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Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland

Submission to the Finance and Administration Committee of the Queensland Parliament

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

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Contents

Introduction

The Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland ("CFMEU") welcomes the opportunity to make this submission to the Finance and Administration Committee of the Queensland Parliament on the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* ("the Bill").

The CFMEU is the principal union in the building and construction industry and has members across trades and non-trades classifications, as well as substantial membership in other industries and sectors such as in manufacturing and in local government across Queensland. The CFMEU has been at the forefront in fighting for its members' work health and safety, through its predecessor unions, for over 150 years – including campaigning for adequate workers' compensation payments for workplace injury and illness, providing members with access to legal services to recover financial losses arising from workplace injury, and negotiating for income protection cover under enterprise agreements.

A critical issue at the 2015 State Election for members of the CFMEU was the changes implemented by the former LNP Newman Government, which curtailed Queenslanders' access to legal recourse against employers arising out of workplace injury or illness, and enabled prospective employers to gain access to individuals' worker compensation claims history. These changes were, and remain, deeply unpopular.

The CFMEU commends the Palaszczuk Government on acting swiftly to restore the rights and protections of workers in Queensland in relation to workplace injury and illness through the Bill.

The CFMEU supports the Bill insofar as it responds to the sound and measured policy objectives of:

- Reinstating common law rights for injured workers that were affected by changes made by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* and establishing the ability to provide additional compensation to workers impacted by the operation of the common law threshold;
- Providing greater certainty of entitlement and accessibility to compensation for firefighters by introducing deemed disease provisions for firefighters with prescribed diseases; and
- Prohibiting employers from continuing to access an individual's claims history as they have been able to since the changes made by the 2013 Act.

In particular, the CFMEU supports those aspects of the Bill, which:

- Remove the current limitation on the entitlement to seek damages that requires a worker to have a degree of permanent impairment as a result of the injury greater than 5% to access common law;
- Establish the ability to provide additional compensation to workers impacted by the operation of the common law threshold;
- Introduce provisions for fire-fighters that will deem certain injuries to be work-related; and
- Remove the entitlement prospective employers have to obtain a copy of a prospective worker's compensation claims history from the Workers' Compensation Regulator.

The former Newman Government's amendments to the *Workers' Compensation and Rehabilitation Act 2003* were arbitrary and unfair. Further, they had no sound basing in genuine public policy considerations, having the effect of heavily disadvantaging some of Queensland's most vulnerable workers, namely the ill or injured. The Committee should do the right thing by working people and their families in Queensland and recommend that the Bill be passed, with some amendments as outlined in this submission.

The common law threshold

The former LNP Newman Government's amendments have had a significant impact on building and construction workers and their families. As the CFMEU has already indicated to the Committee, by its very nature, the building and construction industry is a dangerous and arduous industry in which to work. Hazards which lead to injury and illness commonly present themselves.

Available research conducted for the CFMEU shows that for the 12-18 month period to March 2010, had a 5% common law threshold existed at that time, some 55%-60% of the membership of the CFMEU who otherwise had a right to proceed with a common law claim would have lost that right as a consequence of the 5% threshold. The same research shows that with regard to return to work following injury, of those employees whose WPI was between 1%-2%, 80% lost their job.

Whilst this research was based on projected outcomes, the effects the LNP Newman Government's common law threshold has had on workers in the building and construction industry have been all too real.

Case Study: "John"[1]

"John" is a labourer who sustained injury to his lower back during the course of his employment, caused by the negligence of his employer. John was off work for 6 weeks and then returned on light

[1] For confidentiality reasons, names in case studies have been changed.

duties only working 6 hours per day. John is currently restricted in his capacity to perform full duties and is losing approximately $200 net per week as a result of the work injury and ongoing incapacity. John's treating doctors have indicated he will be unable to return to full duties and it is likely he will remain on light duties restrictions for the remainder of his working life, approximately 10 years. John's lower back injury has been assessed below 6% and as a result he is precluded from suing his employer for common law damages and seeking compensation for past and future losses that flow from his work injury.

