Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Queensland Unions

Submission to the

Education, Employment, Training and Skills Committee

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Introduction

1. The Queensland Council of Unions (**QCU**) is the peak council of registered unions in Queensland representing 26 affiliated unions and 400,000 workers. We have a proud history of representing the voices of Queensland workers since 1885, and have been advocating for their industrial, social, and political interests since that time.

2. We have relevant knowledge and experience in industrial relations, and other work related laws, including workers' compensation and work health and safety. The QCU operates the Workers' Compensation Information and Advisory Service (**WCIAS**) and the Workers' Psychological Support Service (**WPSS**), through grant funding from the Office of Industrial Relations.

3. WCIAS provides Queensland workers with free, independent, experienced advice when navigating the workers' compensation scheme, including applying for compensation, claims management, rehabilitation and return to work obligations, and procedural advice relevant to reviews, appeals and common law proceedings.

4. The WPSS provides Queensland workers with referrals, guidance and psychological support when navigating the workers' compensation scheme or following a psychological injury in the workplace.

5. Since the establishment of both the WCIAS and WPSS, the two services have assisted thousands of Queenslanders.

6. All workers who are injured in the course of their employment should have the right to a workers' compensation scheme that provides the financial, medical

and vocational support necessary to fully recover, rehabilitate and return to durable and meaningful work. This should include the provision of effective return to work programs that accord with the biopsychosocial model of rehabilitation. This has been the longstanding position of the QCU.

7. We therefore welcome the opportunity to make a submission to the Education, Employment, Training and Skills Committee's (**Committee**) Inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (**Bill**).

8. We confirm our support for the various submissions made by our affiliates. Where those submissions expand on or address additional matters to those outlined by the QCU, this submission is made in support of, and to supplement, those submissions.

Statement of support for the Bill

9. Ensuring that injured workers are treated fairly by insurers, receive fair and appropriate benefits, and can participate in effective return to work programs are some of the key objectives of Queensland's workers' compensation scheme (**scheme**).[1] These objectives are of fundamental concern to the QCU, and are critically important to injured workers and their families.

10. To meet these objectives, it is vital that the scheme focuses on improving processes to manage claims, improving return to work rates through the provision of best practice rehabilitation services and return to work programs, and appropriately responds to the emerging issues faced by Queensland

[1] Sect on 5(4) of the *Workers' Compensation and Rehabilitation Act 2003* (**Act**).

workers, such as the rise of psychological injuries (both primary and secondary) and the changing face of work (e.g., gig work).

11. The terms of reference for the *2023 review of the operation of the Queensland workers' compensation scheme* (**2023 review**) instructed the reviewers to examine these matters,[2] and the recommendations from the 2023 review are appropriately designed to address these matters by:
    a. increasing early intervention to pre empt the deterioration of physical injuries into secondary injuries; and
    b. addressing workplace issues that may be causing or worsening psychological injuries; and
    c. making it easier for injured workers to find gainful employment with their own or another employer; and
    d. promoting reductions in delays in the time taken to provide information and make decisions in the system; and
    e. facilitating coverage by the system of insecure workers in the gig economy who may otherwise be exposed to uncompensated risk.[3]

12. We note that the policy objective of the Bill is to implement the legislative recommendations of the 2023 review,[4] and that it proposes relevant amendments (*inter* alia) to:
    a. expand presumption of injury provisions for firefighters to include ten additional specified diseases; and
    b. include an offence prohibiting an employer from influencing an injured worker to refrain from making an application for compensation; and

[2] F sher, G., & Peetz, D. (2023). *2023 review of the operation of the Queensland workers' compensation scheme Final report*. https://www.worksafe.q d.gov.au/ data/assets/pdf f e/0012/120063/2023 rev ew operat on Q d workers compensat on scheme.pdf, 102.
[3] b d, 19.
[4] Exp anatory notes for the B , 1.

c. increase penalties for relevant offences; and
d. require employers and insurers to provide information statements to workers about the scheme and their rights; and
e. require employers to provide wage information to insurers within 5 business days, and introduce a basic weekly payment which will be paid in circumstances where an employer has not complied with this obligation, to ensure injured workers receive more timely wage replacement benefits; and
f. enshrine a worker's right to choose who medically treats them and who is present during that treatment, and to choose an alternative workplace rehabilitation provider if they are dissatisfied with the services of the provider chosen by an insurer; and
g. require an insurer to have a rehabilitation and return to work plan that has been developed in consultation with an injured worker in place within 10 business days after the injured worker's claim has been accepted; and
h. require host employers to assist labour hire workers with their rehabilitation.

13. Many of these amendments specifically address relevant issues raised with the reviewers by the QCU, and our affiliates, and for this reason we commend the Bill to the Committee.

Expanding presumption of injury provisions for firefighters

14. Clause 60 of the Bill proposes to provide Queensland firefighters with the most comprehensive presumption of injury provisions in Australia by expanding the list of specified diseases deemed to be caused by firefighting.

15. The amendment recognises the significant hazards firefighters are exposed to in the course of their employment and the established and ever growing scientific evidence which demonstrates that occupational exposure as a firefighter is carcinogenic.[5] The reviewers acknowledged this matter in their report and that expanding presumption of injury provisions for firefighters to include asbestos related diseases, primary site liver cancer, primary site lung cancer, primary site skin cancer, primary site cervical cancer, primary site ovarian cancer, primary site pancreatic cancer, primary site penile cancer, primary site thyroid cancer and malignant mesothelioma would reflect the current evidence.

16. The QCU commends the government for implementing the reviewers' recommendation in full and ensuring that Queensland's firefighters receive the fairest and most appropriate benefits in the country with respect to deemed diseases coverage. The amendment positions Queensland as a world leader in best practice.

Prohibiting an employer from influencing an injured worker to refrain from making an application for compensation

17. Clause 29 of the Bill proposes to make it an offence for an employer to give a benefit or cause detriment to a worker to prevent them from making a workers' compensation claim.

