police Service, Queensland Ambulance Service, Queensland Fire and Emergency Services and WorkCover Queensland.

The terms of reference for the group included, amongst other matters, to provide the government with advice on any gaps in the current workers compensation scheme, including consideration of presumptive legislation that needed to be addressed to further support first responders with PTSD. Areas of concern identified by the group included stigma, workplace culture, the claims process and return-to-work opportunities.

The stakeholder reference group completed its work in June 2020 and developed an action plan that set out a group of practical initiatives which can be implemented by employers, insurers and government to address some of these concerns. There are five streams in the action plan, from reducing barriers to entry and providing immediate access to support through embedding best practice claims management. This includes developing Queensland's first workers compensation code of practice for the management of psychological injury claims.

Presumptive workers compensation laws for first responders and eligible employees are just one part of a broader range of initiatives under the action plan and complement other initiatives developed by the Office of Industrial Relations and WorkCover Queensland to support first responders. I think, importantly, for psychological injuries that occurred on or after 30 October 2019, the scheme already supports all workers by providing access to early intervention, psychological treatment and support as soon as they lodge their claim until the claim is determined.

During this period, insurers can assist with coordinating early psychological services, such as general practitioner appointments, counselling or psychology sessions, psychiatry appointments, medication relating to the condition, mediation services and some hospital costs. These initiatives seek to ensure workers receive assistance as soon as possible to reduce the severity, duration and recurrence of psychological injuries.

The Queensland workers compensation scheme provides no-fault benefits, rehabilitation and return-to-work support for our injured workers. Psychological injuries, including post-traumatic stress disorder, or PTSD, are already compensable in our scheme if a worker can demonstrate injury was caused by their work. In 2019-20 there were close to 320 accepted claims for PTSD across the Queensland scheme, with 130 of these from the Queensland public sector including first responder agencies.

Despite PTSD already being compensable in the scheme, findings of recent inquiries into first responder mental health suggest these workers present with PTSD very differently due to the effect of the cumulative trauma experienced over the course of their careers. We know that claiming workers compensation can be a daunting process for workers suffering with poor mental health and, as reflected in many of the submissions about the bill, we also know that many first responders are worried about the stigma of having a work related injury and consider their exposure as just part of the job.

Taking a presumptive approach does not introduce new or change existing workers compensation benefit or disadvantage any other workers in the scheme. Instead, the approach provides easier access to necessary support and compensation by reversing the onus of proof on workers to prove their injury is work related. In this case, a PTSD injury for this cohort of workers will be deemed to be a work related injury unless there is evidence to the contrary.

If adopted, this bill creates a new pathway for claims decision-making which reduces the burden on first responders. The new pathway will apply to prescribed workers and relevant volunteers who are either first responders who respond to life-threatening, otherwise traumatic, incidents where time may be critical to prevent actual or potential death or injury to persons or to prevent or minimise damage to property or the environment, or eligible employees of certain first responder departments whose employment requires them to experience repeated or extreme exposure to graphic details of traumatic incidents.

We understand that many of the submissions received by the committee raised issues regarding the scope of workers chosen to benefit from presumptive coverage. The scope of workers and volunteers captured in the bill has been the culmination of a significant body of work which first began in 2018 and sought to improve the claims experience of first responders with psychological injuries. The bill was developed after considering recent inquiries into first responder mental health and identifying those most at risk of exposure to traumatic incidents through examining the workers compensation claims data and through extensive consultation with a stakeholder reference group of first responder agencies, relevant unions and WorkCover Queensland.

Should the bill be passed, the Office of Industrial Relations is committed to undertaking a further review to consider any additional occupations, professions or departments where there is an evidence base—that is, being similarly at risk of PTSD due to the cumulative risk of trauma exposure in the course of their duties—and there is a considerable proportion of PTSD in that particular cohort or subset of that cohort which is known is due to occupational exposure. To allow scheme experience to build on this matter, the review would be conducted following the first-year anniversary of the bill's commencement.

The presumption, as drafted, applies where a worker is diagnosed with PTSD by a psychiatrist. If a worker does not have a psychiatrist diagnosis, the bill proposes a safeguard by requiring the insurer to arrange and fund a psychiatrist examination, including any travel costs the insurer considers are necessary and reasonable for the worker to attend this appointment. Telehealth appointments, which have been enormously successful through the COVID-19 pandemic, as we have all discovered, will be considered where possible and appropriate.

