EDUCATION, EMPLOYMENT, TRAINING AND SKILLS COMMITTEE

Members present:
Hon. MC Bailey MP—Chair
Mr JP Lister MP
Mr N Dametto MP
Ms M Nightingale MP
Mr BL O'Rourke MP
Mr D Zanow MP

Staff present:
Ms M Telford—Committee Secretary
Dr K Kowol—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 20 May 2024

Brisbane

MONDAY, 20 MAY 2024

The committee met at 9.30 am.

CHAIR: I declare open this public hearing for the committee's inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024. I am Mark Bailey, the member for Miller and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we gather today, the Turrbal peoples, and offer my respects to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all now share. Welcome to everybody and thank you for supporting the committee's work. With me here today are: James Lister, the member for Southern Downs and deputy chair of the committee; Nick Dametto, who will be with us shortly—I saw him earlier; Margie Nightingale, member for Inala; Barry O'Rourke, member for Rockhampton; and Darren Zanow, the member for Ipswich West.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. A reminder to please turn off your mobile phones or make sure they are on silent mode.

BEAMAN, Ms Sarah, Secretary, Queensland Nurses and Midwives' Union of Employees

PAWSEY, Ms Ashleigh, Research and Policy Officer, Queensland Nurses and Midwives' Union of Employees

CHAIR: I welcome representatives from the Queensland Nurses and Midwives' Union. I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you.

Ms Beaman: Good morning. Thank you to the committee for the opportunity to appear here today. I would also like to acknowledge the traditional owners of the land here today, the Yagara and the Turrbal people, and pay my respects to their elders past and present and also to First Nations members here today. The QNMU emphasises the critical role the workers compensation scheme plays in supporting nurses and midwives and their ability to provide safe, quality care to patients and consumers. Our members work under considerable physical and psychological demands that place them at risk of injuries and illnesses in the course of their work. Protecting and improving the health and safety of our members is our core union business. We support the bill in enlivening many of the legislative recommendations of the 2023 review of the scheme, including access to timely treatment, rehabilitation, return to work assistance and reforms to prevent the development of secondary psychological and psychiatric injuries. We also express support for the submission made by the QCU that expands on and raises additional matters for the committee to consider.

Regarding suitable duties, the QNMU specifically acknowledges the amendments relevant to our members. The QNMU is aware of members disadvantaged by employers not providing meaningful, suitable duties. Further to this, the lack of enforcement for employers to comply with their obligations has delayed members being able to return to work. We emphasise the need for more robust follow-up and accountability for employers who fail to take reasonable steps to provide suitable duties to workers.

Regarding student placements, the lack of coverage for students on placement is a critical issue for which the QNMU continues to advocate. Under the current scheme, students undertaking placements are not eligible for coverage. Nursing and midwifery students are typically expected to

perform some tasks that would normally be performed by a nurse or a midwife yet they are not covered. This was raised as a key recommendation in the 2023 review of the scheme and is a significant omission of the bill.

Regarding amendments to the IR Act 2016, we note that the second part of the bill intends to make changes to IR Act to align with the recent federal industrial relations reforms. Although we are broadly supportive of this aim, our submission proposes changes to the current drafting of the bill to ensure Queensland's laws remain aligned with the federal framework. Thank you. That concludes our opening remarks.

Mr LISTER: Thank you very much for your appearance today. Your submission talks about a presumption of injury and applications where an employee is taking a significant period of leave—12 months or more; can you expand on that please?

Ms Pawsey: Are we talking about 'suitable duties' that was raised in our submission?

Mr LISTER: It is long-term leave. I understand that under workers compensation arrangements you only have a certain period of time in which to make a claim. I imagine this is about being away for that period and potentially being isolated from cover?

Ms Pawsey: Yes. We have had case studies of members who have been in this experience. For instance, the QNMU is aware of members who have sustained a neck injury and, whilst working in a public hospital, WorkCover subsequently deemed the nurse as incapacitated and placed them on compensation. Some months later the nurse had advised their GP that they could not return to work. There was an offer of a program of two-by-four-hour shifts a week with some manual handling restrictions. The employer deemed that this was not acceptable, and the nurse was not able to return to work. It was deemed unsuccessful. The employer had an obligation to assist and provide rehabilitation to the injured worker. If they cannot, we view that WorkCover should request written evidence as to why this is not happening. That is a case study that expands upon what was mentioned in our submission.

Ms NIGHTINGALE: In your submission you advocate for nursing and midwifery students to have the same workers compensation protections as a nurse or midwife. Can you please elaborate a little more on this? Do you have statistics on injuries to students?

Ms Beaman: To my understanding, they are not broadly captured. It is an ongoing problem because what we also know is that nursing and midwifery students quite often have primary jobs in the health industry. The fact they are not covered whilst on placement actually has a knock-on effect to their underlying employment. Where they are already experiencing placement poverty, the effect of an ongoing reduction in income related to their inability to work for a period of time post that placement exacerbates that.

Mr DAMETTO: Thank you for your submission and for coming in today to talk to the committee. My question is in relation to the Industrial Relations Act. You suggested that additional amendments to the flexible parent leave framework would reflect the recent changes to the Fair Work Act. Can you please outline a little more about your proposal in terms of those amendments?

Ms Pawsey: Certainly. The issue surrounding this is that the bill only allows employers to give written notice of their intention to take flexible unpaid leave arrangements at least four weeks prior. We have noted that in the federal legislation there is an option to provide notice as soon as practicable. We note that this might be dependent on an individual's personal circumstances and that it provides further flexibility. We recommend that clause 7 be amended to provide a comparable provision.

Mr DAMETTO: Thank you very much for providing clarity.

Mr O'ROURKE: I would like to put on record my thanks to all of our nurses and midwives. They do an absolutely amazing job. My son is a registered nurse. I do understand some of the pressures on nursing staff around the state. With regard to student placements, do you have any statistics about injuries to that cohort?

Ms Beaman: I do not have the specifics of those injuries. However, I can look further into that and seek to provide what I can find.

Mr O'ROURKE: It would be interesting to have a look at those. You suggested additional amendments to the flexible parental leave framework that would reflect the recent changes in the Fair Work Act. Can you please outline your proposed amendments and the reasons for them?

Ms Pawsey: Yes. As I mentioned to Mr Dametto, we were concerned that the flexible parental leave provisions did not provide the same flexibility as the federal legislation. We note that an individual might need unpaid flexible parental leave due to personal circumstances. If they are unable

to provide four weeks notice, the option that is provided in the federal legislation is that it could be at an alternative time that is practicable. We hope that that flexibility can be provided in the bill so a comparable provision would be advised.

Mr O'ROURKE: Thank you. I do realise that the member had asked that question, but I was just a bit curious about that.

Mr ZANOW: Thank you for attending today. We very much appreciate your input. Have we investigated the alignment of this bill with other states of Australia?

Ms Pawsey: I do not have the particulars on hand. With regard to the industrial relations amendments?

Mr ZANOW: Correct.

Ms Pawsey: I can have a look and provide some further details.

Mr ZANOW: Thank you.

CHAIR: That is a pretty board question as there are a lot of jurisdictions. Thank you for your commitment. Could you elaborate on your concerns regarding the bill's proposed amendments to appeal pathways under the Industrial Relations Act?

Ms Beaman: This one is of significant concern. The moment that we take the appeals out of the layperson tribunal as it currently stands, it adds a significant financial barrier to appealing. When we have vulnerable workers who also have a reduced income at this time, that is a possible barrier to appealing claims that have been unreasonably refused.

Ms Pawsey: Further to what Sarah was saying—just to emphasise the point—we are concerned about it becoming a prohibitive process and potentially being costly with consideration of filing fees and preparation of appeal records. That may further add costs that are prohibitive. As we mention in our submission, we caution against anything such as that which might create a barrier in terms of a layperson's court.

Ms Beaman: Further to that, there is the need to potentially engage legal counsel for the appeal versus the ability for an advocate to run that particular matter in the current jurisdiction.

Ms NIGHTINGALE: Could you please expand on the proposed amendments to superannuation contributions?

Ms Pawsey: I am happy to. With regard to our superannuation concerns, similar to the flexible parental leave concerns, we just wanted to ensure that they reflect the federal legislation. The issue that we have seen is that the bill does not mirror the Fair Work Act in providing civil remedies provisions in that they have not carried over. We have just made a note that sections 116D and 116E of the Fair Work Act have these civil remedy provisions. We would appreciate seeing them reflected in the bill.

CHAIR: Thank you very much for your submissions. I think we have one question on notice. Responses are due by 10 am this Friday, 24 May.

Ms Beaman: That related to the prevalence of injuries to students?

CHAIR: Yes; actually, there are two of them. The first one is statistics on injuries to student nurses and midwives; and the second one involved alignment of the bill with other states. Thank you for your submissions and for your time today.

MURPHY, Mr Luke, Deputy Chair, Accident Compensation and Tort Law Committee, Queensland Law Society

STUBBINGS, Ms Hayley, Legal Policy—Special Counsel, Queensland Law Society

CHAIR: I now welcome representatives from the Queensland Law Society. I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you. Thank you for appearing before our committee today.

Ms Stubbings: Thank you for inviting the Queensland Law Society to appear today. My name is Hayley Stubbings and I am a policy solicitor supporting the work of the Queensland Law Society Accident Compensation and Tort Law Committee. In opening, I would also like to respectfully acknowledge the traditional owners and custodians of the land on which we meet. As the committee may be aware, the Queensland Law Society is the peak professional body for the state's solicitors. We are an independent, apolitical representative body. The QLS written submission addresses changes to the Industrial Relations Act, the Labour Hire Licensing Act and the Workers' Compensation and Rehabilitation Act. QLS holds significant concerns regarding some of the proposed changes to the Workers' Compensation and Rehabilitation Act. I am joined today by Luke Murphy, Deputy Chair of the Accident Compensation and Tort Law Committee, who will make some opening remarks about those concerns.

Mr Murphy: The Law Society acknowledges the appropriateness of the objective of the bill's changes and that namely being to ensure there is proper coverage for gig economy workers and that they have the benefit of the safety net that a workers compensation scheme provides. The issues, though, for the Law Society are the same that we addressed back in 2019 in response to the RIS that first raised this prospect. Our concern specifically about this bill is more about the mechanism that is being adopted to implement changes, particularly to what are cornerstone concepts on which the whole legislative scheme is based. The concept of who is a worker and who is an employer are fundamental to the Workers' Compensation and Rehabilitation Act. They are the concepts which define the bounds of who is covered by the scheme itself.

