

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Business Chamber Queensland Submission

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**Business
Chamber**
QUEENSLAND

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ABOUT BUSINESS CHAMBER QUEENSLAND

Business Chamber Queensland is the state's peak business body. We represent businesses in every industry, of every size and in every part of the state.

For 155 years, we have supported Queensland businesses to create a resilient, diversified and competitive economy.

We have been at the centre of the state's economic development since 1868 and have a long legacy as the leading business body in Queensland.

OUR BUSINESS INSIGHT

Our extensive business knowledge, built on decades of data and research and direct engagement with businesses, provides invaluable insight.

Our data is considered the state's most timely, comprehensive and trusted snapshot of Queensland business sentiment, economic confidence, conditions and expectations.

Our consistent and timely reporting of issues affecting Queensland businesses ensures regular and comprehensive research and consultation is undertaken to drive policy decisions.

This data and these insights have informed our submission.

EXECUTIVE SUMMARY

Business Chamber Queensland welcomes the opportunity to make this submission to the Queensland Parliament Education, Employment, Training and Skills Committee on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 ('the Bill').

The Bill proposes to amend the following legislation:

- *Industrial Relations Act 2016*
- *Labour Hire Licensing Act 2017*
- *Workers' Compensation and Rehabilitation Act 2003*
- Workers' Compensation and Rehabilitation Regulation 2014

Business Chamber Queensland's position with respect to specific proposed amendments of concern to Queensland's businesses are outlined in this submission.

In summary, they are the following with respect to the amendments proposed in the *Workers' Compensation and Rehabilitation Act 2003*:

- Proposed amendment to section 11;
- Proposed amendment to Schedule 3 9(a);
- Proposed amendment to section 46B; and
- Proposed amendment to section 228(2).

INTRODUCTION

The amendments as highlight in this submission risk adding another layer of complexity to an already stretched and stressed business community in Queensland.

Our recent research shows 70% of businesses say inefficient regulation is limiting their growth while the median business cost of complying with inefficient government regulation, or red tape has doubled in the past two years to \$50,000 a year.

It's against compounded record high labour and business operating costs, weak forward economic confidence, the ongoing skilled labour shortages and macroeconomic challenges.

These proposed amendments are likely to put further, unintended impact on the state's employers.

Businesses must not be prevented from managing their own business needs. The ability to run their business must be front and centre of decision making around these proposed reforms. Business Chamber Queensland is concerned a number of the proposed amendments in the Bill do not consider the potential business impact.

It is essential Queensland businesses needs are at the forefront of any legislative changes which impact the way they operate day-to-day and long term.

PROPOSED AMENDMENTS

The Bill proposes to amend the following legislation:

- *Industrial Relations Act 2016*
- *Labour Hire Licensing Act 2017*
- *Workers' Compensation and Rehabilitation Act 2003*
- Workers' Compensation and Rehabilitation Regulation 2014

1. INDUSTRIAL RELATIONS ACT 2016

Business Chamber Queensland notes the amendments proposed in the *Industrial Relations Act 2016*, as it relates to the Queensland Employment Standards and superannuation, unpaid flexible parental leave and increasing the threshold for unpaid wages claims.

Business Chamber Queensland makes no submission in respect of these proposed amendments.

2. LABOUR HIRE LICENSING ACT 2017

Business Chamber Queensland notes the amendments proposed in the *Labour Hire Licensing Act 2017*, and the intention of the amendments to ensure the Act's compatibility with human rights and to promote contemporary operational practices.

Business Chamber Queensland makes no submission in respect of these proposed amendments.

3. WORKERS' COMPENSATION AND REHABILITATION ACT 2003

In relation to amendments proposed in the Bill, Business Chamber Queensland highlights several proposed amendments that will, if passed, impact businesses both in respect of costs, and additional administrative burdens.

They are:

A) Definition of Worker

The proposed amendment to section 11 contains the definition of a worker. It is proposed the definition be expanded to include a future possibility a 'gig worker' be considered a worker for the purposes of the *Workers' Compensation and Rehabilitation Act 2003*.