The bill allows the presumption to be rebutted if there is evidence to the contrary. This means the presumptive pathway will not apply if an employer can show evidence the worker's PTSD is not work related. Due to the types of incidents that cause PTSD, the bill makes it clear that insurers and employers cannot cite reasonable management action to exclude the PTSD from presumptive coverage. The bill does not amend existing review rights. If a worker or an employer is aggrieved by a decision made by WorkCover or a self-insured employer, they can apply for review with the workers compensation regulator, with the appeals process moving through the Queensland industrial relations court and the Industrial Court.

While PTSD is already compensable in our scheme, it is considered the benefits of claiming under a presumptive pathway may encourage more first responders to lodge a claim and seek early help. We estimate that this behavioural change may increase claims by up to 20 per cent. This would equate to an additional 28 statutory claims, or a total of 140 PTSD claims, per year for impacted employees at an increased claims cost building up to \$9 million per annum. The anticipated cost will not be immediate. Instead, it develops over time. The cost will largely be borne by the first responder departments through their annual WorkCover Queensland insurance premiums. We note that the potential cost impact for private sector businesses should be minimal.

Presumptive legislation for PTSD is not new. Tasmania, the Northern Territory and most provinces and territories of Canada have adopted this approach to claims determination for a variety of workers. However, if this bill is adopted, Queensland will be the only jurisdiction in Australia to provide first responders with crucial early intervention treatment and support, as well as removing the burden of claiming with presumptive workers compensation.

We again thank the committee for allowing us to provide a brief overview of the bill. I note we have provided the committee with a written briefing paper as well as written responses to the issues raised through public submissions. My colleagues and I are happy to answer any questions that I am sure you may have.

CHAIR: Thank you very much. I call the deputy chair for the first question.

Mr LISTER: Chair, there is nothing from me, but on behalf of the opposition I would like to thank the officers of the department for coming and briefing us and for their comprehensive work.

Mr SULLIVAN: Mr Allen, thank you for your introduction. In relation to the submission received by the QNMU with the concern around whether midwives would be covered, drafting issues aside, was it the intention of the bill as drafted that midwives would be included under the definition of a nurse, or was it a deliberate decision not to include midwives?

Mr Allen: I will go to my colleagues, but my initial response is that the group that was captured was based on the claims data experience. The claims data experience did not identify that particular group as being similar to emergency nurses in that field.

Ms Hillhouse: Some midwives actually have dual registration so they may actually be covered by the scope of the legislation, especially if they are working in some of those areas around critical care and intensive care. As a result of the submission of the Queensland Nurses and Midwives Union, we have undertaken a bit of an analysis to understand, at the broadest level, the level of exposure within midwives in particular. Our initial investigations, which do not include a file review at this particular time, have found four claims in relation to midwives since 2015 in relation to PTSD. From a registration perspective, we understand there are around 84,000 registered nurses in Queensland, 1,400 midwives and 6,000 who are registered as both at this time, so it is difficult to give you an understanding as to those who may or may not be covered within the midwife group.

Mr SULLIVAN: In analysing the data from WorkCover, Queensland Health or wherever, there is obviously a significant crossover of those who would be identified as a nurse who may actually be practising as a midwife.

Mr Allen: Yes.

Mr SULLIVAN: The initial response, though, was that including the term 'nurse' was specifically to exclude those who are only practising as midwives, not those—

Mr Allen: Who have dual registration.

Ms Hillhouse: Those who are specifically registered as midwives would not be covered, and those who are registered as a nurse as well as a midwife would be covered.

Mr SULLIVAN: If they are working in a particular area of health care.

Ms Hillhouse: I cannot comment in relation to an intention, but that is what is in the bill.

Mr Allen: Just to clarify, it would be in the critical care or that area they would be working in or traumatic responses to events as a nurse.

CHAIR: Is it possible to obtain the dataset that was analysed by occupation?

Ms Hillhouse: Yes, we would be able to provide data in relation to the occupations that have been raised as part of the submissions, as well as the occupations that are covered in relation to the bill itself.

Mr BROWN: Thank you for coming in and providing the briefing today. In regard to the other jurisdictions that have the presumption, are there any examples of challenges to the presumption that insurers have taken up?

Mr Bick: I think the only thing that we had learned in our discussions with some of the other jurisdictions that have implemented presumptive laws for PTSD was that it was really important to have clarity in those provisions to provide certainty for insurers around who is in, who is out and what the coverage was actually for, with a view to providing certainty for everyone in the scheme.