The bill proposes to alter those definitions such that they can be broadened by regulation to prescribe a person as a worker if they are a regulated worker under the Commonwealth Fair Work Act and the Fair Work Commission has made a minimum standards order, minimum standards guideline or registered collective agreement that covers that person. The QLS opposes the changes of definitions that are fundamental to the act being made by regulation, and being subject to, and dependent upon, as yet non-commenced provisions of federal legislation and decisions of a federal body. I emphasise that that is not to say the Law Society opposes the changes being made so that gig economy workers have access to workers compensation. That is not the society's position. People who are injured while working should have fair access to compensation. Our position is that the definition of 'worker' and 'employer' should be amended in the act after full consultation and parliamentary scrutiny. We welcome any questions that members might have.

CHAIR: Thank you very much for your submissions.

Mr LISTER: Taking on board what you have just said, Mr Murphy, if I could be the devil's advocate for a moment, it is the view of the Australian Industry Group, as a representative of employers, particularly national employers who have to deal with laws across state boundaries, that any amendment to the workers compensation system here should wait until the review of the assistance being done federally in order that there can be commonalties and ease of process for employers. It concerns me that complexity and red tape, particularly across state borders, may be an impediment to employment. Does the Queensland Law Society have a view on that?

Mr Murphy: The Law Society has historically recognised that inconsistencies between the different jurisdictions do present difficulties. However, there are fundamental differences, of course, that justify the design of specific schemes for each jurisdiction. The ideal outcome would, of course, be for a consistency nationwide of policy, but what we believe is most important is that there is a clarity around the fundamental concepts, and those concepts, in the ideal world, should be consistent.

Ms NIGHTINGALE: Your submission is that the proposed requirement for the return to work plan to occur within the 10-day period is insufficient time to enable an appropriate and effective plan to be developed. What suggestions do you have in regards to that?

Mr Murphy: The objective is something that the Law Society acknowledges is an appropriate objective to have. The concern the society has in relation to it is the risk of what we would refer to as unintended consequences, particularly if what you end up having because of that time limit is just a

tick-the-box exercise where there is a template adopted. That actually ends up being counterproductive to the positive return to work of employees where there can be specific steps taken to accommodate their particular needs, and what we would hate to see is employers and insurers being forced through that time limit into a position of that nature. The society has a fear that once there is a template mentality adopted, the encouragement to review that, the encouragement to make it more specific to achieve the ideal outcome, is put at risk.

Ms NIGHTINGALE: Do you have any suggestions with regard to how those amendments could work so that those foreseeable potential happenings might not occur?

Mr Murphy: Our concern is about mandating a dead time limit that then has consequences for failure to comply. We acknowledge that in the existing system, there are occasions where there is a far from perfect approach taken. However, it is our understanding that of the significant number of statutory claims—I think it was as many as 90,000 some years back, but I think that has come down; I apologise, I am not right on top of that figure—the vast majority get back to work, and there is a need for a proportionality in the response. We support the objective entirely; it is again whether in fact it becomes counterproductive and puts at risk some of those successful programs that are working.

Mr DAMETTO: Thank you very much for submitting to the committee. We appreciate the Law Society's input on this. My question is in respect of your submission regarding the definition of 'worker' in the Workers' Compensation and Rehabilitation Act. Would you be able to elaborate on that for the benefit of the committee?

Mr Murphy: The concern is simply the definition of 'worker' and the definition of 'employer' both of which, to achieve the objective of incorporating the gig economy workers, need to be broadened. We believe they are so fundamental to the workings of what is a highly successful scheme, that that has to be acknowledged. The Queensland workers compensation scheme is, in our view, probably the most successful and the most financially stable scheme in Australia. If you were to compare it to the current state of play in Victoria and the current state of play in New South Wales, there are reviews going on there as a result of economic concerns. That is not the position here. The Queensland scheme has been managed wonderfully well and continues to be managed well. That is, indeed, one of the Law Society's primary objectives: we do not wish to see such a financially viable scheme being put at risk. I qualify that statement by saying there is nothing to suggest that these proposed amendments put the financial stability of the scheme at risk. Fundamental to the success of the scheme has been the clarity and the certainty around the definitions, and particularly definitions that are so central and fundamental to the operation of it. We think those definitions need to be carefully considered, properly presented and enshrined in the legislation, conscious of issues like Mr Lister raised of that consistency nationally in the ideal outcome, taking into consideration the specific needs of the Queensland jurisdiction.

Mr ZANOW: Talking about concerns specifically regarding the mechanism and the changes in definition of 'worker', what specifically, if we drill right down, is your main issue?

Mr Murphy: The issue is having the definitions that are so central to the scheme being changed by regulation and not enshrined in the legislation itself. We do not see the reason to justify that. We understand the need for flexibility, but when you have such fundamental concepts that underpin the whole scheme—that is why the scheme was brought in in the first place, back in 1916—we think it should continue to be enshrined in the legislation itself. It has had its ups and downs, but in recent years it has been extremely successful.

Mr O'ROURKE: In your submission, you raised concerns about the amendments to the appeal provisions of the Industrial Relations Act, including the potential for increasing costs and difficulties associated with the court of appeal process. Can you please expand on this and potential impacts, as one part, and then could these impacts be addressed by amendments within the bill?

Mr Murphy: I will take the second question on notice. We have not turned our mind to alternative drafting. It is actually not something that the profession is specifically trained for, although, as lawyers, we always fancy ourselves as understanding the legislation. If it is acceptable, I will take that on notice. In answer to the first question, our concern is, as was just expressed by the nurses' union, it is an access-to-justice issue. There are greater costs associated with running an appeal in the Court of Appeal than there could be taking it to the president sitting in the Industrial Court. There is, by its very nature, the need to retain senior legal counsel to appear in appeals. It does not always occur, but if there are specific legal issues that are to be heard by the Court of Appeal, there is a certain necessary approach and methodology in drawing the appeal documents and complying with the practices of the Court of Appeal that do have costs associated with it.

Our other concern is that if in fact the need for the change is a resourcing issue at the Industrial Court, is the issue of resourcing just being transferred to the Court of Appeal. We are not aware of the statistical data, the numbers, but if it does represent a significant increase in the Court of Appeal's work then that is something that would need to be carefully considered. There is not a great deal of benefit in just moving an issue, particularly if there is an access-to-justice issue.

Ms Stubbings: I think the nurses' union mentioned the filing fee, which is $1,600. I do not think we have seen anything to suggest that that would be waived, so that is part of the access-to-justice issue as well as the cost of legal representation. Obviously, it is just a very different forum to the Industrial Court and we do not fully understand the rationale for making the change.

CHAIR: Thank you for your submissions today and for answering our questions. There is one question on notice—that is, amendments to address potential impacts regarding the implementation of the appeal provisions in the bill. Responses to questions on notice are due by 10 o'clock this Friday, 24 May.

DEARLING, Mr Craig, General Manager, Workforce Services, Master Builders Queensland

CHAIR: Thank you for appearing today. I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you.

Mr Dearling: Master Builders Queensland would like to thank the committee for the opportunity to appear today. Master Builders supports the statement in relation to the 2023 review made by the minister, the Hon. Grace Grace MP, when the bill was introduced on 17 April 2024—that is, the review found that the scheme remains strong and, while major reform was not recommended, it identified emerging trends which may impact the scheme's performance and viability. It found that the scheme is well placed to respond to these trends.

Master Builders agrees that major reform was not recommended and submits that some of the major reform contained in the bill is not necessary. Our submission to this committee outlined our position. This bill goes beyond what the 2023 review recommended in relation to two matters: the proposed new worker information statement; and the new ability for employees to receive penalties when an insurer forms the opinion that an employer has suitable duties available when the employer says they do not. Before we respond to any questions from the committee, we do wish to respond to some of the issues raised by others who have made submissions to this committee.

Regarding the Consultative Committee for Work-Related Fatalities and Serious Incidents' submission, we acknowledge their view that workers are not au fait with their compensation and rehabilitation rights within the workplace but dispute that the new worker information statement will assist to resolve this. We submit that an employer providing the statement at the commencement of employment is of no benefit and that such information should be provided if a worker suffers an injury.

Regarding the QCU's submission, we acknowledge and support their view that the evidence clearly demonstrates that insurers within the scheme must improve the quality of the information they are providing workers about their rights, entitlements and the claims process and that workers should be provided with information that is simple to understand, in the right format and at the right stage in the workers compensation process. Master Builders submits this supports our position that there is no benefit to providing the statement at the commencement of employment and that information should be provided at the time of injury.

Regarding the Business Chamber Queensland submission, we support their submission in relation to the worker information statement. Requiring an employer to provide information that is not relevant at the time for the worker creates an additional administrative requirement on employers. We support the position that information should be given to the worker at the time when the information is directly relevant to them. We also support their objection to clause 42. We agree that this requirement diminishes the ability of an employer to reach positions that are reasonable and considered in relation to suitable duties. We are happy to take any questions that the committee might have.

CHAIR: I will go to the deputy chair.

Mr LISTER: There is nothing from me, Chair. Thank you, you have answered my question already.

Ms NIGHTINGALE: In relation to section 46B, you have submitted an alternative to the employer providing a written notice about the workers compensation scheme to the worker. Can you please explain this in more detail?

Mr Dearling: We submit that providing information at commencement is just another piece of paper that gets lost in all the pre-employment or new employment matters. We submit that if a person is injured they should receive the information at the time of injury.

Ms NIGHTINGALE: If the person is unaware of their rights to access workers compensation at the time of injury how would they then know to approach you for that piece of paper?

Mr Dearling: The employer currently has an obligation to inform the insurer that an injury has been suffered at work, so as part of that process they can—

Ms NIGHTINGALE: What if you were unaware the injury had occurred? If the worker was injured, they are unaware of their rights under the workers compensation scheme because they had not yet received that information. If they were injured and they did not know they needed to notify their employer, how would you then be aware of that injury to then give them the information about their rights?

Mr Dearling: If an employee or worker visits a medical practitioner, the medical practitioners are aware and they will typically ask, 'How did you suffer this injury?' If they suffered it at work, then they go through the process of notifying the insurer that way. There are enough checks and balances there that if a worker does not know and an employer doesn't know, then a treating doctor will know.

Ms NIGHTINGALE: Apart from your concerns that a piece of paper may get lost, can you see any negatives in giving them that information at the commencement?

Mr Dearling: I would say there are two negatives. No. 1 is the administrative and cost burden, especially on small business. Master Builders, for instance, has 9,500 members. The overwhelming majority of them, over 80 per cent, are small or micro businesses with one or two employees. We call them the mum-and-dad builders. There are just two people running the business, and this is just another administrative burden that increases the cost of running their business. We think the second disadvantage to providing the information at the time of employment is that it is not relevant then, so a worker will not even look at it anyway. It will just go in their file or they will throw it away because it is not relevant to them, and then the information does not get passed on to them in any case. We say it is better to provide the information and receive it when it is relevant to you.

Mr DAMETTO: Thank you very much for submitting and addressing the committee this morning. I acknowledge your issues with section 46B. Do you think it needs to be scrapped completely, or are there any suggested amendments you would like to put forward to the committee?

Mr Dearling: We think it should be scrapped. We would submit that you scrap it completely and rely on the existing provisions around information for workers.