[5] The nternat ona Agency for Research on Cancer has conc uded that occupat ona exposure as a f ref ghter s carc nogen c to humans (Group 1); See, ARC Work ng Group on the dent f cat on of Carc nogen c Hazards to Humans. (2023). *Occupational Exposure as a Firefighter*. nternat ona Agency for Research on Cancer.

18. The amendment aims to address the growing trend in employer misconduct in this area, including offering to pay a worker a lump sum if they do not make a claim or threatening to deport a migrant worker should they make a claim.[6]

19. It is paramount that this matter is addressed. It has a direct link to return to work outcomes and ultimately the performance of the scheme. As identified in the *National Return to Work Strategy 2020 2030*,[7] concern about making a claim is one of five identified factors related to a workers' psychological response to injury or illness that can affect their return to work outcome. Put simply, workers who are concerned about making a claim have poorer return to work outcomes. The amendment recognises this and attempts to positively influence return to work outcomes by changing employer conduct which is the very cause of many workers' concerns about making a claim.

20. Further, it is intended that the scheme should provide for workers not to be prejudiced in employment because they have sustained a compensable injury.[8] The amendment accords with this objective and recognises the vulnerability of Queenslanders who find themselves in insecure work.

Increasing penalties for relevant offences

21. Return to work should be the central tenet of any workers' compensation scheme. This is clearly demonstrated by the evidence. People with compensable injuries have worse health outcomes than people with non compensable injuries, the longer an injured worker is away from work, the less

[6] F sher, G., & Peetz, D. (n 2), 69 70.
[7] Page 22.
[8] Sect on 5(4)(da) of the Act.

likely they are to return to work, and worklessness is detrimental to overall health and wellbeing.[9]

22. Despite this, the penalty provisions in the Act relevant to an insurer's responsibility for rehabilitation and return to work (s 220) and an employer's obligation to assist or provide rehabilitation (s 228) are currently only 50 penalty units (some of the lowest in the Act). This does not reflect the seriousness of these obligations.

23. The conduct of both insurers and employers has a significant impact on return to work outcomes. A positive interaction with an insurer is associated with a higher return to work rate, and workers who receive support from their employer have up to five times greater odds of returning to work.[10]

24. The substantial increases proposed to the ss 220 and 228 offences, and others, in the Bill are therefore welcomed by the QCU. They will influence insurer and employer conduct and facilitate better return to work outcomes.

Worker information statements

25. Recent evidence,[11] which was acknowledged in the 2023 review,[12] clearly demonstrates that insurers within the scheme must improve the quality of the

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[9] As discussed in the Australian Faculty of Occupational and Environmental Medicine's, *Helping People to Return to Work: Using evidence for better outcomes* Position Statement. https://www.racp.edu.au/docs/default-source/policy-and-advocacy/afoem/hbgw/helping-people-return-to-work-using-evidence-for-better-outcomes.pdf?sfvrsn=57ae3e1a_10.

[10] National Return to Work Strategy 2020–2030, 14.

[11] The Behavioural Change Collaborative. (2022). *Australian workers' understanding of workers' compensation systems and their communication preferences – Final Report*. https://www.safeworkaustralia.gov.au/sites/default/files/2023-01/australian_workers_understanding_of_workers_compensation_systems_and_their_communication_preferences_report.pdf.

[12] See, e.g., Fisher, G., & Peetz, D. (n 2), 71.

information they are providing to workers about their rights, entitlements, and the claim process.

26. In 2022, The Behaviour Change Collaborative released a report (commissioned by Safe Work Australia) addressing workers' understanding and access to workers' compensation and return to work schemes, as well as their communications preferences. It found that:
    a. Workers have low levels of understanding of workers' compensation, feel uninformed and are unable to access information when they need it.[13]
    b. Most workers (65%) only seek information when they sustain a workplace injury or illness.[14]
    c. Workers who have experience with the system (e.g. those who have been through the process) still feel uninformed about the scheme.[15]
    d. Low levels of understanding can limit how workers engage with, and the benefits derived from, workers' compensation systems.[16]
    e. Workers understand the initial step required (i.e. lodging a claim) but are unaware of the process beyond it.[17]
    f. Workers access other benefits like sick leave, private health insurance and employer medical benefits rather than making a claim.[18]
    g. Workers who make claims are 'drip fed information, and relatively uninvolved in each stage of the process',[19] and as a consequence, they feel vulnerable and consider the process of applying for workers'

[13] The Behav our Change Co aborat ve. (n 11), 40.
[14] b d.
[15] b d, 18.
[16] b d.
[17] b d, 42.
[18] b d, 25.
[19] b d, 28.

compensation would add 'unnecessary stress to what was already a stressful time'.[20]

27. Accordingly, the report suggests that workers should be provided with 'simple to understand information in the right format at the right stage in the workers' compensation process'.[21]

28. Clause 29 and 34 of the Bill aim to address this matter by introducing an obligation on employers (new s 46B) and insurers (new s 132AA) to provide workers with an information statement about the scheme, including relevant information about their rights.

29. These amendments are supported by the QCU. Keeping workers informed not only improves their ability to access workers' compensation, but also allows them to remain engaged in the process and confident that the insurer genuinely cares about their rehabilitation and return to work.

Ensuring injured workers receive more timely wage replacement benefits

30. In the experience of our affiliates, many workers who have had their claim accepted are left with no income for several weeks while WorkCover Queensland (**WCQ**) attempts to obtain wage information from an employer. In effect, these workers are denied their legislative entitlement to wage replacement benefits until WCQ receive that information.

[20] b d.
[21] b d, 6.

31. As noted in the 2023 review,[22] in addition to causing financial hardship, procedural delays such as this worsen return to work outcomes. Financial hardship also increases the likelihood of a worker developing a secondary psychological injury (the link between financial hardship and poor mental health is well established).[23]

32. Clause 35 of the Bill attempts to address this matter by requiring employers to provide wage information to insurers within 5 business days, and introducing a basic weekly payment which will be paid in circumstances where an employer has not complied with this obligation.