Case Study: "Scott"

Scott was employed as a plant operator. He sustained an injury to his lower back while carrying out his work duties, caused by the negligence of his employer. Scott was certified medically unfit for work for approximately three weeks and then returned to work on suitable duties. He was made redundant about one week later. Scott was earning approximately $2000 net per week. Since being made redundant, Scott has been unable to find alternative employment and is significantly disadvantaged on the open labour market as a result of his injuries. His lower back has been assessed below 6% and he is now precluded from suing his employer for common law damages and seeking compensation for the past and future losses that flow from his work injury.

Information and documents about pre-existing injuries and medical conditions of prospective workers

As shown in CFMEU research, a vast majority of workers who sustain workplace injury or illness go on to subsequently lose their employment. Further, as alluded to in the case study above, workers who sustain illness or injury at the workplace frequently face significant disadvantages when re-entering the labour market. The difficulties faced by ill or injured workers seeking to re-enter the workforce have been severely compounded through the obligations placed on them to disclose to prospective employers information of pre-existing injuries or medical conditions, and through corresponding entitlements for prospective employers to obtain from the Regulator a copy of a prospective worker's claims history summary.

In effect, these aspects of the current *Workers' Compensation and Rehabilitation Act 2003* enable and legitimise the blacklisting of workers who have made workers' compensation claims. Not only do these aspects of the Act produce gross unfairness to prospective workers who seek to re-enter the workforce and lead productive lives, but they also create a situation in which making claims for worker compensation are affected by disincentive. Ill or injured workers should not have to choose between accessing worker's compensation entitlements and having future job prospects.

Given the short-term and itinerant nature of work in the building and construction industry, the problems associated with these aspects of the Act can be long-term and perpetual: building and construction workers are necessarily required to seek employment with a whole sequence of different employers and projects over time. Of significant concern, however, is that members of the CFMEU have complained to the union that the data collated from recruitment processes are being misused to discriminate against prospective employees, including on grounds of an employee having made an historic worker's compensation claim.

In parts of the construction industry, a practice has already developed for the recruitment of construction workers on major resources and infrastructure projects via a "registration of interest" process, whereby prospective employees are asked to provide a significant amount of personal information as a pre-condition for employment, including any history of worker's compensation and personal injury claims as currently required under the Act. That information is then used to scrutinise a prospective employee's "suitability" (however defined) for work at a particular site.

It is in this vein that numerous union members have complained that they have been hindered in their efforts to obtain employment in the resource construction sector because of the information obtained and provided through databases. Indeed, in some instances, union members have been advised by prospective employers that the reason they were unsuccessful in gaining employment was because information provided to the prospective employer was to the effect that the worker was unsuitable because of their history of having made a worker's compensation claim (without the worker otherwise being unfit for work in any relevant way).

Between April 2013 and March 2015, the UK House of Commons Scottish Affairs Committee conducted an extensive inquiry into the problem of blacklisting in the building and construction industry in the UK. Notably, the Committee identified multinational construction companies with a presence in Australia (and indeed in Queensland) as having engaged in active blacklisting via a subscription-based database, including Balfour Beatty and Skanska (the former a major contractor on the Gold Coast Light Rail Project). Extracts of the files held and seized by the UK authorities, as well as other evidence, are available on the Committee website. The Finance and Administration Committee of the Queensland Parliament is urged to view that website, and the successive reports handed down by the Scottish Affairs Committee, in considering the importance of this Bill.[2]

[2] http://www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/inquiries/parliament-2010/blacklisting-in-employment/

Rather than facilitating the kinds of unfair activities identified by members of the CFMEU and the Scottish Affairs Committee, the Queensland Parliament should be creating protections for workers who seek recourse for workplace illness or injury as a matter of right.

A first step in that direction would be the undelayed repeal of sections 571A, 571B, 571C, and 571D of the *Workers' Compensation and Rehabilitation Act 2003*, through the passage of an amended Bill.

Conclusion

The Committee should recommend the passage of this Bill, as amended to also repeal sections 571A, 571B, 571C, as well as section 571D.

CFMEU

[redacted] 10 August 2015