Mr O'ROURKE: Thank you for being here today. Can you elaborate on your concerns around the proposed new section 228(3), which would place an obligation on an employer to assist or provide rehabilitation to a worker who sustained an injury with penalties applying in certain circumstances. Have you received any specific feedback from your members with regard to that?

Mr Dearling: Yes. We do not oppose rehab and return to work at all. We are very supportive. The feedback we get from our members, especially our small businesses, is that they do not understand enough about how to provide suitable duties. As I mentioned before, small business are the builder, the accountant and the lawyer. They do everything in the business. When one of their workers suffers an injury they want them back at work. They want to assist in rehabilitation, but they just do not have the support to understand what suitable duties apply. Construction is manual labour, of course, as everyone would understand, and oftentimes an employer just thinks, 'If I've got a carpenter who's hurt their back, I don't have any suitable duties because everything they do requires lifting, bending et cetera.' It is not until they contact us and we give them opportunities or options to consider suitable duties that they go, 'Okay, we can do it.' Some of the feedback we receive is that people think, 'If they can't work on the tools onsite they can only do admin, so I need to find them admin. I don't have any admin, therefore I don't have suitable duties.' We would submit that insurers should work with employers to support suitable duties and not seek to penalise them due a lack of understanding about what suitable duties might be available.

Mr ZANOW: Thank you for coming along today. We appreciate your support and your input. Could you step the committee through the process of actually employing someone? Let's say it is an apprentice chippie coming online or a new employee coming on. Step us through the priority of importance when they first come online when they start work for the day, immediately before they start work and then for the first couple of weeks. Tell us what sort of information the employer needs to educate and give the employee during that time, given they are 100 per cent healthy and ready for work.

Mr Dearling: With an apprentice there is a tripartite agreement between the worker, the employer and the training provider, so there is a third party. They have to engage the third party to undertake the paperwork, sign the training contract. Then they need to understand employment terms and conditions, so it is getting wages, information, allowances. There are a number of allowances for apprentices. Typically, if a small business does not have any other employees then they have to set up payroll, payroll tax, superannuation, contact WorkCover and contact QLeave to ensure that the worker is registered for QLeave. Then they have to run them through the various safety procedures: the construction safety plan, Safe Work method statements et cetera. Information needs to be provided under the Fair Work legislation as well regarding employee entitlements. Off the top of my head, I would say that is it.

Mr ZANOW: I would think there would be an induction to the site, there would be other workplace health and safety issues that need to be addressed. Having employed a lot of people, in the first couple of weeks there is a lot for them to take in.

Mr Dearling: Definitely, yes. There is an informal induction, especially with a small business. Apprentices require direct supervision, so it is ensuring either the employer is a builder themselves or they have a supervisor who can directly work with an apprentice. There is an induction to understand the various hazards and risks that apply at the workplace. There is a lot of information to take in. In the case of an apprentice, you are looking at repeating and reiterating those things at least in the first and even second year. Given the nature of construction, it is not like going to an office where you go in on day one and that is what the office looks like. Construction sites change every day, so it is repeating the process of the safety induction over and over.

Mr ZANOW: With regard to the importance of information a new worker would be given, would you say that workplace health and safety would probably be No. 1 and getting them signed up so they can be paid would probably be fairly high on the agenda. However, giving them specific information and information overload regarding their rights and obligations if they get hurt would be well down the list?

Mr Dearling: Down the list, yes. For young people definitely it is, 'How much am I getting paid?' For young apprentices, if their parents are involved in the training contract because they are under 18 they want to know about safety. 'How are you going to keep my child safe?' Once you get past that it is not as interesting, that is for sure.

I forgot to mention this in my opening. The QCU submission made reference to a report commissioned by Safe Work Australia that said workers understand the initial step required, which is lodging a claim, but are unaware of the process beyond it. People seem to understand, generally speaking, that if I hurt myself at work there is a workers compensation process to follow.

CHAIR: Thank you, Mr Dearling, for appearing before the committee today and for your submission on behalf of Master Builders. There were no questions on notice.

O'REILLY, Mr Jordan, Co-founder and Executive Director, Hireup (via videoconference)

CHAIR: Welcome. Thank you for joining us. I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you.

Mr O'Reilly: Good morning and thank you very much for the opportunity to address this committee. I would like to talk particularly about workers compensation for gig workers. By way of background, Hireup is an online platform that empowers people with disability to find, hire and manage their very own support workers. We support 11,000 people with disabilities across Australia. In Queensland we have close to 2,000 active support workers on our platform. Our platform is similar to those that you recognise in the gig economy. The unique thing about Hireup, however, is that we directly employ every single one of our support workers. This means that we follow the industry award, we pay our workers hourly wages, their taxes, super and entitlements and, yes, we provide workers compensation insurance and return-to-work support too. In short, Hireup proves that you can combine the best of platform technology with a responsible labour model for workers. Because of this, Hireup is a total outlier in the gig economy. Most platforms insist their workers are independent contractors or small business owners, even when it is clear that they are not. This is the big lie of the gig economy and it hurts everyone—for example, when hardworking individuals miss out on access to workers compensation insurance when things go wrong.

We commend the Queensland government for beginning to address the issue of workers compensation with this bill, but we suggest that there is much more that could be done and should be done right now. Firstly, when it comes to the gig economy, the bill proposes a model that is dependent on an external tribunal, the Fair Work Commission, and their untested new system of minimum standards for gig workers that is yet to be even operational. Even if that system becomes operational soon, or when it becomes operational, it does not guarantee full coverage for all deserving gig workers, many of whom might be covered by the Fair Work Commission. We think that there is a more comprehensive, faster way to make workers compensation mandatory for all employee-like gig workers but this would require the Queensland government to make its own definition and take more of a leadership role.

This should not be placed in the too-hard basket. It is too important for that. We urge the Queensland parliament to consider ways to extend the coverage of this bill by defining the type of gig platforms that are digital labour platforms, by prescribing the gig workers who work on a contract for service on those platforms and you could even go further by considering whether you can extend coverage to a broader classification of workers—for example, care workers or NDIS support workers who might not even work via a platform, but are nonetheless treated as subcontractors who might miss out on workers compensation insurance too. This model that I have just mentioned is about to commence in Western Australia, for example, and Queensland could do the same. Thank you for having us and giving us this opportunity to address the committee and I am happy to take any questions.

Mr LISTER: I have no questions.

Ms NIGHTINGALE: Are you able to provide the committee with more information regarding the coverage differentials between the private accident insurance offered by gig platforms in the care sector and the compensation available under WorkCover?

Mr O'Reilly: Yes, I am. Typically the state-based workers compensation schemes are far superior to the kinds of insurance products that an individual might get, certainly in the care sector. There are a lot of insurance products that are sold to people to cover them if they are working as independent contractors, but I think it is eight times more that you would receive under the workers compensation scheme, certainly in the case of a payout of a fatality. The numbers are in our submission, I cannot recall those directly, but it is something like eight times more under the workers comp schemes. What we have said is in the tragic case of a fatality at work some large contracting platforms will pay a lump sum of $250,000, compared with up to $700,000 under the Queensland scheme. It differs from state to state, but it is substantially more if you are covered by state-based workers comp schemes.

Mr DAMETTO: Thank you very much for putting your submission forward but also addressing the committee this morning. My question is in relation to your submission highlighting the growth in the number of direct contracting agreements in the care sector. Can you give the committee more information about this and how you believe direct contracting agreements should be regulated into the future.

Mr O'Reilly: The number of contracting arrangements in the care sector is absolutely exploding. It is not well understood, but it is absolutely worth looking at. In the healthcare and social assistance sector in 10 years the number has doubled of people working their primary job as a contractor. It has gone from 60,000 to over 136,000. In the community and personal services sector it has gone from 44,000 to over 88,000. In the last 10 years, 2014 to 2024, the number of people working as contractors in health and personal services has exploded. It has more than doubled. The rate is faster than any other across the economy. The reasons for that are long and complicated, but it is rapidly increasing.

Mr O'ROURKE: Good morning and thank you for your submission. What implications do you believe the bill will have for the wider care economy and operators such as yourself?

Mr O'Reilly: As it currently stands, we believe the bill does not go far enough. I am talking specifically about the coverage for gig workers. We believe that the reliance on the federal process, with the Fair Work Commission having to deem workers as employee-like, that process has not even started yet, it might not provide adequate coverage and it means that the Queensland government is reliant on a federal process which we think could really delay important coverage to workers. We would suggest that if possible the government look at whether you can look at platforms operating in Queensland that provide labour for service and deem those platforms should be covered and deem the workers on those platforms should equally be covered. You could go further and consider whether you could just say these workers in incredibly important sectors, like NDIS and aged-care, if people are working in a contract for service they should be part of this bill. We believe that if the bill could be amended to look at that it would be a great thing for workers in incredibly important circumstances.

One thing I would like to note is that workers in the healthcare and social assistance sector have injuries at double the rate of the national average. Workers in healthcare, social assistance, community and personal services are more likely to suffer an injury than any other occupation behind only labourers. This is the slips and trips and falls, the psychosocial hazards, the occupational violence that care workers can face. The numbers are rising rapidly of people working outside of employment relationships. These are people who need coverage and workers compensation coverage and we would really hope that the government could look at extending the bill to cover those people.

Mr ZANOW: I have no questions, thank you.

CHAIR: There being no further questions, thank you for your submission and presentation and for answering questions from the committee today.

OLIVER, Mr John, State Secretary, United Firefighters Union Queensland

CHAIR: I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you.

Mr Oliver: Thank you to the committee for the opportunity to be here today. My name is John Oliver. I am a professional firefighter and the state secretary of the firefighters union here in Queensland. I have been a firefighter since 1998 and secretary since 2010. For decades now it has been clear, especially to firefighters, that firefighting makes some of us sick—from major bushfires, factory fires, the emerging EV fires, industrial fires, chemical incidents, even major flooding. Firefighters enter these areas where their exposure to these events causes illness. Recently the World Health Organization, after thoroughly reviewing the latest scientific literature, deemed there was sufficient evidence to classify occupational exposure as a firefighter as carcinogenic to humans. That was a move from a class 2B to a class 1 which is the highest rating that can be given to an occupational exposure category by the World Health Organization.

I can confirm on behalf of our fighters that the sober reality of laws like these is that presumption of injury laws are very good news for firefighters who have received very bad news. On that basis, I wish to thank the minister for introducing the extension of the list of deemed diseases from 12 in 2015 to 22 and will make the point for all that this is world's best practice, with Queensland leading the way. I hope our submissions to the committee are helpful for your consideration of the bill being proposed. I am happy to take any questions.

Mr LISTER: I do not have any questions, but thank you, Mr Oliver, for coming today.

Ms NIGHTINGALE: Thank you for coming and for your submission. The bill proposes to include these 10 additional diseases. Could you please comment on the potential impact of this for your members?

