

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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*Workers' Compensation and Rehabilitation and Other
Legislation Amendment Bill 2024*

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Education, Employment, Training and Skills Committee (the Committee) for the opportunity to provide feedback on the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024* (the Bill).

The QNMU is Queensland's largest registered union for nurses and midwives, representing over 73,000 members. The QNMU is a state branch of the Australian Nursing and Midwifery Federation (ANMF) with the ANMF representing over 322,000 members.

Our members work in health and aged care including public and private hospitals and health services, residential and community aged care, mental health, general practice, and disability sectors across a wide variety of urban, regional, rural, and remote locations.

The QNMU is run by nurses and midwives, for nurses and midwives. We have a proud history of working with our members for over 100 years to promote and defend the professional, industrial, social, and political interests of our members. Our members direct the QNMU's priorities and policies through our democratic processes.

The QNMU expresses our continued commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity outcomes. The QNMU remains committed to the Uluru Statement from the Heart, including a pathway to truth telling and treaty. We acknowledge the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

While the QNMU is broadly supportive of the proposed amendments to the *Workers' Compensation and Rehabilitation Act 2003*, our submission raises some additional recommendations to strengthen the framework for nurses and midwives. We also highlight a number of considerations regarding the intended changes to the *Industrial Relations Act 2016* (IR Act).

Amendments to the *Workers' Compensation and Rehabilitation Act 2003*

The objective of the proposed changes to the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) is to implement legislative recommendations of the *2023 Review of the Operation of the Queensland Workers' Compensation Scheme* (2023 Review).

The QNMU has made detailed submissions to the 2018 and 2023 reviews of the Queensland workers' compensation scheme. Queensland's workers' compensation and rehabilitation scheme is currently one of the most efficient in the country and has been for some time. It plays an important role in supporting nurses and midwives and their ability to provide safe, quality care to patients. Our members work under considerable physical and emotional stress that places them at risk across a range of workplace injuries and illnesses. Their health and safety are paramount in maintaining and advancing the future wellbeing of the community. For these reasons we welcome the Queensland Government's introduction of this Bill and the changes it will make to the working lives of many Queenslanders.

The QNMU specifically acknowledges the amendments relevant to our membership, such as changes to the suitable duties provisions. The offer of appropriate suitable duties is a necessary element of successful return-to-work for nurses and midwives. For nurses and midwives who have a predominantly clinical role, this means that priority should be given to providing clinical duties that match the worker's abilities and skill level, is sustainable and safe for the worker to perform, and is meaningful and productive. Suitable duties should be identified through consultation with the injured worker, the employer, treating health practitioners and other key stakeholders. The QNMU emphasises the need for more robust follow-up with employers who fail to take reasonable steps to provide suitable duties to workers.

While we acknowledge the considerable effort the government has made in restoring and advancing workers' compensation rights, we continue to pursue our longstanding effort to amend areas of the legislation particularly relevant to our members. For instance, the Bill responds to increases in secondary psychiatric and psychological injury claims by requiring insurers to take all reasonable steps to minimise this risk and provide support services. To further prevent such claims, the QNMU raises that on practical placement, nursing and midwifery students are typically expected to perform some tasks that would normally be performed by a nurse or midwife. As a result, students may be exposed to the same occupational risks as a nurse or midwife, including psychosocial risks. The QNMU considers the lack of coverage for students undertaking the same duties to be a critical issue that requires further attention.

Amendments to the *Industrial Relations Act 2016*

We acknowledge that the changes to the IR Act are intended to align with recent industrial relations reforms implemented in the *Fair Work Act 2009* (Cth) (FW Act). The QNMU is generally supportive of the changes. We propose further amendments to ensure Queensland's laws remain contemporaneous and aligned with the federal framework.

Superannuation contributions

The impact of unpaid superannuation on workers is clear and long-lasting. In 2019-2020, approximately 2.4 million Australians lost an average of \$1,700 in unpaid superannuation or

close to \$4.3 billion in total (Industry Super Australia, 2019). The QNMU supports the proposed amendments to ensure employers have an obligation to make superannuation contributions to their employees under the Queensland Employment Standards (QES). Including superannuation in the QES ensures that most employees covered by the Act have an enforceable right to superannuation and better supports employees and their representatives to recover unpaid superannuation funds.