33. These amendments will minimise delays and alleviate some of the financial hardship currently experienced by workers within the scheme which will ensure benefits overall are fairer and more appropriate.

Enshrining the rights of workers

34. The Bill enshrines three significant workers' rights:
    a. a worker's right to choose their treating doctor (clause 38 s 208B); and
    b. a worker's right to choose who is present during a medical appointment (clause 38 s 208B); and
    c. a worker's right to choose an alternative workplace rehabilitation provider (clause 41 s 221AA).

35. Each of these rights contributes to increasing workers' empowerment in the return to work process by providing greater control, autonomy, and consultation

[22] F sher, G., & Peetz, D. (n 2), 63.
[23] See, e.g., K e y, K. M., Leach, L. S., O esen, S. C., & Butterworth, P. (2015). How f nanc a hardsh p s assoc ated w th the onset of menta hea th prob ems over t me. *Social psychiatry and psychiatric epidemiology*, *50*(6), 909 918. https://do .org/10.1007/s00127 015 1027 0.

regarding return to work decisions and planning. These matters are directly associated with beneficial psychological outcomes and a faster return to work for injured workers.[24]

36. Further, developing good rapport is important to building trust, and without a worker's trust, a workplace rehabilitation provider (**WRP**) will find it very difficult to motivate a worker to be an active participant in their rehabilitation. This can become a significant barrier to return to work. Allowing a worker to request a change of WRP, on reasonable grounds, is an appropriate way to address this issue.

Rehabilitation and return to work plans

37. As noted in the 2023 review,[25] the most recent National Return to Work Survey shows that Queensland had the lowest proportion of workers who reported having a rehabilitation and return to work plan in place of all Australian workers' compensation jurisdictions except Seacare.[26] This is despite research indicating that a worker with a return to work plan in place is up to 3.4 times more likely to return to work.[27]

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[24] Brough, P., Chan, C., W shart, D., Spedd ng, J., & Raper, M. (2021). *Psychological response to injury: Research to support workers' psychological responses to injury and successful return to work*. https://www.safeworkaustra a.gov.au/s tes/defau t/f es/2021 10/Research%20to%20support%20workers%20psycho og ca %20responses%20to%20 n ury%20and%20successfu %20return%20to%20work.pdf.

[25] F sher, G., & Peetz, D. (n 2), 46.

[26] Soc a Research Centre. (2022). *2021 National Return to Work Survey Report*. https://www.safeworkaustra a.gov.au/s tes/defau t/f es/2022 02/2021%20Nat ona %20Return%20to%20Work%20Survey%20Report.pdf, 46 47.

[27] Sheehan, L.R., Lane, T.J., Gray, S.E., Beck, D., & Co e, A. (2018). *Return to Work Plans for Injured Australian Workers: Overview and Association with Return to Work*. https://www.monash.edu/ data/assets/pdf f e/0007/1617280/COMPARE RTW P an and RTW Outcomes w th DO .pdf.

38. In these circumstances, stronger enforcement of the legislative requirement for return to work planning is required, as is proposed in clause 41 of the Bill. Requiring a rehabilitation and return to work plan to be in place within 10 business days after a worker's application for compensation is allowed is a simple and effective return to work intervention that will improve the performance of the scheme.

Labour hire workers

39. A host employer of an injured worker is not currently required to assist a labour hire provider to meet its obligations to take all reasonable steps to assist or provide the worker with rehabilitation under s 228 of the Act. This is a significant barrier to return to work for labour hire workers. As reported in the 2023 review, labour hire workers are nearly 25% more likely to not return to work than another worker.[28]

40. The QCU understands that some labour hire providers require their clients (host employers) contractually to assist with rehabilitation and return to work, but this should not be left to industry to self regulate. We therefore commend the government for addressing this matter.

41. While the QCU makes this submission generally in support of the Bill, we also seek to draw the Committee's attention to specific aspects of the Bill that could be improved to ensure the scheme is providing injured workers with fairer and more appropriate benefits and facilitating their participation in more effective return to work programs. We therefore provide the following comments and recommendations for the Committee's careful consideration.

[28] F sher, G., & Peetz, D. (n 2), 48.

Coverage of gig workers

42. The 2018 review of the scheme (**2018 review**)[29] identified the rapidly expanding gig economy as an emerging issue facing the scheme and recommended options for the coverage of gig workers.[30]

43. Recommendation 10.1 and 10.2 of the 2018 review recommended that:

    a. *The coverage of the Act should be redefined to include any person engaged via an agency to perform work under a contract (other than a contract of service) for another person. This would exclude employees of licensed labour hire businesses and employees of firms that engage contractors, and specify that it applied where at least two parties were in Queensland at the time the work was undertaken* (10.1); and

    b. *Intermediaries or agents who engage any person to perform work under a contract (other than a contract of service) for another person should be required to pay premiums, based normally on the gross income received by the intermediaries or agencies* (10.2).[31]

44. The coverage of gig workers was examined again in the 2023 review, with the terms of reference requiring the reviewers to examine:

    any national regulatory proposals or findings from national reviews in relation to gig workers and other forms of insecure work that should be taken into account by the government in its consideration of the outcomes of the Consultation Regulatory Impact Statement for Workers'

[29] Peetz, D. (2018). *The Operation of the Queensland Workers' Compensation Scheme*. https://cab net.q d.gov.au/documents/2018/Jun/Rev2WC/Attachments/Rev ew.PDF.
[30] b d, 88 110.
[31] b d, 108.

compensation entitlements for workers in the gig economy and the taxi and limousine industry.[32]

45. The 2023 review recommends the following:

a. *That, in light of the likely outcomes from developments in the federal sphere, the Minister:*

    1. *note the absence of impediments to legislating in the area of gig economy workers; and so*
    2. *consider introducing a Bill to implement preferred options from the CRIS. That is, in relation to gig economy workers, to:*

        (a) *amend the Act to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (as per the recommendations of the 2018 Review); and*

        (b) *in relation to the other insecure work covered by the CRIS, amend the Act to either: extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or enhance and mandate private personal accident insurance for taxi and limousine licence holders*; and

b. *That, after the Queensland system of workers compensation is extended to gig workers, OIR should monitor developments in the federal jurisdiction to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland workers' compensation system. Options for including such workers would include use of the deeming provisions in the Act*.[33]

[32] F sher, G., & Peetz, D. (n 2), 102.
[33] b d, 101.