Mr Oliver: Very significant. As I stated earlier, the World Health Organization has done a review of all of these types of cancers, and particularly the elevated rates for firefighters, and to move to the class 1 or group 1 is a significant move for them. They do not do it for lack of reasons. It impacts our firefighters greatly when they get one of these cancers or illnesses. Previously you would take all your leave or your WorkCover or whatever you had at the time. You would take all of your long service leave, your holidays, your sick leave and then you would deal with the cancer and hopefully you would return to work, if you were lucky enough. Otherwise, you would be cast adrift and could not perform those roles or duties anymore or you return without any of those benefits that you have been working for years to get. Obviously it has been now deemed to be a workplace illness and it is making the lives of those who do get one of these diseases an easier path to deal with the issue at hand.

Mr DAMETTO: Thank you very much for coming today to speak to the committee. In your submission you discuss the union's feedback during the 2023 review of the Queensland workers compensation scheme in relation to presumption of injury performed during day work. Can you please give us some details about your concern there and whether or not the current bill addresses those concerns?

Mr Oliver: Thank you for your question. The current bill does address the day work issue and that is where firefighters are taken from their primary duty of responding to incidents in the red truck each and every day from every station to other roles that have significant importance, such as state fire investigators who attend incidents to make sure that they see where the seeds of fires may be or what caused that fire. They are also getting exposed to the toxins.

In terms of the bill, I think at 36D, if you are not actually responding to those incidents each and every day in the red truck then you are precluded if it is over a 12-month period. Our day-work rotations are around 18 months, so that has the potential not to be counted. I believe the bill gets that. I do have a small statement to make regarding the effect it has on women firefighters taking extended periods of leave for caregiving responsibility or having a baby.

Mr DAMETTO: Of course.

Mr Oliver: If I take the committee to our submission on page 4, I ask the committee to note that the risk of excluding periods of long-term leave is particularly significant for women firefighters, who remain more likely to be the primary caregiver after the birth of a child or adoption. This extended period of leave required, which is leave usually over 12 months, by approved forms of parental leave may result in a firefighter, likely to be a woman, not meeting the threshold of performing the relevant duties during the qualifying period proposed by the bill in clause 27.

We also note that there are, of course, multiple other scenarios where a firefighter, male or female, may be able to access periods of approved leave exceeding 12 months and these may equally impact qualifying period assessments. Again I wish to raise that significant point. It is something that I think is a positive, particularly for the women firefighters in our occupation. I think they are somewhat disadvantaged by the caring responsibilities. I am not saying it is particularly only for women, because males do it as well. It is something that could be considered in the committee's report. I would really appreciate it.

CHAIR: Mr Oliver, you state that the bill does not address the limitation to accessing presumption of injury arising from a worker taking approved leave for periods that exceed 12 months, otherwise known as long-term leave. What are your concerns for your members in this regard and what do you propose to address them?

Mr Oliver: My concern is that I could be working with a firefighter for 14 years and six months. My colleague on that day leaves the workplace for long-term leave, maybe to have a child. During that period, my colleague is precluded from the qualifying period because of that workplace condition. I believe that there is an opportunity in the bill itself to look at various forms of approved leave that may go over that 12-month period to be included in the qualifying periods.

CHAIR: There being no further questions, Mr Oliver, I thank you for your presentation and for answering our questions today.

Mr Oliver: I really appreciate the opportunity, thank you.

CHAIR: We are actually running 13 minutes ahead of schedule so we will take our break now and come back at 10.45 with the Australian Lawyers Alliance.

Proceedings suspended from 10.32 am to 10.45 am.

GRACE, Ms Sarah, President, Queensland Branch Committee, Australian Lawyers Alliance

CHAIR: Thank you for appearing today. I invite you to make a short opening statement of no more than two minutes, after which committee members will have some questions for you.

Ms Grace: Thank you, Chair and members of the Education, Employment, Training and Skills Committee, for inviting the ALA to speak at today's public hearing. I acknowledge the traditional owners of the lands on which this public hearing is taking place. I pay my respects to their elders past and present and to all Aboriginal and Torres Strait Islander peoples who are here today or who are joining via the live broadcast.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice, human rights and equality before the law for all individuals, including those who are injured in the workplace. We estimate that our 1,500 members represent up to 200,000 people nationally every year. The ALA has been grateful to be involved in consultations in the lead-up to the introduction of this bill into the Queensland parliament, and we note some amendments were made after stakeholders provided feedback on the consultation draft of the bill.

As detailed in our submission, the ALA believes that the Queensland government should not wait for the federal government before including gig workers in Queensland's scheme. Relying on the Fair Work Act provisions as a bridge to the Queensland legislative rights is severely inadequate. Amending Queensland legislation now will level the playing field for employers who are doing the right thing and providing a safe and regulated workplace. Including gig workers in Queensland's workers compensation scheme will not compromise the scheme's sustainability or affordability, and the current optional insurance coverage offered by some employers to gig workers falls far short of that provided in the workers compensation scheme in Queensland. Gig workers are missing out on vital rights.

Mr LISTER: Ms Grace, I do not have any questions but thank you for your submission and for your appearance today.

Ms NIGHTINGALE: Ms Grace, in your submission you state that the bill does not provide sufficient clarity around access to statutory benefits for gig workers. What amendments would you propose to the bill in this regard and why?

Ms Grace: Those amendments are in our submission. Essentially, at the moment it is a staged process where there would have to be some steps under the federal legislation that would then enable the Queensland government to enact, by regulation, the rights for those groups—we say that, because that is a several stage process, it does not provide clarity or certainty—and better yet that the definition just be in the bill itself.

Mr DAMETTO: Ms Grace, you are seeking urgent reform in relation to extending workers compensation rights for gig workers. You say that we cannot wait until the federal government legislates on the definition of 'gig worker'. Can you please elaborate on this point for the committee's benefit?

Ms Grace: It might be best expressed with an example of perhaps what gig workers would have in the current state versus what they would have if they were entitled to those compensation rights. Take for example a gig worker, perhaps a delivery driver, who injures their ankle while slipping down a driveway when making a delivery in the rain. Perhaps they need four to six weeks off work and then they would have to return to work at reduced duties. If they were entitled to workers compensation like a traditional worker, they would fill in an application for compensation and they would need to get a medical certificate, which are two fairly straightforward forms. Then they would have access to a workers compensation claims officer who would step them through their recovery, their return to work and their treatment.

If they are not extended those rights, they would be potentially left to endure that financial burden on their own and arrange all of those things themselves. If they were fortunate enough to have a policy in place by their employer or the platform for which they work, there may be some entitlement. But in this case, for example, unless there was a fracture, most of those policies do not cover these instances. They would likely just be left with no wages or means to meet their treatment costs for that period.

Mr O'ROURKE: Sarah, in your submission you speak about the inadequate protection of gig workers if they are injured at work, noting that some of the larger gig platforms do offer optional cover. Could you outline your understanding of what these companies provide in terms of compensation and rehabilitation for injured gig workers in Queensland?

Ms Grace: As you will appreciate, I do not have access to all of their documentation and policies, but the examples that I have come across cover things such as a maximum amount of wage loss per day. For example, $100 or $150 certainly is not entire compensation for loss of wages. They also only cover certain injuries. Most of these policies are for, say, a fracture only. I think with the amount of time that these gig workers spend on the road, we do see a lot of soft tissue injuries. I provided the example of someone injuring their ankle slipping down a driveway. That is something that happens in real life. Also, in car accidents soft tissue injuries to necks and backs are very common. Those injuries are simply not covered at all by those policies.

Mr ZANOW: Sarah, your submission addresses concerns about the sustainability of workers compensation schemes should the gig workers be included. I would like you to comment further on why you think those concerns have no basis.

Ms Grace: In the submission that we made we talked to the current sustainability of the workers compensation scheme in Queensland. It is the strongest scheme for a state-based scheme in Australia. There was some information in relation to the paper that was provided at the start of this five-year review. It included that in Queensland we have the lowest average premium rate in Australia of $1.20, and this has been the case for the last eight years. We have also seen the most timely and efficient dispute resolution in all Australian jurisdictions. The Queensland workers compensation scheme has a funding ratio of assets over liabilities of 142.5 per cent. Essentially, from a practical perspective, we say that gig platforms would be required to pay premiums like every other employer that does business in Queensland and the further collection of premiums could potentially—

Mr ZANOW: You think that could come at a cost?

Ms Grace: That is right, exactly.

Ms NIGHTINGALE: In your submission you say that the common law has not kept pace with the growth and complexity of the gig economy and that legislative remediation is required urgently. Do you have any statistics on the growth of the gig economy in terms of the number of workers as well as incidents involving gig workers where they may have been ineligible for workers compensation if they had been deemed to be already a worker under the Workers Compensation and Rehabilitation Act?

Ms Grace: That data is difficult to come by, particularly with respect to that latter half of your query. The gig economy in Queensland, from the Australian Bureau of Statistics—if we look at it as Queensland based, we estimate from that data that there are 150,000 gig workers in Queensland. In terms of those missing out, that data simply does not exist.

CHAIR: Thank you very much, Ms Grace, for your presentation and also answering the questions of the committee today.

Ms Grace: Thank you.

CHAIR: We will now take a break. We are still ahead of schedule. We will reconvene at 11.15.

Proceedings suspended from 10.54 am to 11.14 am.

TURNER, Mr Patrick, Principal Lawyer, Maurice Blackburn Lawyers

CHAIR: Welcome. I invite you to make a short opening statement of no more than two minutes, after which committee members will have some questions for you.

Mr Turner: Thank you, Chair, and thank you to the committee for the opportunity to address the bill today. I acknowledge those listening online and acknowledge the traditional owners of the land on which this public hearing is being conducted today. By way of introduction, my name is Patrick Turner. I am a principal lawyer with Maurice Blackburn. I head the firm's Queensland employment industrial law team. A two-minute time limit is always difficult for a lawyer, but I will endeavour to keep my opening remarks brief.

We commend the Queensland government on bringing forward this bill and for taking steps to protect some of the state's most vulnerable workers: those who perform work in the emerging gig economy. The safety risks posed to those workers and the harm that is suffered by them and their families when they are injured at work are real and profound. The benefits for these workers of becoming part of Queensland's workers compensation scheme are obvious. They would receive meaningful compensation for harm they suffer and be part of a scheme that places rehabilitation and return to work at its heart.

The large multinational companies that benefit from these vulnerable workers' labour will contribute to the financial strength and stability of the scheme and have a real interest in ensuring the safety of their workforce by virtue of being brought within it. The inclusion of these workers in the scheme has been long promised. It has followed recommendations for inclusion in reviews conducted by Emeritus Professor Dr David Peetz. It also reflects recommendations made at the federal level, including in a 2021 interim report which is cited in our written submission. It also follows commitments made by the Queensland government.