The Bill includes new provisions (clause 9) that align with the recent changes to the FW Act regarding employer obligations to make superannuation contributions.¹ Although the QNMU is broadly supportive of these amendments, we question why the Bill does not include comparable civil remedy provisions to ss 116D and 116E of the FW Act to enforce compliance with the new entitlement.

Flexible parental leave

The Bill brings parental leave entitlements in line with the FW Act by increasing the number of unpaid flexible parental leave days from 30 to 100 and providing greater flexibility for parents with the introduction of late-term pregnancy leave. The QNMU welcomes these changes that will make a positive contribution to better supporting parents to balance care and work requirements. We raise the following areas where the framework could be strengthened to better reflect the recent changes to the FW Act.

The Bill proposes that for an employee to receive late-term pregnancy leave, they must give an employer at least 4 weeks written notice of their intention to take leave. The comparable provision in the FW Act regarding the notice and evidence required to take leave, stipulates that an employee must give the employer written notice of flexible unpaid parental leave²:

- (a) At least 4 weeks before the day; or
- (b) If that is not practicable – as soon as practicable (which may be a time after the leave has started).

Whether or not it is practicable for the employee to give notice at least 4 weeks before that day will depend on the employee's personal and family circumstances. The QNMU seeks that clause 7 is amended to include a comparable provision where it is not practicable.

Unpaid wage claims

The QNMU is supportive of the proposed changes to increase the claim threshold for unpaid wages claims from \$50,000 to reflect the new \$100,000 threshold for small claims under the FW Act. However, we note one discrepancy between the FW Act changes. The QNMU seeks that clause 10 (Amendment of s386, Recovery of unpaid wages) be amended to include a comparable provision to the FW Act, that prescribes that *a higher amount applies if prescribed by the regulations*.³ This amendment would improve the proposed drafting and provide flexibility for the Queensland legislation to mirror any higher amount prescribed in the FW Regulations.

¹ *Fair Work Act 2009 (Cth)* ss 116B, 116C.

² *Fair Work Act 2009 (Cth)* s 74(4B).

³ *Fair Work Act 2009 (Cth)* s 548(2)(b).

Appeal pathways

Currently, s 557 of the IR Act defines the Queensland Industrial Relations Commission (QIRC) in this section as meaning 'the commission, other than the full bench constituted by the president and 2 or more other members' and provides that the appeals pathway is to the Industrial Court of Queensland.

The Bill proposes amendments to extend the appeal pathway to allow decisions of a full bench constituted with at least one member who is a presidential member to be appealed directly to the Queensland Court of Appeal, rather than being heard by the Industrial Court of Queensland, constituted by a single presidential member. The proposed changes have the potential for the President of the Commission to only constitute full benches with at least 1 member who is a presidential member. This may mean that all appeals of full bench decisions will be required to be heard in the Queensland Court of Appeal rather than the Industrial Court of Queensland.

The QNMU opposes this fundamental shift that extinguishes the ability to have certain appeals heard in the Industrial Court of Queensland. We raise concerns that the proposed changes may result in appellants incurring fees that are not currently required for an appeal to the Industrial Court of Queensland. For instance, filing fees and costs associated with the preparation of an appeal record book may be required. Further to this, appellants are not entitled to the same representational rights for matters heard in the Court of Appeal as they are for proceedings conducted by the Industrial Court of Queensland. The potential implication of this amendment will mean that unions who do not have an employee or officer with a practicing certificate, and workers not represented by a union, must engage legal representation, and incur further costs. The QNMU opposes changes to the appeals pathway that may become prohibitive, costly and could erode the status of the Commission as a 'layperson's tribunal'.

References

Industry Super Australia. (2019). *Unlawful underpayment of employees' remuneration Submission 11*.

file:///C:/Users/apawsey/Downloads/Submission%2011.1%20ISA%20Attachment%201%20Unpaid%20super%20(1).pdf