46. Relevantly, recent amendments to the *Fair Work Act 2009* (Cth) (**FW Act**) empower the Fair Work Commission (**FWC**) to set minimum standards for a 'regulated worker', including gig workers i.e., 'employee like' workers performing 'digital platform work'.[34] The amendments also introduce a framework for registered organisations representing 'employee like' workers to make collective agreements with digital labour platforms.[35]

47. The minimum standards set by the FWC can be in the form of a mandatory Minimum Standards Order or non binding Minimum Standards Guidelines,[36] and the FWC has discretion to decide what terms and conditions will be set as minimum standards, which may include terms about (*inter* alia) payment, deductions, record keeping, and insurance.[37] However, the FWC cannot include terms about matters such as (*inter alia*) overtime rates, rostering arrangements or terms that would change the form of engagement or status of the workers covered by a minimum standards order.[38]

48. An order is not made by the FWC promptly. Before making an order, the FWC is required to prepare and publish a draft of the order,[39] follow a consultation process to provide affected entities with a reasonable opportunity to make written submissions,[40] and may hold a hearing.[41]

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[34] *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.
[35] b d, s 536MK.
[36] b d, ss 536JY and 536KR.
[37] b d, s 536KL.
[38] b d, s 536KM.
[39] b d, s 536KAA.
[40] b d, s 536KAB.
[41] b d, s 536KAC.

49. Minimum standards will not affect the status of regulated workers under workers' compensation laws.[42] They will not amend the meaning of an 'employee' and 'employer' for the purposes of workers' compensation, and coverage of gig workers will remain a matter for relevant jurisdictions to determine.

50. The existing insurances currently in place for gig workers are insufficient to cover loss of income and/or medical expenses for injury or provide dependents with reasonable entitlements in circumstances where a worker dies on the job. Benefits are commonly capped annually and paid on a lump sum basis, and the income supplement benefits that may be available are only paid if an injury requires hospitalisation.[43]

51. For example, a worker sustaining a complex fracture to the neck, skull, or spine may only be entitled to a benefit of $2,000, and their income replacement may be capped at $5,000 if admitted to a hospital for that injury for five or more consecutive nights (it may only be $1,500 if hospitalised for less nights).[44] The worker may also not be entitled to any rehabilitation and return to work services (apart from a basic rehabilitation assessment to obtain recommendations and advice on their recovery), or have access to common law damages.[45]

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[42] b d, ss 536JP and 536JQ.

[43] See, e.g., Uber Persona Acc dent Group Po cy Coverage Summary: https://uber.app.box.com/s/sta019n502e6gwaf9y1gk4cd60mw3k75?uc ck d=80646252 7e93 4d8f af13 68d22d396e0d.

[44] See, e.g., Uber Persona Acc dent Group Po cy Word ng: https://uber.app.box.com/s/7072vpmk9dvedfd0spbf6cw5 tg7dwvo?uc ck d=80646252 7e93 4d8f af13 68d22d396e0d.

[45] b d.

52. Sadly, the existing insurance arrangements are also subject to countless terms and conditions and there are many examples of gig workers having insurance claims unfairly denied.

53. A well publicised example is Burak Dogan who was hit by a truck and died instantly while working for Uber Eats in April 2020.[46] Burak's family was denied a $400,000 death benefit and a claim for funeral expenses by Uber because he was hit by the truck outside a 15 minute window following a delivery or cancellation.[47]

54. Gig workers and their families deserve better, and the QCU continues to advocate strongly for the scheme to extend coverage to gig workers.

55. The Bill, at clause 24, provides a head of power to extend workers' compensation coverage to gig workers. Section 11(1) of the Act is proposed to be amended to permit the making of a regulation to prescribe that a regulated worker who is covered by a Minimum Standards Order, Minimum Standards Guidelines or a collective agreement under the FW Act is a worker for the purposes of the Act. The Bill does not extend automatic coverage to gig workers.

56. The QCU acknowledges the uncertainty that exists both nationally and internationally about the legal status of gig workers, and the difficulties that this presents for determining the definition of a gig worker in the Act. We also acknowledge that this is further complicated by the recent amendments to the FW Act which provide a process for gig workers to have their legal status as an 'employee like' worker determined, and that there may be a desire at both the

[46] https://www.theguardian.com/australia-news/2023/sep/05/family-of-uber-eats-driver-who-died-after-being-hit-by-truck-urges-mps-to-pass-laborsgig-worker-changes.
[47] Ibid.

state and national level to adopt a consistent approach to regulating 'employee like' work.

57. However, the current amendments in the Bill mean that gig workers' access to the scheme is subject to, and delayed by, both the detailed FWC consultation processes relevant to the making of minimum standards for 'employee like' workers (and possibly a hearing), and the regulatory impact analysis and public consultation that is required for any relevant proposed regulation to extend coverage to them. This means that even after their legal status as an 'employee like' worker has been determined, their standing in the scheme will remain uncertain for many months, if not years.

58. While the regulatory impact analysis and public consultation process may not guarantee coverage for gig workers, it is fair and appropriate that it is conducted as promptly as possible to give gig workers certainty about their standing in the scheme.

59. The QCU therefore submits that the government should address this matter by commencing the regulatory impact analysis as soon as possible. Monitoring proceedings in the FWC relevant to the making of minimum standards for 'employee like' workers may also assist. As the proceedings progress through the FWC processes, relevant information could reasonably be obtained to inform the analysis.

Qualifying periods – presumption of injury for firefighters

60. Clause 27 of the Bill proposes to amend section 36E of the Act to clarify that periods of day work rotation are to be included when determining the qualifying periods for presumption of injury provisions for firefighters.