We think the Queensland government is showing real leadership in seeking to extend coverage to these workers; however, the proposed changes to the definition of 'worker' in the current form of the bill do not go far enough to ensure gig economy workers have the benefit of Queensland's workers compensation scheme as soon as possible. What is currently proposed requires that these workers be a regulated worker under the federal Fair Work Act, that a prescribed type of instrument cover or apply to them under that act and that they be prescribed by regulation to be a worker. In short, it is presently unclear what gig economy workers may be covered by the scheme.

Much of the amended definition refers to changes to the Fair Work Act introduced with the closing loopholes No. 2 legislation. Those changes that deal with regulated workers or employee like workers will currently only come into effect on 26 August 2024. Then there will be the need for a minimum standards order, minimum standards guideline or collective agreement to then apply or to cover the person. Each of those instruments has various procedural steps—prerequisites—that need to occur before they can take effect: application will need to be made by a relevant party; consultation is required in respect of some of those instruments in order for them to be made; and hearings may be held, which might be contested. A process for a collective agreement to apply is somewhat akin to that for an enterprise agreement or a collective agreement in the state scheme. There are involved consultative processes. Contested hearings may well result in delay.

It is also presently unclear what gig economy workers are intended to be covered by any of these instruments. The parties that might apply for them mainly do so according to the bounds of their coverage. I am talking here about unions, for example. There is a real possibility of a patchwork of coverage emerging, and those instruments can be varied, revoked or terminated by the federal industrial relations tribunal, the Fair Work Commission. Ultimately, while unlikely, there is some possibility that no minimum standards order, minimum standards guideline or collective agreement is ever made. I think that is very unlikely, but I just raise it to highlight some of the potential difficulties that arise in the present form of the amended definition.

Coverage of workers is essentially left to the vagaries of the federal industrial relations system. Of course, then, the requirement that these workers also be prescribed by regulation introduces further uncertainty and may leave coverage to the winds of electoral chance. There is much to commend in this bill—I certainly wish to emphasise that—but we ask the Queensland government to look again at how it proposes to define these workers to ensure that the most workers benefit from these protections as soon as possible. Thank you for indulging me in that slightly longer opening statement.

CHAIR: Indeed; all good. Thank you for the submission. Deputy Chair?

Mr LISTER: Thank you, Chair. Thank you very much for your appearance, Mr Turner. Present company excepted of course, does your support for this bill threaten the livelihood of ambulance chasers?

Mr Turner: Certainly not. We think it is critical that those who are most vulnerable in society have access to the same protections as anyone else who is directly employed for performing the same kind of work. This work is inherently dangerous. That has been revealed time and time again. There have been submissions made which have identified case studies and examples where workers have lost their lives or suffered profound injury while performing this type of work. It is a public good to have those persons receive the same compensation as people who are directly employed by employers. It is a public good for them in terms of ensuring their families and themselves achieve appropriate recompense, as I said, but, as Ms Grace identified in her previous remarks, it provides a level playing field. It ensures large multinational tech companies do not unduly benefit from operating outside of workers compensation schemes, not having to pay the same premiums that Queensland small businesses and larger businesses are required to pay.

Ms NIGHTINGALE: Can you please explain why you consider legislating the definition of 'worker' is an urgent matter that, if not done soon, would have consequences for Queenslanders? What are the consequences?

Mr Turner: Some of them are the ones I have alluded to, which are that you have this acutely vulnerable group who then suffer injury or illness that they are unable to get adequately compensated for or, as I said, death. The gig economy is growing by the day. It is plainly now a feature of Australian society. It is important that it is regulated in the same way as other types of engagements. The federal government has recognised this. That is why there is now the capacity for these instruments I referred to to be made. The Queensland government has identified this, which is why it has taken very good steps in introducing this bill to address the issue. We think that amended definition can be tightened to make sure it takes effect sooner rather than, as I said in my opening, leaving things to the vagaries of the federal industrial relations system.

Mr DAMETTO: Mr Turner, thank you very much for submitting and also facing the committee today. My question is with regard to your submission, outlining the recent history leading up to the development and then introduction of this bill. Can you please elaborate on this and Maurice Blackburn's involvement?

Mr Turner: Certainly. This is an issue that we have been passionate about for a long time. We have acted for gig economy workers in a range of matters—not simply in the workers compensation and personal injuries sphere but also in a large class action brought against Uber, in particular, but also assisting in various test cases around whether or not these workers were properly characterised as employees or independent contractors. It is an issue that we have been passionate about for some time. The reviews I have referred to are ones that were conducted by Emeritus Professor David Peetz. We have consistently shown support for ensuring these workers have the same rights as other employees in the state. It is something we certainly do not resile from today.

Mr O'ROURKE: In your submission you express concerns that the definition of 'worker' was not included in the bill and argue that it is not necessary to wait for the conclusion of what is happening at the federal level. A few of the other submitters have raised this as well. Could you explain this in a bit more detail?

Mr Turner: Certainly. As I touched on in the opening, essentially the amended definition requires a couple of things to happen before these workers will be captured and introduces a significant degree of uncertainty about precisely who will be captured by these laws. The person needs to be a regulated worker. That is what is called an employee like worker under the new fair work laws, but there also has to be one of these instruments in place: you need to have a minimum standards order; you need to have some guidelines in place or a collective agreement that covers or applies to that worker. That type of order, guideline or agreement will need to be made. As I identified in my opening, there are various procedural steps that need to be complied with before that will occur, so there is some uncertainty about precisely how long it might take for those instruments to come into effect as well. Returning to your question, that is why there is a degree of uncertainty, we think, that is introduced by linking things to processes under the federal industrial relations scheme.

Mr ZANOW: Do you have any statistics regarding injuries to gig workers? Where does their risk profile sit compared to other industries?

Mr Turner: I might have to take that question on notice and get in touch with some of my colleagues in our various injuries teams, but certainly the type of work that is being performed, which is overwhelmingly manual work, inherently exposes these workers to greater dangers than, for

example, a white-collar worker, who sits behind a desk and is exposed to less risk of harm than someone who is pedalling a delivery bike through busy city streets at night. I will take that question on notice.

Mr ZANOW: Thank you.

CHAIR: Can you please expand on your recommendation that the government should undertake a fresh and targeted regulatory impact statement process on the provisions of the bill regardless of the final terminology adopted?

Mr Turner: Certainly. Again, I might take that question on notice and endeavour to come back to the committee in writing on that point.

CHAIR: No problem. Thank you very much for your submission and for answering questions from the committee today. It is much appreciated. Responses to questions on notice are due by 10 am this Friday, 24 May.

Mr Turner: Certainly.

POWER, Mr Justin, Branch Secretary, Shop, Distributive and Allied Employees Association of Queensland

CHAIR: Welcome. I invite you to make a short opening statement of no more than two minutes, after which committee members will have some questions for you. Thank you for appearing here today.

Mr Power: Thank you, Chair, and thank you, honourable members. We are here today to support the bill. We see the bill and the forms that it outlines as being for the benefit of employees in Queensland, specifically the elements as they relate to employees being given information around their rights for WorkCover and workers compensation, improvements to rehab services, requirements for employees to cooperate with labour hire for the provision of reasonable steps to support providers to meet rehab obligations, and providing specific rights that an injured worker can choose their treating doctor and not have their employer or insurer present during their treatment and be able to seek advice from parties such as registered industrial organisations and a lawyer.

The one thing that we think is probably missing from this, which we have identified more recently, is that under the current system employers only have to report injuries in the workplace if they could result in a WorkCover claim. Effectively, this is interpreted as the employee has sought medical treatment. We have a number of employers now who offer, for example, physiotherapy or a number of other forms of treatment as an alternative before the person sees a doctor or puts in a claim. This can skew the regulator's maths in relation to how many injuries are actually occurring, because employers can dodge having to report on the injury if the person never actually went to the doctor. Their internal schemes tend to avoid that part of the process. I am happy to take questions.

Mr LISTER: Thank you very much for your attendance today. In your submission you express concern that the definition of 'worker' was not included in the bill and argued that it is not necessary to wait for the conclusion of what is happening at the federal level in this space. Could you please expand on that?

Mr Power: Sure. I suppose that would relate to the gig economy, something which I noticed the previous speaker was talking to. In terms of the gig economy, when it first started—for example, Uber drivers are probably where it did begin—the theory of the gig economy is that would be a mum or a dad who would take a couple of hours out of their week to provide a service and effectively get not pocket money but a small amount of money as compensation for that. What has increasingly happened is that the gig economy has started to replace entire industries—for example, Uber largely replacing the taxi service and a lot of the industries that we look after in that a lot of the pizza companies had their own delivery service and Coles and Woolworths had their own delivery service. Increasingly—not in total but increasingly—those services are now being replaced with people from the gig economy. Those jobs are increasingly becoming jobs that people rely on as an income, not simply as a supplementary income, and therefore we believe that those people working within the industry could be defined and have the workers compensation scheme under this legislation applied to them before having to wait for the implementation of the federal legislation.

Mr LISTER: Thank you.

Ms NIGHTINGALE: Thank you for your submission and for attending today. I note that the SDA expresses support for the proposed legislative changes under the bill. Can you please comment on how your membership would potentially benefit if the bill is passed?

Mr Power: Sure. There are a number of benefits in the bill, one of which is the fact that employees have to be informed of what their rights are under the workers compensation scheme. We do often get reports of employees who have injured themselves in the workplace and the manager has done one of two things: No. 1 is offered to take the employee to the doctor and attended the medical appointment with the employee. That can create the problem where if the manager then responds, which has happened, to the doctor's questions about what caused the injury that then becomes a part of the recorded data around how it occurred and the person then puts in a WorkCover claim and the WorkCover claim then gets rejected because of what the manager said in the medical appointment which may or may not be the actual reality of the injury. If there is the potential that the manager may have contributed to the injury, it is human nature for them to try and make out that it was more the employee's fault than their fault and that tends to skew the person's ability to get a WorkCover claim.

The other point that I make in relation to the employee knowing their rights is that a lot of companies now—and I am not here to comment on where the company's motivation comes from—offer alternatives to put in a WorkCover claim, that is, they offer the person free physiotherapy, they

offer the person some access to medical and what have you without putting in a WorkCover claim, and what we have had is circumstances where the person has chosen to use the company's services rather than put in a WorkCover claim. The person subsequently ended up with a permanent injury, but by the time the person has realised that they need to put in a WorkCover claim to have ongoing treatment and to potentially look at a common law claim they are out of time to put in a proper WorkCover claim.

We see a suite of measures in here which keeps our members informed, which keeps their rights protected and more importantly puts an onus on the employer to make sure that they are behaving in a manner which is ethical and which protects the members' rights, because often in this space the members do not know these things themselves. Of course, if they are in the union we would be providing them with that information, but not everybody is and sometimes they make the phone call to us just that little bit too late.

Ms NIGHTINGALE: Thank you.

