

Restoration of rights for injured Queensland Workers

Submission to the Finance and Administration
Committee (QLD) on the *Workers' Compensation and
Rehabilitation and Other Legislation Amendment Bill 2015*

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WHO WE ARE

The Australian Lawyers Alliance (“ALA”) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.

INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Finance and Administration Committee on the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* ('the Bill').

As the Finance and Administration Committee have set out in their inquiry overview, and as was evident in the explanatory notes accompanying the Bill, this legislation has a series of key policy objectives to restore and strengthen rights for injured Queensland workers, namely to reinstate common law rights for all workers injured since 31 January 2015 by removing injury impairment thresholds.

We provide a submission in this instance regarding the proposed changes to the Bill regarding these policy objectives, specifically in relation to the reinstatement of common law rights for injured workers, the provision of compensation to particular workers impacted by thresholds, the accessibility to compensation for deemed diseases for firefighters and the consultation process to commence these amendments.

The ALA is a strong advocate for injured workers in Queensland, and welcomes the opportunity to outline our support for these initiatives to restore and strengthen rights for injured workers. The ALA is acutely cognisant of the history of workers' compensation changes over the last three years, and was supportive of the conclusion reached by a multi-party committee convened by the former government: that the system was Australia's best, and that no structural changes were warranted.

OUR POSITION

The ALA welcomes the introduction of the Bill, and most specifically the removal of injury impairment thresholds. It is the position of the ALA that the removal of thresholds through the Bill will help to ensure that Queensland once again has the best workers' compensation scheme in the country – a scheme that is fair for injured workers and employers.



The ALA's position has always been that all Queensland workers deserve access to common law rights when injured on unsafe worksites where there is negligence on the part of an employer. Indeed, such rights have existed for the better part of a century in Queensland.

In late 2013, against the advice of multiple stakeholders and its own Parliamentary Committee, the Newman Government removed these rights with the introduction of injury impairment thresholds of more than 5%. In doing so, the Newman Government oversaw the legal rights of up to 60% of the State's injured workers stripped away. This change was fundamental, and unjustified on economic and fairness criteria.

Prior to the introduction of these changes, Queensland had the best workers' compensation scheme in the country. It was a scheme with strong profits that was financially solvent, with stable claim numbers and fair outcomes for injured workers. It was a scheme that did not need to be fundamentally changed, a view also endorsed by the former Finance and Administration Committee in 2013, who recommended against the introduction of thresholds.

It is the position of the ALA that given the many well-known strengths of the scheme, and that the scheme had received the endorsement of the former Finance and Administration Committee with no major changes recommended, that the decision ultimately made by the Newman Government to introduce thresholds was unfair and unnecessary.

It is expected that with the introduction of this Bill seeking to repeal thresholds that the rights of all injured Queensland workers will be restored, and in doing so, help to ensure that no future government will repeat such excesses that so fundamentally undermine the rights of injured workers ever again.

REINSTATEMENT OF COMMON LAW RIGHTS FOR INJURED WORKERS

The ALA notes that clause 6 of the Bill seeks to amend s237 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) to remove the requirement that a worker must have an

assessed degree of permanent impairment of more than 5% arising from their injury in order for that worker to be entitled to seek damages for their injury.

The ALA strongly supports this amendment.

Many of the ALA's membership have had experience in advising clients who have been injured in negligent circumstances and are precluded from pursuing a damages claim and recovering any of their ongoing losses caused by their injury.

An injury assessed at 5% or less impairment in accordance with the Guides to the Evaluation of Permanent Impairment may not sound significant, but the reality for workers with such injuries could not be further from the truth. Indeed, ALA members have reported many instances of injured workers with injuries assessed at 5% or less whom:

- Are no longer able to work due to their injury;
- Have had to change careers entirely on account of their injury;
- Have had extended periods of time off to recover from their injury in order to return to work; and
- Have returned to work in a part-time capacity only or on limited duties on account of their injury.

The following is one such example of a de-identified, real-life case study provided by an ALA member of a worker who suffered an injury assessed at less than 5%:

Worker is a 28 year old male. He was injured in early 2014; only months after thresholds were introduced.