61. However, it does not address the limitations of the provision with respect to approved leave for periods that exceed 12 months (**extended periods of leave**). We rely on the more detailed submissions of the United Firefighters Union Queensland (**UFUQ**) regarding this matter but seek to emphasise the following.

62. The current method for determining qualifying periods:
    a. disadvantages firefighters who take extended periods of leave, such as parental or long service leave; and
    b. is likely to disproportionately affect women firefighters' access to the presumptive pathway as they are more likely to take extended maternity related leave.

63. As recommended by the UFUQ, this matter (which was acknowledged by the reviewers)[48] could be addressed by further amending the Act to clarify that approved periods of 'extended periods of leave' (or however else it may be described) are to be included when determining the qualifying periods for presumption of injury provisions for firefighters.

[48] F sher, G., & Peetz, D. (n 2), 56.

Contraventions of the new section 46A (and others)

64. The new s 46A proposes to make it an offence for an employer to give a benefit or cause detriment to a worker to prevent them from making a workers' compensation claim. The effectiveness of this provision is dependent on workers being aware of the offence and knowing how to report an unscrupulous employer for committing the offence. However, the Bill fails to address either of these matters.

65. Workers should be informed of the offence by way of the worker information statements proposed in the Bill. This matter could be addressed by amending the new s 144D(2) of the *Workers' Compensation and Rehabilitation Regulation 2014* (**Regulation**) to prescribe that an information statement must include information about s 46A.

66. Workers should also have a clearly understood mechanism for reporting an offence. This could be achieved by amending the new s 46A to include a mechanism for workers, or their unions, to notify an authorised person appointed by the Regulator of a contravention. But the Bill would benefit from extending this to all offences in the Act.

67. The QCU therefore submits that this mechanism could reasonably complement the compliance notice provisions in the Bill by operating in a similar manner to the *Work Health and Safety Act 2011*[49] a party to an issue may ask the Regulator to appoint an inspector (in this case an authorised person appointed by the Regulator) to assist in resolving the issue.

[49] See sect on 82.

68. Given compliance notices are proposed in the Bill to be given to prevent a contravention of the Act from continuing or being repeated, and the authorised person appointed by the Regulator must be satisfied on reasonable grounds that a person has already contravened the Act and the contravention is continuing or is likely to be repeated,[50] there is merit in workers being able to obtain the assistance of an authorised person appointed by the Regulator to settle issues related to offences under the Act to prevent contraventions from occurring in the first place (or to expedite enforcement processes).

69. For example, this would be of great benefit to a worker who is facing termination in contravention of s 232B of the Act which prohibits an injured worker from being terminated within 12 months after they sustain an injury solely or mainly because of the injury. In these circumstances, an authorised person appointed by the Regulator may be able to assist to prevent this from occurring and ensure that the worker continues to be able to engage in suitable duties in their pre injury employment.

WCQ's power to require an employer to pay a penalty for a s 146A offence

70. As previously stated, the QCU commends clause 35 of the Bill. It ensures injured workers receive more timely wage replacement benefits.

71. However, ensuring both WCQ and employers are maintaining compliance with the proposed new s 146A will be critical to its success in addressing the problem it is endeavouring to address. For this reason, the Bill could be improved by prescribing additional provisions in s 146A that impose:

[50] See ss 537C(1) and (2) n c ause 53 of the B .

a. an obligation on WCQ to reasonably consider the exercise of its power under s 146A(5) (7) to require an employer to pay a penalty for non compliance; and
b. a duty on WCQ to report employer non compliance to the Regulator (whether in s 146A itself, or in the new s 537A); and
c. a requirement for WCQ to notify the Regulator of the following when reporting non compliance:
    1. whether they exercised their power under s 146A(5) (7); and
    2. if not, the reasons why the power was not exercised.

72. Without the imposition of these obligations, employers may never be penalised for failing to comply with their obligations and the Regulator will have significant difficulties in monitoring compliance.

Preparation and review of rehabilitation and return to work plans

73. The proposed s 221(3) prescribes the circumstances when a rehabilitation and return to work plan must be reviewed and modified, as well as the parties it must be prepared and reviewed in consultation with.

74. While the QCU support the intent of the provision, s 221(3)(a) could be drafted more clearly, and amendments are required to s 221(3)(b) to better reflect a person centred approach and ensure injured workers are appropriately consulted on the preparation and review of their rehabilitation and return to work plans.

75. As currently drafted, s 221(3)(a) prescribes three circumstances where a worker's rehabilitation and return to work plan must be modified:

    a. when further information becomes available; and

    b. when the worker's progress against the plan is assessed; and

    c. when decisions are made.

76. However, it is currently unclear who is reviewing the worker's progress against the plan. In the first instance, this should be a registered person (as defined in the Act) treating the worker and may be a registered person who is assessing the worker on referral from an insurer in relevant circumstances. Rehabilitation and return to work plans should be prepared, reviewed and/or modified in a way that is consistent with the current medical information. This is consistent with the current guidance material published by Workers' Compensation Regulatory Services regarding this matter,[51] and should be clearly prescribed in the Bill.

77. It is also unclear who is making the decisions referred to in s 221(3)(a), as well as what these decisions may be and how they are informed. If this is intended to refer to decisions of the insurer, these should also be made in a way that is consistent with the current medical information, and this should be clearly prescribed in the Bill.

78. As currently drafted, s 221(3)(b) prescribes that rehabilitation and return to work plans are to be prepared and reviewed in consultation with the relevant parties 'to the extent that it is reasonably practicable to do so'. The QCU does not support the inclusion of these words in the provision, particularly in the absence

[51] *Rehabilitation and return to work plan guideline for insurers*. https://www.worksafe.q d.gov.au/ data/assets/pdf f e/0020/113942/rehab and return to work p an gu de ne for nsurers.pdf.

of a note to provide any context. We fail to understand when it would not be reasonably practicable to consult with a worker (or a nominated person a worker has provided the insurer consent to communicate with) or a registered person treating the worker, particularly in circumstances where the current table of costs includes services such as case conferences which could be appropriately utilised to discuss rehabilitation options. Cost should not be a barrier to ensuring an appropriate rehabilitation and return to work plan is in place.