Mr DAMETTO: Thank you very much, Mr Power, for coming along today to talk to the committee. In your submission, Mr Power, you say that the SDA has noticed an increase in psychological claims, either initial claims or secondary injury claims, arising from a physical claim. Do you have any specific numbers to support this?

Mr Power: I might have to take that on notice.

Mr DAMETTO: That is fine.

Mr Power: I do not have the numbers here, but what we have noticed anecdotally as to whether this is a consequence of the changes to the legislation to include psychosocial hazards—

Mr DAMETTO: I would have thought so.

Mr Power:—or whether this has always been there I probably could not comment on. Certainly what I can comment on is that, as I said, anecdotally the number of people who have made claims for psychological injuries either as a result of an incident in the workplace or as a result of the way they were treated as a part of the process through the WorkCover claim process has certainly increased, but I can certainly take it on notice and see if we can get some numbers for the committee.

Mr DAMETTO: I would appreciate that. Is that okay, Mr Chair?

CHAIR: Yes, of course.

Mr O'ROURKE: Mr Power, can you elaborate on your views that section 133 and 133A of the workers compensation act relating to reportable injuries should be amended to require all potential injury claims to be reportable whether they had been medically assessed or otherwise?

Mr Power: Absolutely. Going back probably around about six years ago—possibly even longer than that—we were seeking to potentially have one of the self-insuring companies have their licence to self-insure revoked because of what we saw happening with their members. We ran into a little bit of a problem, and that is that the people who were in a WorkCover claim and then had it resolved—because often it would not actually go all the way through to arbitration—would be sealed in a deed of confidentiality, so we could not use those numbers and statistics to talk about why this particular self-insurer should not have their licence renewed. The people who were currently in the process did not want to talk because the process itself was traumatic enough that they did not want to then have to go through a secondary process.

What we then sought to do was to then rely on the regulator's own statistics to say, 'Have a look at the number of injuries and then have a look at the percentage that actually translate into WorkCover claims compared to the industry and you would have to realise that those numbers don't correlate and something's missing', and what is missing is that people are being discouraged from putting in WorkCover claims and the process is being made more difficult. When we then went to the regulator we found out back then very surprisingly that self-insurers actually were not required to report injuries in the workplace. That has been amended, but the way that it was amended is it only required it to be reportable if it resulted in medical treatment. Again, we now find ourselves in that situation where the statistics are not correct because if the person is led away from medical treatment into physiotherapy or a number of other treatments provided by the employer then that is now no longer reportable. If the person has an injury which requires first aid but they do not go to the doctors or they do not go to the hospital, that is also no longer reportable and we believe that that potentially skews the regulator's ability to make genuine assessments about levels of industry hazard or risk as well as whether individual self-insurers are doing the right thing.

Mr O'ROURKE: Thank you.

Mr ZANOW: Thank you, Mr Power, for attending today. Similarly to the member for Hinchinbrook, I might integrate the question on notice, in particular regarding psychological claims and its increase anecdotally. We need to try and understand why that is happening. Is that directly related to the injury or other conditions that may be present? We certainly would like to understand that a little bit further.

Mr Power: Sure. I can think of one example off the top of my head, but I am a little bit limited in what I can say in this out of respect for the individual involved.

Mr ZANOW: We understand, but as much information as possible would be good.

Mr Power: Yes. She suffered a fairly psychologically and physically traumatic event associated with the workplace—a personally psychologically and physically traumatic event. I believe she did get some treatment. When she then went back to the store manager to say, 'Look, I'm not okay. I need help', the advice that, we understand, she received was, 'Don't worry. You'll get over it.' It is the compounding effect of the psychological trauma that has come about because of the way the issue was treated on top of the existing trauma. Of course, one of the other things which has probably also increased the numbers is the increasing amount of consciousness around the No One Deserves a Serve campaign and customer abuse. Quite often what we find is the customer might be abusive. That causes an initial level of trauma and then if that is not handled well by management or management accuse the employee of having instigated it when the employee was actually doing exactly what they were required to do, which was follow the company policies, that quite often adds trauma to trauma and increases the psychological damage.

Mr ZANOW: Do you think that employees try it on?

Mr Power: Sorry?

Mr ZANOW: Do you think employees try it on—'I think I'll have a problem now because something has happened'? Do you think they try it on?

Mr Power: Yes and no. What I mean by that is that in any system you have you will have a very small percentage of people who will try and use that system inappropriately, but they are absolutely the minority. What has happened is an increased level of awareness. I absolutely believe that these claims are legitimate. One of the other things that has only just come to our attention more recently is when it comes to psychological claims—and I am mentioning this by way of answering the question—when a person has a psychological claim as a result of a workplace incident, if that psychological claim is considered to be as a result of the manager having taken reasonable management action, it is exempted from a WorkCover claim. What we do find increasingly, for example, in relation to customer abuse is that the customer is abusive. When I say 'abusive', we have had people who have had cans of drink thrown at their face in a number of different incidences. They then go to the manager and if they do not feel supported by the manager that causes another level of trauma, but they cannot mention that because if they mention that that has caused another level of trauma they run the risk of the entire WorkCover claim being rejected because they dared to bring in the manager's action and that becomes reasonable management action and the whole thing gets canned. So I actually think it is an increased level of awareness. It is also an increased level of advice from us that you absolutely have the right to raise that, but you just have to do it in a particular way to not put your entire WorkCover claim at risk.

Mr ZANOW: So you believe that the number of workers who try it on or put it on is very low?

Mr Power: Yes. I am not going to be brazen enough to pretend that there will not be some people who will do that, but they will absolutely be the minority. In our experience for the people that we deal with that we are assisting with these sorts of issues it is clear from the interactions with them that they are traumatised; they are not pretending.

Ms NIGHTINGALE: Given that you have just said that there is a small incidence potentially of people who may be making these extended claims, are you also aware of the incidence where there is an under-reporting of secondary psychological injury?

Mr Power: Absolutely. As I said, if it is WorkCover reporting and the WorkCover claim gets rejected because of reasonable management action, I do not know what happens with those statistics. To be fair, our interest in that space has really been to look after the member with the circumstance that they are going through. If the rejection of it on the grounds of reasonable management action means it does not actually contribute towards the statistics, then there would be an awful lot of claims that would be disappearing off the radar where psychosocial issues within the workplace are one, if not the main injury.

CHAIR: As there are no further questions, thank you, Mr Power, for your submission this morning and for answering our questions. There was one question on notice which involved statistics on increases in psychological claims either as the initial claim or secondary injury arising from a physical claim. If we can have the response by 10 o'clock on Friday, that would be extremely helpful. Thank you.

Mr Power: Thank you.

MILLROY, Mr Joshua, Director, Organising, Transport Workers' Union Queensland

CHAIR: Thank you for presenting today. I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you.

Mr Millroy: Thank you, Chair. For those of you who are not aware, we represent workers in the transport industry—that is, traditional employees such as those who work in general freight, logistics, bus drivers, aviation. However, our union was founded and is heavily influenced by what we call owner drivers, essentially small business people who run their own operations such as a family who might have one or two trucks or an individual who might have a van they use for delivery work and bid for work around Australia. In a sense, we were founded by the original gig workers in this country.

We have worked considerably in the gig space for a number of reasons. One is the incredible level of exploitation that occurs in the gig sector and secondly is the threat they face to traditional methods of transport. WorkCover is one particular example of that, which I spoke heavily about in our submission. The TWU's submission is related simply to the amendments in section 11 of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill and for all other purposes within the bill we support the Queensland Council of Unions' submission.

As we know, gig workers are heavily exploited. I wanted to have Nirav here today, who was seriously injured in an accident. He received $4,000 and was unable to work for months. He is still dealing with the consequences of those injuries. Had he been injured covered by WorkCover he would have received a portion of his earnings for months and he would have received supported medical treatment. Nirav is just one example. We deal with dozens of examples every week of people who have been horribly injured when they are working under significant control of a gig company.

In our submission I obviously note that we support the legislation and we are proud to see Queensland taking the first steps in the Commonwealth towards including workers compensation for gig workers, but we do believe that more needs to be done and faster. There have been a number of reviews into this issue commissioned by the current government and they both argue for the inclusion. We believe this needs to happen faster. Whilst we acknowledge the significant challenges in drafting—it is a complex area of law—waiting on the Commonwealth we believe presents an unacceptable risk to these workers.

Mr LISTER: I think I recall the shoppies saying that they cover workers in the gig economy to do with deliveries and so forth. Is there a crossover there between your union and the shoppies?

Mr Millroy: I would not say there is a strong crossover. They obviously cover the warehousing space and logistics. We also cover that when there is a closer relationship to transport, but generally speaking we have a very strong relationship with the SDA and we work hand in hand on campaigns.

Ms NIGHTINGALE: Your submission states that for gig workers, due to the low wages and job insecurity workers are pressured to take risks and cut corners. My question is in two parts. Can you expand on this, please, and what implications does this have for personal injuries?

Mr Millroy: There was an interesting report done called Tough Gig by the McKell Institute. That was the biggest ever survey of gig workers. What that showed was that most of these workers are actually earning below the minimum wage, especially when you factor in the expenses that they incur. We know that most of these workers are often ESL, often from foreign countries. A lot of the time they are on student visas. They are highly vulnerable. They know little about their rights. They know little about Australian law, especially Australian workplace law, and they are highly susceptible to exploitation. We know that the way they make money is per job and often it is very opaque about how that algorithm works to determine how much money they will get at a certain period. So they are always rushing. I am sure you have been on the street and you have seen the gig worker rush past you on a pushbike or a moped. That is because they are always under pressure and that pressure results in risk taking behaviour. We believe that by including gig companies under this it will incentivise greater safety for them because it will directly affect the premiums that they pay on a day-to-day basis and will start to create a better culture around workplace health and safety.

Mr DAMETTO: Thank you very much for submitting today and talking to the committee. My question is with regard to gig companies and their involvement in operating in places like Queensland. Do you believe the gig companies that operate in Queensland have negatively affected the Queensland Transport industry and, if so, could you talk to us a little bit more about that?

Mr Millroy: Yes, I do. In my opening statement I spoke about not just the significant exploitation these workers face on a day-to-day basis, which is well documented, but also the threat to existing safe transport jobs. We run large-scale enterprise bargaining with major companies in Australia—the

biggest companies there are in national logistics—and regularly in enterprise bargaining they seek to engage contractors under a model that is similar to how an Amazon or an Uber would engage contractors. Largely speaking these are good companies most of the time that seek to have strong agreements with their workers. However, they are being dragged to the bottom in what we call the Amazon effect where they are telling us they have to engage contract workers in order to remain competitive. As these companies seek to operate outside of the employment conditions that we have spent over 100 years building, they are actually bringing down everyone's wages, they are bringing down everyone's safety and they are bringing down everyone's conditions. This race to the bottom is something we have been focused on strongly.