He worked as a labourer in a glass bottle manufacturing factory undertaking repetitive manual labour, including cleaning glass and other material out from under a narrow crushing machine. The glass captured was then either lifted by the worker overhead and back onto the conveyor belt, or placed onto a wheelbarrow (weighing 100kg when full), which was then emptied up on to a conveyor belt.

The worker received no manual handling training from his employer or instructions regarding the risk of injury caused by repetitive overhead work.

As a result of this repeated heavy lifting, the worker sustained a major strain to his spine, as well as disc bulges.

His injury is aggravated by sudden movements, and his back continues to 'lock up' because of his injury. He continues to suffer pain in his lower back, as well as pins and needles and numbness at the



top of his right leg.

The strain on the worker's spine was assessed at 4% impairment. This was appealed to the MAT, who confirmed an impairment of 7%, attributing 3% to pre-existing degeneration. This is despite the worker being a young man and having no previous medical history or reported pain in his lower back.

The worker attempted to return to his employment, but because of his injury and ongoing pain was unable to continue in this role. He has now returned to work in a less physical occupation on a casual basis. The reduced hours has meant he has suffered financially.

He has a young son. He is now limited in what he can do with his son which saddens him. He also has to rely on family to help with maintenance for his home, as he's no longer able to perform these tasks due to his injury.

As this example demonstrates, injuries assessed at 5% or less can have wide-ranging and significant consequences not just for workers, but also for their families.

This case also highlights the immense unfairness of removing common law rights for workers with injuries assessed at 5% or under – a worker who similarly can only return to work on restricted duties with an injury assessed above 5% is entitled to compensation, but a worker such as the example detailed above with an injury assessed at 5% or less who is also only able to work on restricted duties cannot. The former Premier and Attorney General dishonestly sought to characterise the changes as only affecting minor injuries. The evidence is to the contrary.

Furthermore, and as the explanatory notes for the Bill have also articulated, it is estimated that the removal of thresholds for injuries on or after January 31 2015 and the provision of compensation to particular workers who were impacted by thresholds can be achieved without impacting Queensland's premium rate. The ALA supports this view, and indeed has long argued that the solvency of the State's workers' compensation scheme has always meant that maintaining low premiums is possible, without stripping away the rights of injured workers.

PROVISION OF COMPENSATION TO PARTICULAR WORKERS IMPACTED BY THRESHOLDS

The ALA notes that clause 33 of the Bill includes the insertion of a new s193A to provide additional lump sum compensation for particular workers, applying to those workers who



sustained an injury on or after 15 October 2013 and before 31 January 2015. This includes those workers with injuries assessed with a DPI of 5% or less.

The ALA supports this proposal as a fair way to assist injured workers who may otherwise be precluded from fair access to compensation as a result of the introduction of thresholds. The ALA looks forward to receiving further details of the regulations that will determine eligibility of workers for this assistance in due course.

DEEMED DISEASE PROVISIONS FOR FIREFIGHTERS

The ALA notes clauses 14 through to 22 of the Bill outline measures to strengthen accessibility to compensation by introducing deemed disease provisions for firefighters with prescribed diseases.

The ALA supports these amendments as an important measure both in recognising the high-risk work environments experienced by firefighters, and also in ensuring that where such prescribed diseases are identified that there is a simplification of the process for firefighters in being more easily able to access their compensation entitlements.

CONSULTATION PROCESS

As part of its submission, the ALA commends the consultation process that has been undertaken in the preparation of this Bill and the necessary amendments required.

The ALA was an active participant in the Stakeholder Reference Group established for this purpose, and it is the view of the ALA that the consultation process preceding this reform package was inclusive and healthy. It has taken substantial work, but the ALA believes this has been a fair, thorough and consultative process that also vindicates the 2013 Parliamentary Inquiry recommendations made under the previous Government.

CONCLUSION

It is the position of the ALA that this Bill is important and necessary in ensuring a restoration of rights for all injured Queensland workers. With the passing of this Bill, Queensland will once again have the best workers' compensation scheme in Australia – a scheme that is fair for workers and for employers, with low premiums that also ensures equal access to the law for all injured workers.

The ALA commends the Bill to be passed and thanks the Committee for the opportunity to be consulted.