



United Voice, Industrial Union of Employees, Queensland

Submission to the Education, Tourism, Innovation and Small Business Committee

Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016

July 2016



Introduction

United Voice, Industrial Union of Employees, Queensland (**United Voice**) makes the following submissions in relation to the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016* (the **Amendment Bill**).

Overview of United Voice, Queensland

United Voice represents almost 30,000 workers in Queensland across a diverse range of public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

We represent school cleaners, teacher aides, ambulance officers, health professionals and operational staff, childcare workers, those employed in the contracting industries including but not limited to cleaning, security and hospitality, private prisons and detention centres and aged care workers.

United Voice welcomes and supports the Amendment Bill for the benefit it will provide to seriously injured workers; the restoration of the common law principle that an insurer will not be liable to indemnify an employer for a liability to pay damages incurred by a third party under a contractual arrangement; and the ability to opt out of the scheme should an injured worker seek common law damages against negligent employers.

Additional protection for seriously injured workers

United Voice commends the additional protection established by the Amendment Bill that will ensure eligible workers who sustain serious injuries (as defined) will automatically receive lifetime treatment, care and financial support.

A common issue affecting our members is the cost of treatment and lost income arising from workplace injuries. Whilst the current WorkCover scheme provides valuable and necessary support to injured workers, it is not without its limitations.

For instance, workers who have sustained a workplace injury resulting in permanent impairment (as defined) are eligible to receive a lump sum payment. However, that payment may be insufficient to compensate those workers for their lifetime, depending on their financial commitments and stage of life. Those eligible under the new scheme that would otherwise have been compensated for permanent impairment will now receive guaranteed lifetime care and support, resolving the potential financial shortfall.

Contractual indemnities and the Byrne decision

Often in matters involving employers and non-employers there are contractual arrangements between those entities affecting the distribution of risk and loss.

Those arrangements often include a third party (such as principal or host employer) having a contractual claim for indemnity against the employer for a worker's injury.

Historically WorkCover Qld has refused to indemnify an employer for contractual liability to a third party that exceeds common law liability to pay damages to an injured worker.

However, the Queensland Supreme Court decision in *Byrne v People resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269 altered this position by requiring an insurer to indemnify an employer for a contractual indemnity to a third party.

The Amendment Bill reverses the Byrne decision, effectively returning liability to the party responsible, by their negligence, for a worker's injury.

The contracting industries that fall under the coverage of United Voice (property maintenance, contract cleaning, security and hospitality related areas) are plagued by indirect and triangular employment arrangements that obfuscate and complicate the adoption of responsibilities by the various employing entities and disadvantage employees.

Such arrangements undermine the enforcement of industrial relations law and instruments, occupational health and safety laws and workers compensation laws in the labour hire industry.¹

Whilst the reversal of the Byrne decision addresses only part of the broader issues affecting the labour hire industry, it represents a positive step towards clarifying that a negligent employer who follows unsafe work practices will be unable to transfer liability to another related party through contractual arrangements.

Common law damages

United Voice supports the ability for injured workers to opt out of the new scheme should they wish to seek common law damages against negligent employers. Importantly, those who opt out retain the ability to apply for support under the new scheme in the event that damages arising from the action are insufficient.

Overall, we support the Amendment Bill for the benefit it will provide to seriously injured workers that would otherwise receive insufficient treatment and/or support under the existing scheme; the restoration of a common law principle that clarifies the responsibility of negligent employers who fail to maintain safe work practices; and the ability of injured workers to pursue an action for common law damages without prejudicing their right to apply for treatment and support under the new scheme.

¹ United Voice, Industrial Union of Employees, Queensland, Submission to the Finance and Administration Committee, Inquiry into the practices of the Labour Hire Industry in Queensland, April 2016.