Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Office of the President

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Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane Qld 4000

By email: EETSC@parliament.qld.gov.au

Dear Committee Secretary

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Thank you for the opportunity to provide feedback on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (**Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Executive Summary/Key Points:

- The changes to appeal pathways following a QIRC decision may create access to justice issues.
- QLS otherwise supports the changes to the *Industrial Relations Act 2016* and the *Labour Hire Licensing Act 2017*.
- QLS submits that the definition of 'worker' in the *Workers' Compensation and Rehabilitation Act 2003* should not be altered by regulation
- QLS holds concerns that some amendments, while promoting best practice that employers and insurers should aspire to, are too stringent and may be counterproductive
- Increased responsibilities on the Regulator will need to be matched with increased resourcing.

This response has been compiled by the QLS Accident Compensation and Tort Law Committee and the QLS Industrial Law Committee, whose members have substantial expertise in practice areas relevant to the Bill.

Part 2 – Amendment of *Industrial Relations Act 2016*

QLS supports the amendments to the *Industrial Relations Act 2016* (**IR Act**) that harmonise certain provisions with those in the *Fair Work Act 2009* (Cth) (**FW Act**). We welcome the positive impact these amendments will have on Queensland workers by:

1. the addition of an explicit reference to the existing obligation employers have to make superannuation payments to their employees into the IR Act's Queensland Employment Standards in order to align with the National Employment Standards;
2. increasing the allowable number of flexible unpaid parental leave days from 30 to 100 under s 87B of the IR Act, in line with changes made to the FW Act and to enable parents to take full advantage of the Commonwealth Paid Parental Leave scheme; and
3. increasing the claims threshold for unpaid wages claims taken to the Queensland Industrial Relations Commission (**QIRC**) from $50,000 to $100,000 to reflect the new $100,000 threshold for small claims that can be taken to the Industrial Magistrates Court under the FW Act.

As we have stated in prior submissions to inquiries considering legislative reform in area of unpaid wages, access to legal advice is critical for workers and small business seeking to understand their legal rights and obligations, including the available pathways for recovery of wages and other entitlements. We renew our calls for appropriate funding for the legal assistance sector.

Amendments to appeal pathways

We note the proposed amendments to the appeal provisions of the IR Act to require that appeals of full bench decisions, where a presidential member (defined to mean President, Vice President or Deputy President) was a member of the full bench, proceed to the Queensland Court of Appeal. We note that currently, only full bench decisions where the President was sitting, proceed to the Court of Appeal and for all other full bench decisions, the President can hear the appeal in the Industrial Court of Queensland.

While QLS appreciates there is some rationale for this change, we note that it is likely to result in an increased volume of appeals being heard by the Court of Appeal. Our members have expressed concerns about the impact of such a change on parties being required to appeal matters to the Court of Appeal, rather than the Industrial Court, noting the potential for increased costs and difficulties associated with unfamiliarly with Court of Appeal processes. There is also the potential for delays by an increase to the Court of Appeal's workload.

We are unsure as to how many matters would be impacted by the change and we urge that appropriate information is provided to impacted parties with sufficient time to allow them to consider options before appeal periods expire. Consideration should also be given to whether such a shift will impact upon the Court of Appeal's resources.

If the amendment is to proceed, it should not disturb the appeal pathway for matters presently before the QIRC.

Part 3 – Amendment of *Labour Hire Licensing Act 2017*

QLS supports the amendments to the *Labour Hire Licensing Act 2017* (**LHL Act**) to:

1. remove section 69(4) to ensure the LHL Act is compatible with human rights, specifically the right to a fair hearing and rights in criminal proceedings under sections 31 and 32 of the *Human Rights Act 2019*; and
2. facilitate electronic service of documents under the LHL Act.

Part 4 - Amendment of *Workers' Compensation and Rehabilitation Act 2003*

Fundamental legislative principles – definition of worker

Clause 24 of the Bill amends s 11 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**) such that the definition of a *worker* can be broadened by regulation.[1]

A precondition to making a regulation prescribing a person to be a *worker* is that they are a regulated worker under the FW Act to whom a minimum standards order or collective agreement applies under chapter 3A of that Act.[2]

While appreciating that the Bill is intended to afford flexibility and allow for developments at the national level, QLS is of the view that the correct course is to amend the WCRA to provide a complete definition of *worker*.

We also note that relying on chapter 3A of the FW Act as the threshold for who may be prescribed by regulation to be a worker introduces complexity and may restrict the ability to cover gig workers more than is intended, given that only workers (or a class of workers) who have applied to the Fair Work Commission for minimum standards, or those covered by a collective agreement with a digital platform, will meet the threshold.

More broadly, for a state parliament to legislate that one of the fundamental concepts on which its workers' compensation system is based will be determined by the definition from time to time contained in a Commonwealth statute can be viewed as an abdication by the state parliament of its responsibility to legislate in the interests of Queenslanders. It facilitates the Commonwealth's appropriation of the power to determine this central concept and in QLS's view, there is insufficient justification for this omission.

Furthermore, extension of workers' compensation scheme coverage to gig economy workers is a significant policy development, the implementation of which should be dealt with in a bill - rather than subordinate legislation - and therefore subject to the usual legislative processes and consultation to allow examination of its full effect on all stakeholders and the scheme more broadly.

Altering the definition of *worker* by regulation rather than an act of Parliament fails to have sufficient regard for the institution of Parliament and therefore breaches fundamental legislative principles. To allow for one of the fundamental concepts that underpins the very reason why the statute was enacted to be capable of amendment by a minister, without proper accountability to

[1] These comments extend to the corresponding amendments made by clause 59 of the Bill to schedule 3 WCRA *Who is an employer in particular circumstances.*

[2] Which is to be inserted by the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024.

the Parliament and the Queensland public, is simply wrong. It must not be permitted. The definition of *worker* is one of the pillars on which this statute is based and Parliament must be accountable and responsible for determining who is covered by the statute as it puts at risk the entire scheme which this statute provides.

Unintended consequences of penalty provisions

The Bill mandates a number of steps for rehabilitation and return to work (with penalties for non-compliance) in regard to matters that would previously have been considered best practice issues for insurers and employers. While QLS appreciates the importance of all parties to the scheme acting in good faith and aspiring to high standards, we are concerned that certain aspects will become focused on compliance rather than on meaningful outcomes for injured workers.

In particular, the requirement in proposed s 221 that the insurer must prepare a rehabilitation and return to work plan within 10 business days after deciding to allow the worker's application for compensation could be problematic. In many cases, 10 days will not be sufficient to properly consult with the worker, their employer and their treating practitioner and insurers will likely need to resort to template plans that do not meaningfully advance matters, merely to comply and avoid a penalty.

The requirement may also be counter-productive to the achievement of the objective as once the standard work plan is issued there must be a very real risk, and understandably so, that an employer will stick to the plan and not adopt the far more beneficial approach of making a fully-informed, proper assessment of what is the most advantageous plan to achieve the best rehabilitation outcomes for the worker.

Additional resourcing

The Bill imposes increased reporting obligations on insurers and enforcement responsibilities on the Regulator (clause 53, insertion of new ch 12 pt 3 – Duty to report). The Regulator will need appropriate resourcing to ensure that it can meet its obligations in a timely manner. Our members report that, at present, there are significant delays in both reviews and investigations. This problem will only increase with additional responsibilities on the Regulator.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on [redacted].

Yours faithfully

[redacted]

Rebecca Fogerty
President