In the Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers (the DIAS), two options with respect to gig workers were presented.

The first is to make no amendment to the *Workers' Compensation and Rehabilitation Act 2003* in this respect and the voluntary adoption of private accident insurance by gig intermediaries. The second is to expand the *Workers' Compensation and Rehabilitation Act 2003* and extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums leave.

Business Chamber Queensland's preference is option one.

Business Chamber Queensland participated in the Regulatory Impact Statement (RIS' Consultations in mid-2019, and opposed option 2. Workers' compensation coverage for gig workers should remain voluntary, and not be legislated.

To legislate cover, as proposed by the Bill, business wage costs will increase, which are already at high record and it will create an additional administrative burden for businesses. It will also create additional regulation of the gig economy.

Noting the Queensland Government has supported option 2, Business Chamber Queensland maintains the position held during the RIS consultation period, and also notes , importantly, at page 47 of the DIAS, it was concluded :

'further consideration of this issue is necessary taking into account the state of national work being undertaken from an industrial and workers' compensation perspective as well as industry and scheme impacts, implementation complexities and cost burden identified in consultation'¹ (emphasis added)

The Explanatory Note to the Bill also importantly states:

'In making this decision it would be appropriate to consider the terms included in a minimum standards order (which can include insurance); any current insurance arrangements that might already exist and how they compare to entitlements in the scheme; impacts on sustainability of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 scheme; business administrative and compliance costs; regulatory burden; and impacts on the relevant industry. It is noted these issues

¹ Office of Industrial Relations, Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers, 47.

would need to be considered as part of separate regulatory impact analysis and would be subject to further public consultation.² (emphasis added)

As at the time of this submission, Business Chamber Queensland notes amendments to the *Fair Work Act 2009* (Cth) in relation to gig workers have not yet taken effect. The impact of the amendments are still unknown and will be for some time after the amendments take effect on 26 August 2024.

A Fair Work Commission minimum standards order, or minimum standards guideline or a collective agreement does not mean automatic assessment that an employee-like worker is a worker for the purposes of the Bill. It does, however, leave it open to the Queensland Government to consider, in light of a different jurisdiction's assessment and actions, to make a regulation that will result with that gig platform worker considered a worker for the purposes of the *Workers' Compensation and Rehabilitation Act 2003*.

Amending the *Workers' Compensation and Rehabilitation Act 2003* on the basis of possible future flexibility is premature.

The impacts are unknown, as acknowledged in the DIAS, and the operation of the amendments to the *Fair Work Act 2009* in relation to gig workers must be demonstrably understood prior to amending Queensland legislation for a possible flexibility that will be required in the future. This is acknowledged in the Explanatory Note with recognition a regulatory impact analysis would be required in addition to public consultation.

A regulatory impact analysis and public consultation should take place prior to legislation being enacted, not after.

Such consultation would be necessary for additional matters not addressed in the Bill. The calculation of a workers' compensation premium for a gig platform is one example. Currently, calculation is based on wages, and would require public consultation on the future of premium calculations.

A second example is multi-apping, where a gig platform worker operates with several apps open at the same time. This is common with transport apps. Should an injury occur, it is not clear which app intermediary is deemed to be the relevant intermediary for workers' compensation.

A third example is consideration of gig platforms who currently provide platform funded accident insurance for gig platform workers, and whether this should prevent a regulation being made. Any existing insurance must negate the need for regulation.

A regulatory impact analysis and public consultation should take place prior to legislation being enacted, not after it has passed.

For this reason, the proposed amendment to section 11, and corresponding amendment to Schedule 3, 9(a) (expansion of the definition of an employer) is not supported.

B) Information Statement

The Bill proposes new section 46B, which requires employers to provide workers with an information statement on commencement of employment.

² Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 Explanatory Note, 8.

Further, through amendment to the Workers' Compensation and Rehabilitation Regulation 2014, it is proposed the information statement will include information about a worker's rights and responsibilities, as may be prescribed.