Mr BROWN: Has any individual, any self-insurer or WorkCover challenged a worker's PTSD claim in those jurisdictions since the presumption has been in? Do we have any case examples?

Mr Bick: We have spoken to the Northern Territory and Tasmania, who have implemented those PTSD laws, and they have not conducted any analysis at the moment looking at the scheme and how it has been operating to date.

Mr BROWN: One of my concerns is if there are any challenges from an insurer—the evidence they collect and the privacy of workers. You have not heard of any use of private eyes or going back through private matters of that worker?

Mr Allen: The schemes have only been in for a relatively short time in both those jurisdictions. Like us, if this is implemented there will be a period of time before we can start to develop what the patterns are around that behaviour. At the moment, because of the relatively short period of time, we have not been advised of that. I know that Brad has spoken to those jurisdictions around that.

Ms Hillhouse: We do have presumptive legislation in Queensland in relation to firefighters which has similar rebuttal provisions, and no issues have been raised with us in relation to the operation of those provisions in terms of rebuttal.

Mr BROWN: In the Canadian cases you have not heard of any rebuttal? You haven't? Thank you.

CHAIR: With regard to the QLS presentation to us earlier and their submission in relation to costs for insurers—they cited some examples from British Colombia that they are going to table some data on—has the department done any sort of assessment on likely costs?

Mr Allen: The department has done some analysis and it has been based on the claims history. I think I indicated that, from our information, remembering that PTSD already exists within our workers compensation scheme, the PTSD claims will not be a whole lot of new claims but there will be potentially some more claims because of the capacity to have a clearer pathway to the legislation. From looking at analysis of our data and the number of psychological claims, we have done an assessment that it would be about \$9 million per annum but not in the first instance. It would be cumulative until it got to that \$9 million. I am not au fait with the Canadian schemes, but I understand that the schemes in Canada are broader in terms of their scope. They do not rely on a medical practitioner signing off on the PTSD; they can have a psychologist, I understand. They also have a wider range of psychological conditions that can be captured in that, whereas the scheme is fairly narrow in Queensland, limiting it to PTSD by a medical practitioner.

CHAIR: The narrowness has been raised by a number of submitters, that mental illness conditions experienced by workers not only relate to PTSD. Can you expand on that narrowness?

Mr Allen: The narrowness is because it can be attributable to an event or a series of events. With psychological health, it is a more complex and more difficult to ascertain whether it relates to the particular incident. I think the narrowing is done because we have based it on the definition of the DSM-5, which is fairly specific. I know that a number of submitters have talked about other diseases that could be included, but we have particularly done this in response initially to the police, to the minister asking about police, then responding to the Phoenix report and to the other inquiries. It has been limited to PTSD because it gives a direct line to the incident and it also takes out the capacity around the rebuttal, because if the incident is there in terms of the clear line it makes it easier.

CHAIR: That is possibly something for a review at the same time we are looking at occupations.

Mr Allen: Absolutely.

CHAIR: It has been noted in a number of submissions that the DSM-5 document will age. As it is going to be prescribed within the act, has the department considered that? Has it considered that, maybe as a standalone document, there is also the possibility that you could rely on the clinical expertise of a psychiatrist without being definitive to DSM-5?

Mr Bick: What DSM-5 will do for the scheme is provide consistency in diagnosis across the scheme. Everyone will need to meet that diagnosis to actually have access to those presumptive clauses. It will provide consistency in the scheme. DSM-5 is a diagnostic tool that we know psychiatrists use. It does not take away from them using their other clinical expertise to diagnose PTSD in a person they are looking at, but the aim is to provide some consistency in the scheme, essentially by using that particular diagnostic criteria. It is internationally accepted as the gold standard criteria for assessing people who have PTSD. There is a bit of flexibility with us updating that in due course, because I note the DSM-5 is actually specified through the regulation. We will be able to update that as it updates, but we have tied it to that particular version at the moment because what we would like to do in the future is assess any changes that happen to the DSM-5 without it. If we just referenced DSM by itself it would just update as that external document was updated. We want to make sure we are tying it to a particular version so we can actively have a look at that as it moves forward.

Mr SULLIVAN: A number of submitters have raised the issue of the list of eligible workers being included in regulation versus legislation. Can you give us the rationale for the path the department has taken in this draft?

Mr Allen: We have relied on the act to give good definitions of the groups covered by PTSD. The act, as the overriding document, needs to have that definition. The employee groups and employers are in the regulation so we have the capacity to add groups after we do reviews. It is a less cumbersome process, and we are more agile and flexible to respond to things that we may not know will be issues in the future.

