

# Queensland Council of Unions

Honorary President: **Rohan Webb** General Secretary: **Ros McLennan** Assistant General Secretary: **Michael Clifford**

14 July 2016

Ms Sue Cawcutt  
Research Director  
Education, Tourism, Innovation and Small Business Committee

By email [ETISBC@parliament.qld.gov.au](mailto:ETISBC@parliament.qld.gov.au)

Dear Ms Cawcutt,

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

The Queensland Council of Unions (QCU) is pleased to provide comment on the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016*, which was introduced into the Legislative Assembly on the 14<sup>th</sup> June, 2016.

The QCU is the peak union body in Queensland, representing 29 affiliated unions and over 360,000 union members. The QCU has a long and proud history of fighting for safe and healthy workplaces and a fair compensation system that ensures that no worker is disadvantaged if they are injured at work.

The QCU supports the intention of the Bill to provide for no-fault lifetime care and support payments for workers who suffer a catastrophic workplace injury. This support is conditional upon the continuation of current common law rights and coverage of journey and recess claims, both of which we note the Bill maintains. Additionally, the QCU strongly contends that the cost should be funded by premiums and not by workers or the community.

**Current arrangements:** Currently, Queensland workers have two ways to receive payouts once their entitlements have ceased. The first of these is through a degree of permanent injury (DPI) payment where there is a degree of permanent impairment. This amount is determined by the *Guidelines for the Evaluation of Permanent Impairment* (GEPI) and the *Workers Compensation and Rehabilitation Regulation 2014*, Schedule 12. This amount is capped and the maximum amount specified (approximately \$300,000 with additional variable components) is clearly insufficient to meet lifetime care and support for a person with a catastrophic injury. The National Injury Insurance Scheme (NIIS) provides a more realistic level of financial support in the case of catastrophic injuries than is met by the DPI provisions.

Alternatively, workers may seek damages through a common law claim. Unlike DPI, common law damages are not capped and the worker is entitled to claim for all past and future loss arising for the injury. Common law damages must be proven in court and can only be paid where the employer was negligent. In cases of catastrophic injuries, the proposed NIIS does not require negligence on behalf of the employer, or, in cases where there is negligence, for this to be proven in court. Furthermore, it

is noted that the NISS does not limit the ability of workers to opt out of the NISS payments and accept an award of damages for common law. The QCU supports the maintenance of common law rights in addition to the workers' option to elect payments under the NISS.

**Funding:** In the *Workers' Compensation update: National Injury Insurance Scheme and other related matters* it is stated that (p.1): "The estimated increase to average premium rates is one cent. From \$1.20 to \$1.21. It will be a matter for the WorkCover Board to decide whether to absorb the cost or increase the average premium rate."

We ask you to note research by Safe Work Australia<sup>1</sup> which calculated that, in terms of "the burden to economic agents, 5 per cent of the total cost is borne by employers, 74 per cent by workers and 21 per cent by the community." In light of this fact, and with respect to the extremely modest cost increase for premiums (one cent), the QCU will be recommending the NISS scheme be fully funded by premiums to prevent a further offloading onto workers and the community of poor WHS practices which give rise to the majority of catastrophic injuries.

**Prohibition of the contractual transfer of liability:** The QCU supports the legislative reversal of the judgement of *Byrne v People Resourcing* (Queensland) Pty Ltd & Anor. As we understand it, this decision allowed the contractual transfer of liability for compensation from principal contractors or host employers to subcontractors or labour hire companies. This judgement undermined the relationship that compensation has to improving work health and safety (WHS), given that compensation claims are often a trigger for persons in control of a business and undertaking (PCBUs) to undertake investigations and risk assessments and to correct factors that gave rise to the injury.

The *WHS Act* 2011 specifically prohibits the transfer of duties under section 14 which states "A duty cannot be transferred to another person." Allowing the contractual transfer of workers' compensation liabilities not only undermines the provisions of the *WHS Act*, but also contradicts the objects of the *Workers' Compensation and Rehabilitation Act* 2003, specifically section 5(1)(b) which states that an object of the Act is to aid in "encouraging improved health and safety performance by employers."

**Floor for rate of compensation:** The QCU supports the provisions relating to the floor for the compensation rate where Queensland Ordinary Time Earnings (QOTE) have reduced. The QCU agrees that this will help prevent financial hardship for workers.

Again, we wish to thank you for the opportunity to make this submission. Please contact Research and Policy Officer John Martin on telephone [REDACTED] should you wish to discuss this matter further.

Yours sincerely

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Michael Clifford  
Assistant General Secretary  
Queensland Council of Unions

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<sup>1</sup> Safe Work Australia (March 2012) *The Cost of work-related injury and illness for Australian employers, workers and the community*: 2008-09