79. Further, an injured worker has the right to seek advice and support from their union about any matter relevant to their claim, including about the preparation and review of a rehabilitation and return to work plan. This accords with the amendment of s 5 in the Bill (this right will be prescribed in the objects of the scheme).

80. The QCU therefore submits that s 221 should prescribe that a union representative must also be consulted about the preparation and review of a rehabilitation and return to work plan should a worker request their support. This could be addressed by including a subsection (4) in s 221 that states the following:

> *For the purposes of, subsection (3)(b), if a worker requests the assistance of their union representative, the insurer must also prepare and review the plan in consultation with the worker's union representative.*

Employer's obligation to assist or provide rehabilitation

81. The success of an injured worker's rehabilitation, particularly their return to work outcome, is significantly influenced by their employer's commitment to the

health and safety of their employees, and the support they receive from their employer when recovering from injury. This is discussed in detail in the *National Return to Work Strategy 2020 2030* which identifies 'building positive workplace culture and leadership' as a priority action area.[52]

82. The important role an employer plays in positively influencing a worker's return to work is also clearly demonstrated by the evidence. Workers who receive support from their employer have up to five times greater odds of returning to work.[53]

83. For these reasons, it is vital that employers are complying with their obligation to assist or provide an injured worker with rehabilitation under s 228 of the Act. Similarly, it is vital that insurers are appropriately discharging their responsibility under s 220 of the Act to secure the rehabilitation and early return to suitable duties of an injured worker by enforcing employer compliance with s 228.

84. This was considered by the reviewers who recommended s 228 of the Act be amended to require that:

    a. the employer, when providing written evidence that suitable duties are not practicable, describe the steps taken or the inquiries made to reach that determination; and
    b. the insurer take reasonable steps to satisfy itself that no suitable duties are available; and
    c. where it is not satisfied, the insurer (where appropriate) use the penalty provisions at s 228(1) and s 229 of the Act.[54]

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[52] Nat ona Return to Work Strategy 2020 2030, 26 28.
[53] Sheehan, L.R., Gray, S.E., Lane, T.J., Beck, D., & Co e, A. (2018). *Employer Support for Injured Australian Workers: Overview and Association with Return to Work*. https://researchmgt.monash.edu/ws/porta f es/porta /277538372/277538267.pdf.
[54] F sher, G., & Peetz, D. (n 2), 42.

85. The Bill fails to adequately address these matters.

86. With respect to the proposed s 228(2), it does not prescribe the requirement for an employer to 'describe the steps taken or the inquiries made to reach th[e] determination' that it is not practicable to provide an injured worker with suitable duties. This provision should therefore be amended to include the following words:

> *If the employer forms the opinion that it is not practicable to provide the worker with rehabilitation in the form of a suitable duties program, the employer must give the insurer a written notice stating the evidence relied on to support the opinion, including a description of the steps taken or the inquiries made to identify what suitable duties may be available.*

87. With respect to s 228(3), this provision should be linked to s 229 of the Act as recommended by the reviewers. As currently drafted, s 228(3) only prescribes that an insurer must consider the evidence from the employer and form its own opinion, and then provide the employer with a reasonable opportunity to provide further evidence as to why it cannot provide suitable duties. The process for what happens when the insurer forms the opinion that the employer can provide suitable duties, despite the evidence provided by the employer to argue the contrary, must be prescribed for the provision to accord with the intention of the reviewers' recommendation.

88. Therefore, the Bill could be improved by prescribing:

a. an obligation on WCQ to reasonably consider the exercise of its power under s 229 to require an employer to pay a penalty for non compliance and to caution the employer about this matter; and
b. a duty on WCQ to report employer non compliance to the Regualtor (whether in s 228 itself, or in the new s 537A); and
c. a requirement for WCQ to notify the Regulator of the following when reporting non compliance:
    1. whether they exercised their power under s 229; and
    2. if not, the reasons why the power was not exercised.

Minimising risk of psychological harm

89. Clause 46 of the Bill inserts a new s 232AC into the Act which requires an insurer to take all reasonable steps to minimise the risk of an injured worker sustaining a secondary psychological injury arising from a physical injury.

90. The QCU commends the amendment. It recognises the negative psychological reactions workers commonly experience following an injury, which often results in delayed return to work and poorer health outcomes,[55] and is aimed at addressing the increasing number of secondary psychological injuries experienced by workers in the scheme.

91. There is a critical need for all stakeholders, particularly insurers and employers, to be doing more to assist and support workers who are experiencing negative psychological reactions to a physical injury. Coming to terms with the impact of a significant injury can be a very difficult time for many workers, and more can be done to prevent a worker from experiencing the negative psychological

[55] Brough, P., Chan, C., W shart, D., Spedd ng, J., & Raper, M. (n 24).

reactions which hinder return to work and promote the positive psychological reactions which enable return to work.[56]

92. The provision could therefore benefit from the inclusion of examples of the 'reasonable services' that must be provided to a worker to ensure clear guidance exists on the intent of the amendment. These examples may include the types of services that are aimed at minimising the risk that a worker experiences a negative psychological reaction like fear avoidant beliefs which would hinder their return to work. This might include services such as adjustment to injury counselling (which the QCU submits should be included as an example). There would be many other examples which could be informed by relevant stakeholders and the current body of evidence.[57]

93. The QCU submits that the inclusion of examples in s 232AC is consistent with other provisions in the Act, namely s 232AB of the Act which provides examples of the 'reasonable services' which must be provided to support a worker in relation to a psychological injury.

Scheme directions and codes of practice

94. The 2023 review identified that stakeholders are currently confused about the legal status of the guidelines and other material published by the Regulator and recommended that these documents be reviewed, and where appropriate, transferred to enforceable standards or codes of practice.[58] Clauses 49 and 50 of the Bill are aimed at implementing this recommendation.