Mr Bick: That is essentially it. It provides a balanced approach. A limited head of power in the primary legislation then allows the regulations some flexibility. We know that over the years job titles change and the nature of duties changes, and sometimes it can be difficult for us to keep up with that through legislative change. We think what we have done takes a balanced approach which provides certainty but also flexibility at the same time.

Mr SULLIVAN: Earlier this afternoon we heard submissions that 20 years ago firefighters would not be considered in this line of work, considering that was not their job back then in terms of vehicle recovery.

CHAIR: From a number of submitters we heard concerns with regard to time frames on both sides of the ledger. The United Firefighters Union cited an example today of a member who had had breast cancer and for whom 12 months of maternity leave did not count towards the cumulative time of her employ. The QLS also raised that there were no time frame thresholds within there to give certainty around the program. Can you talk a little bit about that generally?

Ms Hillhouse: We are talking about two very different pieces of presumptive legislation. The first is presumptive legislation for firefighters with very specific occupational cancers and diseases. There are time frames in that piece of legislation, especially around the level of active service that somebody may have undertaken in order to qualify for that presumption, due to the latent onset nature of the diseases covered there. The issue raised in that matter was the requirement of the legislation that the service be active service. When we are talking about the presumptive legislation in relation to PTSD, there are no time frames. It is very much recognised that PTSD can occur as a result of one incident or a cumulative exposure to many incidents. The big concern raised through the reviews that have been undertaken nationally is around cumulative exposure and the difficulties that workers who have cumulative exposure may face in terms of entering the workers compensation schemes. There are no time frames.

The Queensland Law Society has also raised issues in relation to how long after a person leaves the service they may be eligible to rely on the presumption. There are no time frames in relation to that as there are no time frames in relation to making an application for compensation, aside from the fact that it must be within six months of being diagnosed with an injury. It very much aligns with our approach in relation to PTSD claims outside of presumptive legislation.

Mr SULLIVAN: As you pointed out, we are talking about two very different regimes. I understand there is constructive work in terms of why certain cancers have certain time frames—that is, because of the nature of long service in the fire service and exposure to gases and smoke and in the industrial setting other dangerous materials. That contrasts with someone being six months into a job as an ambulance officer, a firey or a police officer and coming across a horrific accident. It does not matter how long you have been there. It could be your first shift or your 10th year and you could have the same response. In layman's terms, that is why we are talking about two very different regimes?

Mr Allen: Yes.

Ms Hillhouse: Yes, very different.

Mr Allen: Unfortunately, it could be on the very first day that a person attends work.

CHAIR: Thank you for clarifying that. The QLS also raised the reversal of the onus of proof as a significant issue as it is a cornerstone principle of the law regime. Can you talk a bit about that?

Ms Hillhouse: Presumptive legislation is widely adopted across all of Australia's workers compensation schemes for various injuries and diseases. As we have discussed already, we in Queensland already have presumptive legislation in relation to firefighters. Typically, the only time presumptive legislation is introduced in scheme is where there is very specific evidence that there is a high likelihood the disease has arisen as a result of a work related exposure. The criteria typically used for that is a strong causal link between the disease and the occupational exposure, clear diagnostic criteria and a considerable portion of the cases of the disease in a particular occupation or group. They are very much the bases upon which this legislation has been developed in relation to PTSD, from the scope of workers covered through to the diagnostic requirements as well as the injuries that are covered.

CHAIR: There being no further questions, before I close I might just add that today there have been some things within the proceedings that may have caused distress. For anybody who is viewing today or who has felt distressed by these proceedings, we urge you to seek professional advice. We will ensure that on our webpage we have the numbers for Lifeline, Beyond Blue, Dementia Australia, Open Arms, Family and Relationship Services Australia and Head to Health.

Mr SULLIVAN: Chair, that is a good point. Is there a mechanism for the committee to have a warning on our public-facing webpage about what some of the submissions and testimony will contain?

CHAIR: Absolutely. Thank you, member for Stafford. That concludes the briefing. I thank departmental officers for their contributions and their valuable insights into the development of this legislation. We are very appreciative. Thank you to Hansard and thank you to our committee

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secretariat staff. Taken on notice was data around those occupations that were assessed as part of this legislation. Could we have that returned by 12 pm on Wednesday, 6 January 2021 so that we can include those in our deliberations? I declare this public briefing for the committee's inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 closed.

The committee adjourned at 4.30 pm.