That is why the federal government recently passed what we called our transport reform campaign, which we reference in the submission, which is around setting minimum standards for this type of work. We think it is a huge threat to traditional employment standards. We are seeing it creep into areas of heavy freight now which is a huge concern to us. In America they have Uber Freight which is now taking heavy haulage work too. We believe there is a really strong place in the economy for genuine owner drivers, but genuine owner drivers have discretion in the contracts they accept. They have the ability to set their own rate. They are not going to have all their work cut off from them and be deactivated overnight by a machine if they decline certain types of work. We believe it is a huge threat and that is why we are here today. Workers compensation is just one example. If you are a good employer paying workers compensation premiums for your workers and a massive international gig company is not, they already have a huge competitive advantage over you.

Mr DAMETTO: They certainly do.

CHAIR: Your proposed amendment to section 11 includes broadening the definition of worker to an employee-like worker or road transport employee-like worker who are covered by minimum standards guidelines. Can you tell the committee more about the minimum standards guidelines and why reference to them alongside minimum standards orders is preferable?

Mr Millroy: We understand the drafter's intent in relation to that and we acknowledge there are issues and it is a complex area of law trying to capture these workers. There is a system we have seen globally from gig companies where they seek to remain outside of any legislative changes. It is much quicker to update a contract with a worker than it is to legislate a bill. We really see these avoidance strategies from gig companies. The beauty of that system, the minimum standards order system, is that it actually will not make a decision on whether or not you are a contractor or an employee, but it will set minimum standards for different types of work. That is the system that we advocated for because we did not want to get caught in this constant game of being caught outside of legislative safeguards.

We believe that whilst there is some use in that, there are ways the Queensland government could draft this legislation such that we are not having to wait for minimum standards orders. As I outline in our submission, that legislation will not come into force until August this year and then any application that is brought by my union or any decisions made may take months. We believe it can create a bit of a perverse incentive for gig companies to attempt to avoid or delay for as long as possible entering into that jurisdiction if a consequence would be them being subject to workers compensation premiums the moment that came into effect. We believe there is a crisis here and we do not really have accurate figures on how many injuries are taking place. We believe this requires urgent intervention.

Mr DAMETTO: We have noticed gig companies over the years operate outside the Queensland legislation quite bullishly. How concerned is the transport union about some of these companies not taking any notice of any legislative change even if it were to pass?

Mr Millroy: That is an excellent question and that is something that we have been grappling with for a long time. We also know it is something that taxi operators, mums and dads that own taxi licences, have been struggling with too. We also represent taxi drivers. We are acutely aware of especially the entry into the market, when they entered markets like Queensland but other state jurisdictions around Australia. It is well documented what occurred there. That is something we are concerned about and that is why we believe the legislation can be tidied up to capture those companies faster, notwithstanding it is a complex area of law. It is a big concern. I am hopeful that they would engage, if they were included in that process. I would hope that that would be the case. There are huge issues there, but in recent years we have seen some gig companies come to the table and sign agreements with the TWU around advocating for minimum standards. There has been some progress in recent years which we are happy to see, but it will be ongoing and we want to make sure that, for something as simple as if you are injured at work, you are covered.

Mr DAMETTO: I would say that is a very good answer and their absence from today's hearings speaks quite loudly to me, if you ask me.

Mr Millroy: I agree.

Mr O'ROURKE: In your submission you express support for the bill in terms of creating a pathway for gig workers to access workers compensation. Can you please expand on what you consider would be the benefits to not only the gig workers but also the industry and economy if this bill was passed?

Mr Millroy: Thank you for the question. I think there is a bit of a misconception here that the Queensland government, and federal government to an extent, is not already paying for the injuries that occur. When these workers are injured and cannot work and receive no income that still has a very negative effect on the economy, on that worker, but also on things like the health system and unemployment benefits which those workers are now forced to be on. We have seen it significantly with the injuries incurred and the burden that places on the public health system and also just the general effects on these workers' livelihoods and state of mind. I was listening to the previous speaker. I have met very few workers who ever want to be on WorkCover. For a lot of these people they are proud. Working is part of their identity and sitting at home not working has an enormous negative effect on them. It has a much greater effect on gig workers because they are receiving no income at all. Often they are sole breadwinners and often they are basically living on the poverty line anyway. We know it has a massive effect and, as I touched on earlier—I will not repeat myself—it is creating an uncompetitive advantage for gig companies not having to engage in the expense that hardworking Queensland businesses do.

CHAIR: Thank you for your presentation and answering the questions from the committee today.

ABBOTT, Mr Jared, Assistant General Secretary, Queensland Council of Unions

TOSH, Mr Nate, Legislation and Policy Officer, Queensland Council of Unions

CHAIR: Thank you for presenting here today. I invite you to make a short opening statement of no more than two minutes after which committee members will have some questions for you.

Mr Abbott: Thank you, Chair and committee, for this opportunity. We will take our submission largely as read. I know we cover a lot of technical aspects in it. What we want to focus on in our opening submission today is really two key aspects, which is obviously our support to have coverage extended to the gig economy for workers compensation and also for the appeals pathways that my colleague Nate is going to speak on.

The Queensland Council of Unions represents 400,000 workers in Queensland across a range of industries that are affected by the gig economy now. Obviously, none is larger than the transport industry. I come from the transport industry where I have over 20 years experience. What we have seen and what has been talked about with previous speakers is that these workers are extremely vulnerable. The most vulnerable now are often migrants and students. We see them on bicycles, doing jobs that would otherwise have been traditional work. Those workers are not small businesses. They are not building up a case where they can get a client base and then sell their business. They are literally controlled by the apps. They do not make decent money.

The mechanisms currently in place with only a few gig operators that do provide some compensation through insurance schemes are wholly inadequate. The type of injuries they would face would put them out of work and what they get in compensation is certainly not enough to come anywhere close to what they could live off. Also, these companies have very poor health and safety standards. As was referred to earlier with the McKell report, behind that report is hundreds and hundreds of submissions from gig workers saying how hard it is to actually have any personal contact with the gig companies to have a discussion with a real person in terms of what has happened with incidents. Time and time again, we have seen these things go sour. I would note that in the last year we have had a record number of deaths in the transport industry. These people are at the most vulnerable end of the most dangerous industry in Australia. The workers compensation scheme is absolutely vital in terms of being able to make sure that they are adequately compensated when they are injured but also that we drive better behaviour out of companies.

The one thing that we would like to emphasise in terms of what we would like improved in the bill is that we would like the regulatory impact statement process fast tracked. With the current proposal, using the Fair Work minimum standards orders to determine who would be covered, it will be a slow process. One thing that we would support to deal with that is to fast track the regulatory impact statement procedure so that, as soon as an order is applied for, it would kick off the process for an RIS to take place. I will pass over to Nate to quickly give an opening statement.

Mr Tosh: Thank you, Chair and committee members. My opening remarks relate to clauses 13 and 14 of the bill, which the QCU does not support. They fundamentally change the appeal pathways in Queensland's industrial relations tribunal. These are tribunals that are tailored for the specific needs of the stakeholders they serve who are laypeople—ordinary working Queenslanders. They are designed to allow access on a relatively cost-free basis. Unlike the design of the current appeals pathways, which were informed by significant stakeholder consultation as part of the 2015 review of the IR framework in Queensland, the pathways proposed by the amendments do not arise from any review recommendations. They will make appeals more costly and they will impact the representational rights of appellants. The QCU, therefore, urges the committee to recommend that these amendments are not passed.

I also want to briefly respond to comments of the Master Builders, which referred to us in their submissions in relation to information statements, to clarify the QCU's submissions. The statements that were referenced are not direct quotes from the QCU. These are statements from a report by the Behaviour Change Collaborative in 2022. The QCU says that although the quote there talks about providing the information to workers at the right stage of the workers compensation process that does not mean only one point in time. Our position would be that is at the commencement of employment and also when a claim is lodged.

The second point goes to the statement that was made around workers understanding the initial step required, so lodging a claim but being unaware of the process behind that. We say that that supports the issuing of the information statements, particularly when you have a look at the rights

that are prescribed in clause 64 of the bill, including the QCU's submission that the new offence in new section 46A also be prescribed to provide workers with the information that an employer should not be providing them with a benefit or a detriment to not make a workers compensation claim.

Ms NIGHTINGALE: You state that new section 221(3)(b) regarding the requirements of consultation on rehabilitation and a return to work plan could be amended to better reflect a person centred approach. Can you please outline what amendments you would suggest and how these amendments would help improve return to work performance for workers?

Mr Tosh: There are two amendments further on in our submissions that we refer to. The first would be providing some clarity around the parties that are to be consulted in developing a workers compensation plan. The bill itself is going to prescribe that a worker has a right to talk to a lawyer or their union. Procedurally, many workers, for whatever the reason may be—because of psychological injury or a young worker—might nominate a family member or a union representative to be a contact for their claim. We think that the bill could be improved by prescribing in the consultation provisions in that section that the requirement to consult with a worker would also extend to someone whom they have nominated as their representative or particularly a union.

The other section is in relation to the provision that says that consultation should occur to the extent that it is reasonably practicable to do so. The QCU's position is simply that those words should be removed because it should never be reasonably practicable to not consult a worker or some processes that will allow for that consultation to occur like case conferencing, which is currently provided for in the table of costs that WorkCover has where you can get the doctor together, their other treaters, the worker and anyone else who might be relevant and talk about the rehabilitation goals and develop the plan from there.

Mr DAMETTO: My question relates to gig companies. Currently, Queensland workers may find the process of going through a WorkCover claim with their Queensland based employer or, should I say, bricks-and-mortar employer in Queensland somewhat difficult sometimes. Could the council comment on the complexity that may arise from a worker having to deal with a workers compensation claim through a gig company that is not based in Australia?

Mr Abbott: They do have staff based in Australia. I guess that would be their responsibility to establish that process. We have had situations where recently a number of gig companies in the transport industry have brought in their own wholly inadequate schemes. They have set parameters around them that make them very difficult to be able to actually access. We have seen time and time again people having to enter and engage very expensive legal challenges just to be able to access what they are entitled to in terms of that compensation.

Mr O'ROURKE: In relation to extending the coverage of the workers compensation scheme for gig workers, you state that their standing in the scheme will remain uncertain for some time. Can you please explain that in a bit more detail? What would you propose to address it?

Mr Abbott: It is a very difficult one to address. This is what has been talked about in terms of what we have seen in other jurisdictions: when you set clear parameters for who would and would not be deemed to be a worker covered or not covered, the gig companies can then take those parameters and slightly change how they engage these workers to say that they are not covered by it, which then moves into other legal battles. The Transport Workers' Union has done work with the federal government in order to have minimum standards apply where rather than saying, 'Yes, you are this' or 'You are that', saying 'Actually, you are similar to this and because you are similar these are the minimum standards that apply to you.' The QCU believes that that is a logical way that these workers should be determined on whether they would then be covered by WorkCover.