[56] b d, 15 21.
[57] b d, 72 75.
[58] F sher, G., & Peetz, D. (n 2), 40 41.

95. While the scope of scheme directions and codes of practice are proposed to be broad, many would relate to how claims are managed by insurers and how the scheme provides for employers and injured workers to participate in effective return to work programs (both objects of the scheme).[59]

96. 'Evidence informed' practice is promoted by many stakeholders within the scheme.[60] Although it is continually developing, the evidence regarding best practice claims management and occupational rehabilitation is longstanding, and what is required, as a minimum, from insurers and employers is clearly understood.

97. Within this context, it should not be controversial for the scheme to include enforceable minimum standards that ensure insurers are managing claims in accordance with best practice and employers and injured workers are participating in best practice return to work programs. The transfer of guidance material relevant to these matters to scheme directions or codes of practice is therefore supported by the QCU.

98. We note however that clause 42 of the Bill, at s 228(1)(a), transfers the current *Guidelines for standard for rehabilitation* to a scheme direction. Given the importance for this document to reflect contemporary 'evidence informed' best practice, it should be reviewed regularly.

99. The QCU therefore submits that scheme directions should also be subject to a review 'at least once every 5 years' as proposed for codes of practice in clause

[59] See ss 5(2)(e) and 5(4)(d) of the Act.
[60] See, e.g., https://www.worksafe.q d.gov.au/ data/assets/pdf f e/0022/113944/accred ted rehab and return to program gu de ne.pdf, 6.

50 of the Bill at s 486A(5). Section 329A should be amended include a like provision.

100. Alternatively, the *Guidelines for standard for rehabilitation* should be transferred to a code of practice rather than a scheme direction so that it is subject to the regular review prescribed at s 486A(5).

101. Section 486A itself would also benefit from two amendments:

a. At 486A(2) the inclusion of an example relevant to 'determining and managing claims for psychiatric or psychological injuries' in recognition of the need for the scheme to include minimum enforceable standards relevant to these matters; and

b. At 486A(6) the inclusion of s 232AB of the Act (an insurer's responsibility for providing support for workers with a psychological injury) in the definition of a 'reasonable steps offence' as it appears to have been omitted in error by the drafters.

Duty to report

102. Recommendation 31 of the 2023 review recommended that the Act be amended to impose on insurers a positive duty to report suspected offences by employers to the Regulator. The recommendation was made by the reviewers to improve the oversight the Regulator has of the scheme administration and to make enforcement under the Act fairer because it will assist with increasing prosecutions of non compliant employers (the current prosecution outcomes

data demonstrates that very few successful prosecutions involve offending by an employer).[61]

103. While the Bill includes the new s 537A (in clause 53) which prescribes a duty on insurers to report offences, it simply consolidates into one provision the offences in the Act that currently include a duty to report (none of which relate to employer offences).

104. The Bill fails to implement the intent of recommendation 31. Section 537A(5) enables a duty to be prescribed on insurers to report employer offences by way of regulation, but the Bill does not contain any relevant amendment of the Regulation.

105. Therefore, s 537A should be amended to explicitly prescribe that all employer offences in the Act are reportable.

106. Alternatively, including a mechanism in the Act for workers, or their unions, to notify an authorised person appointed by the Regulator of an employer offence (as previously discussed) would assist the Regulator in improving its oversight of employer non compliance.

[61] F sher, G., & Peetz, D. (n 2), 68; https://www.worksafe.q d.gov.au/ aws and comp ance/comp ance and enforcement/prosecut ons/workers compensat on prosecut ons/workers compensat on prosecut on outcomes

Compliance notices

107. Recommendation 33 of the 2023 review identified that the compliance and enforcement measures currently available to the Regulator are limited and recommended amending the Act to introduce enforceable notices.[62]

108. Clause 53 of the Bill aims to implement this recommendation by proposing to introduce a new Chapter 12, Part 4 of the Act which permits an authorised person appointed by the Regulator to issue a compliance notice. This amendment is supported by the QCU.

109. However, ss 537C(3)(g), 537D(5), and 537E(4) of the new Chapter 12, Part 4 prescribe that a compliance notice is of no effect while it is subject to review or appeal proceedings. The operation of the compliance notice is stayed until the matter is decided.

110. This is impractical for any offence that is relevant to a duty holder's obligation to assist or provide an injured worker with rehabilitation and return to work, particularly in the context of the proposed timeframes for review and appeal proceedings. It could be up to 40 business days (56 calendar days / 8 weeks) before an appeal of a compliance notice is even heard by the Queensland Industrial Relations Commission (**Commission**), and significantly longer before the matter is finalised. This is despite it being widely accepted that a worker who is off work for 45 days has only a 50% chance of returning to work.[63]

[62] F sher, G., & Peetz, D. (n 2), 69 70.
[63] https://www.worksafe.q d.gov.au/rehab tat on and return to work/gett ng back to work/benef ts of return ng to work

111. Matters relevant to rehabilitation and return to work are time sensitive and it is imperative that they are dealt with as quickly as possible to minimise any impact on return to work outcomes. Staying the operation of a compliance notice until review / appeal proceedings are finalised prevents this from happening. It also significantly limits the deterrent effect of compliance notices.

112. The QCU therefore submits that the relevant provisions in the new Chapter 12, Part 4 are amended to prescribe that a compliance notice operates until such time as it may be overturned by the Regulator or the Commission.

Amendments to the Industrial Relations Act 2016

113. Part 2 of the Bill proposes a number of amendments to the *Industrial Relations Act 2016* (**IR Act**). Most of the amendments, such as those that relate to parental leave entitlements and superannuation contributions, intend to mirror recent amendments to the FW Act.

114. These amendments are supported by the QCU. They ensure employees in the Queensland jurisdiction are afforded similar entitlements to national system employees.