Recommendation 37 from the 2023 review of the operation of the Queensland workers' compensation scheme (the 2023 Review) and the preamble in section 6.3.3 describes the requirement of national system employers to issue a Fair Work Information Statement³. Business Chamber Queensland submits comparing the proposed Information Statement to the Fair Work Information Statement is not a valid comparison.

The Fair Work Information Statement national system employers are required to provide to national system employees contains information that is directly relevant to the employee on commencement of their employment. Such information includes, but is not limited to, the National Employment Standards, the right to request flexible working arrangements, freedom of association, termination of employment and right of entry.

Business Chamber submits requiring an employer to provide information that is not relevant at the time for the worker creates an additional administrative requirement on employers; noting it may incur a financial penalty.

The Bill proposes, at new section 132AA, a requirement of the insurer to give a worker and the worker's employer an information statement as soon as practicable after an application for compensation is lodged.

Proposed new section 132AA states:

"132AA Insurer must give worker and employer information statement

(1) The insurer must, as soon as practicable after an application for compensation for an injury sustained by a worker is lodged—

- (a) give the worker a statement providing information about the workers' compensation scheme relevant to workers; and*
- (b) give the worker's employer a statement providing information about the workers' compensation scheme relevant to employers.*

Maximum penalty—50 penalty units.

(2) The statements, and the way in which they are given, must comply with any requirements prescribed by regulation."

Business Chamber Queensland submits this proposed amendment is the preferable new requirement for a worker receiving the proposed information statement. This amendment ensures the information statement will be given to the worker at a time where the information is directly relevant to them.

Business Chamber Queensland submits proposed new section 46B be rejected, with proposed new section 132AA accepted as the appropriate mechanism for injured workers to receive information that is relevant and current for their situation.

³ 2023 review of the operation of the Queensland workers' compensation scheme, https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf

C) Suitable Duties Program – section 228(2)

The Bill proposes, at section 228(2), to strengthen an employer's obligations when it has formed the opinion a suitable duties program is not available for an injured worker.

Currently, the *Workers' Compensation and Rehabilitation Act 2003* places an obligation on an employer to provide written evidence that it is not practicable to provide an injured worker with a suitable duties program.

It is proposed this obligation be expanded by requiring an employer to include the evidence they are relying on to support their view in the written notice.

Further, this additional obligation will incur a new civil penalty of up to 100 penalty units. Applying a significant penalty for a failure to provide written evidence of an inability to provide an injured worker with suitable duties is unnecessary, and punitive, when considering the proposed new section with existing section 229.

The 2023 Review refers to a) stakeholder reservations regarding a lack of rigour for employer compliance with the existing requirement, and b) also refers to a lack of scrutiny by insurers interrogating an employer's position that suitable duties are not available.

Business Chamber Queensland again refers to existing section 229 of *Workers' Compensation and Rehabilitation Act 2003* and submits the amendment proposed for section 228(2) is unreasonable and unnecessary. An employer's operational imperatives, together with the circumstances of the injured worker, must already be considered when examining suitable duties.

A new requirement to place those considerations in written format, open to scrutiny from parties who do not know or understand the workplace diminishes the ability of an employer to reach positions that are reasonable and considered. For this reason, Business Chamber Queensland also objects to proposed new clause 42.

4. WORKERS' COMPENSATION AND REHABILITATION REGULATION 2014

Business Chamber Queensland does not have any further submissions to make in addition to those made about the proposed information statement on page 6 of this submission.

RECOMMENDATIONS

Business Chamber Queensland submits the following recommendations with respect to the proposed amendments to the *Workers' Compensation and Rehabilitation Act 2003*:

- Proposed amendment to section 11 be rejected;
- Proposed amendment to Schedule 3, 9(a) be rejected;
- Proposed amendment to section 46B be rejected;
- Proposed amendment to section 132AA be accepted; and
- Proposed amendment to section 228(2) be rejected.

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