The problem with that has been outlined earlier, which is that this is quite a long procedure. Before the order comes in place there is a consultation phase. There is a lot of process in it. There will be appeals and all that. It does not mean that we are likely to see gig workers covered overnight. If we have the process taken after all of that and also take the regulatory impact into effect then that could extend it out even further. That is why we are proposing that the two are done in conjunction with each other.

CHAIR: You propose amendments to clause 35 through new section 146A to impose additional obligations on employers in relation to providing necessary information to WorkCover. Can you please outline what those amendments are and your reasons for them?

Mr Tosh: Clause 35 is essentially aimed at ensuring that injured workers get more timely wage replacement benefits. There is a process designed to prescribe that an employer needs to provide wages information within five business days, I think it is, and then failing that there is a basic weekly

payment that would be provided by WorkCover. After that period, the wages information then comes in. WorkCover will have the ability to seek a penalty from the employer for the difference between what the basic weekly payment may have been and the actual wages if there was an overpayment.

What the bill does not do at this point is put a positive obligation on WorkCover to consider reasonably exercising that. While it all exists, without prescribing that an insurer must reasonably consider exercising their power to issue the employer with that penalty, it means employers can continue to not provide timely wage information. Basic weekly payments will be provided and the employers will see no penalty for not complying with their legislative obligations.

We say that that undermines the purpose of the provisions and that the way that that can be improved is in three parts. This would be including a subsequent subsection in the relevant provision. Firstly, an obligation on WorkCover to reasonably consider exercising its powers to require an employer to pay a penalty for noncompliance and then a duty on WorkCover Queensland to report employer noncompliance to the regulator. When they report it to the regulator, if they have decided not to exercise their power, they would detail to the regulator whether they exercised it and then if not the reasons why. That will then filter in to any processes that the regulator might have for pursuing employer noncompliance.

CHAIR: That is very helpful. Thank you, Mr Abbott and Mr Tosh, for your presentations today and for answering the questions of the committee. We very much appreciate it.

BROWNE, Ms Tracey, Manager, National WHS and Workers' Compensation Policy and Membership Services, Australian Industry Group (via videoconference)

FERGUSON, Mr Brent, Head of National Workplace Relations Policy, Australian Industry Group (via videoconference)

CHAIR: I now welcome representatives from the Australian Industry Group, who are here via videoconference. Welcome, Ms Browne and Mr Ferguson. I invite you to make a short opening statement of no more than two minutes, after which committee members will have some questions for you.

Mr Ferguson: Thank you for the opportunity to join you today. We have obviously lodged a detailed written submission. It addresses a number of concerns that we have about a range of new obligations and increased penalties that are proposed to be introduced under the workers compensation legislation, as well as the importance of employers being given sufficient time and support to enable them to understand and comply with those obligations.

I think it is fair to say that obviously our major concern in relation to the bill relates to the amendments that would create a regulation-making power that would bring regulated workers, as contemplated under the changes to the Fair Work Act, under the coverage of the workers compensation legislation. As a threshold issue, I make the observation that this does not just impact gig workers as commonly thought. It will also have implications for traditional contracting arrangements in the road transport industry, which would be swept up within this change as well, even though not a lot of attention has been focused on that point.

The heart of our concerns really goes to the practical reality that the simplistic extension of the workers compensation scheme, which has been developed to apply to employees, just is not going to be workable in the context of the diverse range of contracting arrangements that will be caught now. Our material traverses the reasons for that in some detail. I understand that a number of the submissions lodged by platform businesses do as well.

I think the short point to make here is that there are really fundamental but unanswered questions about how it will work. For example, how would arrangements where multi-apping apply be dealt with—where contractors are working for two platforms at the same time? How would the rehabilitation obligations under the legislation operate sensibly in a gig economy context where people have no ongoing relationship? How will the legislation work, for example, when someone is on an app at their home—they are not actually undertaking a task when they are injured? There really seems to be no clarity around those sorts of major issues.

The other point I would make is that there is a real risk that, if Queensland moves forward with this legislation, it will greatly complicate the process for making minimum standards orders in the federal jurisdiction because there is going to be an overlap. That jurisdiction itself is empowered to deal with insurance. It is not clear how it is going to do that if there is one state jurisdiction dealing with it in a piecemeal way.

Finally, the point I amplify for the committee is that Safe Work Australia is undertaking work already in relation to having a nationally consistent approach to the roll-out of workers compensation for gig workers. We would urge the committee to recommend that the Queensland parliament refrain from developing a state scheme until there is scope for a potentially nationally consistent approach to be developed. I think that would be in everyone's interest. That is all I wanted to put in relation to the opening submissions. We are very happy to take any questions.

CHAIR: Thank you for your presentation. It is over to the deputy chair, the member for Southern Downs.

Mr LISTER: One of the points you make in your submission states—

> Collective agreements are consent-based instruments and should not logically be used as a basis for activating legally binding obligations under the WCR Act. Additionally, this may disincentivise parties from making such agreements.

Would you mind expanding on that?

Mr Ferguson: The federal scheme is intended to be one that is entirely voluntary. The parties who wish to can enter into an agreement that is then binding on them and it could set terms and conditions above or more favourable than any minimum standards order. One of the difficulties might be though for a platform or a road transport business is that, if as a consequence of agreeing to that—it may be an agreement around rates of pay or some other condition which everyone wants to see—

they are swept up into the workers compensation scheme in Queensland in a context where there are still big doubts about how that is going to work practically, that would mean that those businesses would be very reluctant to enter into those agreements, even if they are in everyone's interest.

The short point is that these changes would create a very significant disincentive to parties utilising these new mechanisms that have been put in place in the federal sphere. That may be an obviously unintended consequence but it would be a reality.

Ms NIGHTINGALE: You also state that the proposed amendments to the definitions of 'worker' and 'employer' are 'unworkable'. Can you please explain why?

Mr Ferguson: As I have alluded to in my opening submissions, it is a fairly blunt approach of simply bringing into coverage of the Queensland legislation anyone who could be caught by the coverage or application of those instruments in the federal sphere. What that means is that a system that was clearly designed to work in the context of an employment sphere will be applied to contracting arrangements where it just does not sensibly work for the sorts of reasons I have talked about.

The reality is that particularly contracting in the context of the platform sector is very flexible. All of the assumptions that underpin the workers compensation legislation just will not make sense when applied to those sorts of contracting arrangements. Nonetheless, the mechanism that is proposed is to just alter the definition so that, frankly, if you are covered by a minimum standards order or an agreement, as the other question just referred to, you get caught by the workers compensation scheme. That is a very blunt approach and one that really does not deal with the nuances that should be worked through.

Mr DAMETTO: My question is in regard to some comments earlier about the federal scheme and the review that is happening there at the moment and that perhaps Queensland should wait for that review to be completed and then implemented. There have been a number of comments this morning in regard to the idea that Queensland workers cannot wait for that alignment to happen and if we were to wait we would essentially be putting workers in a position where they would be operating without workers compensation. Can you speak to that more broadly?

Mr Ferguson: I would be happy to. It is crucial that the Queensland parliament waits and takes a considered approach to this. One of the reasons for that is, as I have put, there has been no proper holistic look at the Queensland legislation and no efforts made to amend it so that it aligns with the realities of contracting arrangements in the transport industry or the gig sector more broadly. That alone is a sufficient reason to wait.

The other side of this is that there is, of course, this federal jurisdiction. It is a new jurisdiction, but what happens in Queensland in relation to this bill will colour the deliberations of that federal sphere. When the commission comes to look at what might be the terms of a minimum standards order, it is going to have to grapple with what might be the consequences of this bill being passed. That is going to complicate the processes around making any potential minimum standards at the federal level and probably delay those standards. Firstly, that is a reason to delay.

Secondly, it is expressly provided for in the federal legislation that the commission can deal with insurance. It could set a minimum standards order that deals with insurance obligations of platform businesses or road transport businesses that engage relevant contractors and create obligations that are better suited to the realities of contracting in that sphere than a scheme that was designed to cover employees.

We think that it is better for that specialist tribunal, working under these specialised provisions of the legislation, to deal with these issues than for one state to go ahead or, alternatively, and preferably, for these issues to be fully worked through at Safe Work Australia so that potentially a nationally consistent approach to workers compensation for gig platforms and contracting can be developed.

There are several moving parts, but I think the worst case scenario would be for one state to move independently and create a potentially inconsistent approach to the treatment of this issue. It is complex and we are better off seeing if we can develop a nationally consistent approach.

Mr DAMETTO: Thank you, Mr Ferguson. I appreciate your answer.

Mr O'ROURKE: In relation to the bill's introduction of a penalty for an employer who circumnavigates a scheme by paying amounts of compensation to workers who have a work related injury, you submit that there may be reasons other than claims suppression as to why an employer may do this. Can you elaborate on that?

Ms Browne: I am happy to take that question. Often we find with our members that they may have workers who have an injury but they are reluctant to put in a claim. They do not want to be part of the workers compensation scheme, so the employer in goodwill, even though they should not do it as the legislation is written, will pay the worker maybe a week or two of payment for compensation and they may pay some medical bills. It is not actually because they are trying to avoid paying premiums or suppress claims. They often do not understand those obligations and just want to help the worker who does not want to go through that claims process.

CHAIR: You hold concerns about the bill's proposed new and increased penalties, particularly as employers are not always aware of their legal obligations in relation to workers compensation. Besides education programs, is there anything else the government could be doing to address this in your view?

Ms Browne: I think the challenge with workers compensation for the small to medium employers is that, until they have a claim, it is not really something that they think about. Larger employers will have everything in place to enable them to comply with any changes, but for smaller employers, until there is a claim, they do not even think about it. It takes them time once they do get a claim to work out where they need to go to get that assistance.

I really think it is important not just for general education and awareness but also for WorkCover to be very actively involved in engaging with employers when there is a new claim, if they have not had a recent claim, to ensure that they know exactly what their obligations are. If they do not meet those requirements immediately then WorkCover's role should be education and helping them to comply, rather than going straight to the point of reporting them to the regulator for compliance activity. What we want to see with workers compensation is employers engaging very actively with getting people back to work, not being punished for not doing things the right way. I think a bit of hand holding is needed for employers when they have new claims.

One of the challenges as well is that one of the new obligations is to provide information statements to all workers about their workers compensation entitlements. If an employer has not engaged with the scheme before, how do we actually make sure that they know that that obligation is there? I think as a minimum, when the premium notices are sent to employers each year, they have information that is provided at that point about what it is that they need to do and that that is obvious in a covering letter, rather than an attachment 10 pages in at the end of the invoice.

CHAIR: There being no further questions, thank you very much, Ms Browne and Mr Ferguson, for your presentations this morning and for answering the questions from the committee. It is much appreciated. That concludes this hearing. Thank you to everyone who has participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's website in due course. I declare the public hearing closed.

The committee adjourned at 12.28 pm.