115. Clauses 10, 11 and 12 of the Bill also intend to align the IR Act with the FW Act. These amendments increase the threshold for a recovery of unpaid wages claim to $100,000 to mirror the small claims procedure threshold in the FW Act.[64]

116. These amendments are supported by the QCU as well, but they could benefit from improvement to better align with the FW Act provisions. Section 548(2)(b)

[64] Sect on 548 of the FW Act.

of the FW Act prescribes that a 'higher amount' may apply 'if a higher amount is prescribed by the regulations'. The amendments to ss 386, 476 and 531 in the Bill could therefore benefit from including a like provision.

117. The QCU does not support the amendments in clauses 13 and 14 of the Bill. They fundamentally change appeal pathways by extinguishing the ability to have certain appeals heard any longer in the Industrial Court of Queensland (**ICQ**). These are proposed by the Bill to now be heard in the Court of Appeal.

118. Currently, any decision of the Commission, except for a decision of a Full Bench constituted by the President and 2 or more other members, can be appealed in the ICQ (which must be heard and decided by the ICQ constituted by the President, except for an interlocutory proceeding relating to the appeal which may be heard and decided by the Vice President or a Deputy President of the ICQ).[65]

119. The Bill proposes for the exception to now be extended to any decision of a Full Bench of the Commission constituted by 'at least 1 member who is a presidential member' (i.e. the President, Vice President, or one of the two Deputy Presidents).

120. Full Benches of the Commission are rarely constituted without at least 1 presidential member. If the amendments are passed, this would practically mean that all appeals of Full Bench decisions would be required to be heard in the Court of Appeal rather than the ICQ. The QCU completely rejects this change.

121. The basis of our rejection of the amendments is as follows.

[65] See the current ss 554 and 557 of the R Act.

122. The explanatory notes suggest that the amendment is simply aligning the appeal pathway with other appeal pathways in Queensland.[66] However, insufficient regard is made to the special nature of the Industrial Relations Tribunals (**tribunals**) which are primary laypersons tribunals that are designed to allow ordinary working people access on a relative cost free basis.

123. The amendments will increase costs for appellants. The transfer of appeals from the ICQ to the Court of Appeal will mean that appellants incur filing and other fees that are not currently charged for an appeal to the ICQ. This makes the cost of an appeal prohibitive and is contrary to the design of a laypersons tribunal.

124. The amendments will also diminish the representational rights of appellants. Section 529 of the IR Act currently permits a party to a proceeding before the ICQ to be represented by a person other than a lawyer, including:

a. an employee or officer of an organisation appointed in writing as the agent of the party or person; or
b. if the party or person is an organisation an employee, officer or member of the organisation; or
c. if the party or person is an employer an employee or officer of the employer; or
d. another person appointed in writing as the agent of the party or person, only with the leave of the industrial tribunal conducting the proceedings.

125. If the amendments are passed, appellants will not be entitled to these representational rights for matters heard in the Court of Appeal. They will be

[66] Explanatory notes for the Bill, 9.

required to engage legal representation, incurring further costs. It would also be questionable as to whether an employee or officer of an Industrial Organisation would have a right of appearance before the Court of Appeal. This significantly hinders the ability of unions to represent their members.

126. Recent review findings do not support the amendments either. They are inconsistent with the recommendations in section 11.8 of the 2015 *review of the industrial relations framework in Queensland* (**2015 IR review**),[67] and the matter was not the subject of any recommendations in the 2021 *Five year Review of Queensland's Industrial Relations Act 2016*.[68]

127. The relevant recommendations from the 2015 IR review are as follows:

> *"64. That the legislation allow for the legal representation, by leave, of parties in a proceeding before a full bench (other than a full bench established to arbitrate when collective bargaining has failed to result in an agreement) where it would allow the matter to be dealt with more efficiently (having regard to the subject matter of the proceeding), or it would be unfair not to allow the party to be represented because the person is unable to represent themselves effectively.*
>
> *65. That the Act ensure that only the President of the Industrial Court of Queensland can hear an appeal from a full bench. The Act should allow an interlocutory matter such as stay applications to be heard by a Deputy President of the Court.*

[67] https://cab net.q d.gov.au/documents/2016/Feb/ RRev/Attachments/Report.PDF.
[68] https://www.o r.q d.gov.au/s tes/defau t/f es/f ve_year_rev ew_of_queens ands_ ndustr a_ re at ons_act_ 2016.pdf

66. That the Act provide for appeals from decisions of the Industrial Court of Queensland to the Queensland Court of Appeal.

67. That the provisions in relation to the awarding of costs apply to any party who caused costs to be incurred because of an unreasonable act or omission in connection with the conduct or continuation of the matter.[69]*"*

128. Notably, the 2015 IR review proposed that *'appeals against the decision of the full bench ought to be dealt with in terms of a hierarchical approach'* and that unlike any other member of the Commission and ICQ, the President *'has a dual role as a Justice of the Supreme Court of Queensland'.* Accordingly, the 2015 IR review recommended the current appeal pathway which acknowledges the hierarchy within the ICQ and balances the need for a hierarchical approach with maintaining the tribunals as laypersons tribunals.

129. The existence of a President of the ICQ who is also a Supreme Court Judge removes the need to burden the Court of Appeal with appeals from the Full Bench just because there is someone on the Full Bench who holds a dual appointment in the ICQ and the Commission.

130. The appeal arrangements were specially crafted after extensive consultation with all stakeholders, and they should not be disturbed without significant stakeholder consultation and not by way of miscellaneous amendment to a Bill dealing with entirely other subject matters.

[69] Ibid, 143–146.

131. The current regime and appeal structures of the tribunals is tailored for the specific needs of the stakeholders that this very specialist tribunal serves. Requiring stakeholders seeking justice to enter a traditional court regime, with limited representation rights for Industrial Organisations and placing additional resource burdens on the Supreme Court should only be for exceptional circumstances.

132. The QCU therefore urges the Committee to recommend that the current appeal pathways in the IR Act are maintained.

Conclusion

133. The QCU thanks the Committee for the opportunity to make this submission, and we encourage the Committee to carefully consider our recommendations.