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Finance and  
Administration Committee



**SUBMISSION TO THE  
FINANCE AND ADMINISTRATION COMMITTEE  
LEGISLATIVE ASSEMBLY OF QUEENSLAND**

**Inquiries into:**

**The Workers' Compensation and Rehabilitation  
and Other Legislation Amendment Bill 2015**

## **INTRODUCTION**

We would like to thank the Committee for this opportunity to provide submissions into the two Amendment Bills currently being considered by the State Government. It is disappointing that the former Attorney General ignored most of the recommendations of the Committee in the previous review of the scheme in 2012, instead enacting provisions which diminished the rights of injured workers.

We commend the current government's commitment to reversing many of these detrimental amendments, but note, with some concern, that the draft bills do not constitute a full reversal of all unfair measures that diminished the rights of injured workers. Please note that in representing our direct membership, it is our intention to make comment only in relation to the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*.

### **About Us**

The Independent Education Union of Australia Queensland and Northern Territory Branch has over 17,500 members working in Queensland. Our members work in non-government schools, early childhood centres, English language and business colleges and other post secondary non-government educational institutions. Our members are administrators, educators, school support officers, services staff, professional officers, cleaning staff, teacher aides and assistants. Many work in regional and remote areas, including Indigenous communities. As well as the delivery of educational services, our members regularly undertake excursions, co-curricular and extra-curricular activities requiring them to carry out duties and travel outside of their normal working hours. This includes school camps and trips which may require staff to be on duty around the clock, during holidays and on weekends. Many of our members also work in boarding schools and are subject to shift work.

### **What We Do**

In addition to general industrial and professional matters, our Industrial Services Team assists and represents members suffering from work-related injuries. None of our employers are self-insured. We provide non-adversarial assistance for members lodging claims with WorkCover Queensland, guide members through the return to work and rehabilitation process in conjunction with WorkCover Queensland case managers, prepare Applications for Review to QComp for rejected claims and provide support for members attending the Medical Assessment Tribunal. We also provide direct representation and legal liaison for members at Appeal.

In respect of these inquiries, all submissions will be written from the unique viewpoint of each stakeholder within the workers compensation scheme. We recognise this is true of our submission, but have aimed to ensure that our submission is based on case studies and data from our records.

### **Injuries in Our Sector**

The injuries most commonly reported by our members are slips, trips and falls, vocal injuries, post traumatic stress disorders, infectious diseases, injuries associated with lifting heavy weights, repetitive strain injuries, traffic incidents associated with fatigue, and work-related stress.

### **Claims Lodgement and Dispute**

The level of claims disputation among our members has remained relatively stable overall in the last two years.

In the 2011/2012 financial year, we directly assisted 114 members with WorkCover claims/QComp Reviews and assisted 63 members returning to work after a work-related injury. During this period, we took an average of 11 general enquiries per week from members seeking advice on various aspects of the WorkCover claim process.

In the 2013/2014 financial year, we directly assisted 102 members with WorkCover claims/QComp Reviews and assisted 55 members returning to work after a work-related injury. During this period, we took an average of 14 general enquiries from members seeking advice on various aspects of the WorkCover claim process.

Lodging a claim for workers compensation is generally a straightforward process. We made submissions to the Committee as part of the review undertaken in 2012. To that point, we had noticed improvements in administrative processes, return to work/rehabilitation and compliance and commented that we believed this is what accounted for the slight reduction in requests for assistance.

Since that review, we have had a similar number of queries, but less members making claims. We believe this is largely due to legislative changes that took effect from October 2013, in particular the change to the definition of injury for psychiatric and psychological injuries, increasing the burden of proof for workers who suffer these injuries in the workplace.

### **The Position of our Affiliates**

We note that submissions are being prepared to these inquiries by the Queensland Council of Unions (QCU). As an affiliate of the QCU, we endorse their position in general. Similarly, we note submissions being prepared by the United Firefighters Union of Queensland relating to amendments specific to their members, and we endorse these submissions.

We recognise that our experience may be different from that of affiliates who operate in industries other than education. Without diminishing the significant impact of workplace injury on our members, the education industry is largely "self-regulatory" in terms of workplace health and safety risk. This is due to the significant duty of care educational institutions hold to their own communities and to regulation around child protection.

We acknowledge the very different injuries and experiences of our fellow affiliates, particularly those in the manufacturing and construction industries where the most significant number of serious workplace injuries occur. We ask that our submissions be considered in the context of our experience, and caution that it is unwise to compare industries when the risks and environments are different.

# **The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015**

We note and commend the Bill currently before the Parliament, which reverses some of the measures put in place by the previous government that diminished the rights of injured workers.

In reference to the amendments proposed to commence from 31 January 2015, we offer submissions on the various amendments as follows:

## **Clauses 1, 2 and 3**

These clauses facilitate the amendments as put and do not require comment.

## **Clause 4**

We note the intention to introduce a timeframe for workers to submit applications for assessment of permanent impairment in circumstances where an application for workers compensation has not been lodged.

We assume this provision is to prevent delays caused by insurers in providing permanent impairment assessments, and putting an obligation on insurers to issue decisions within a reasonable timeframe.

We also note the extension of review rights to these applications, which did not exist under the previous 2013 amendment.

We support the proposed additions to Section 132A in relation to applications for permanent impairment in cases where applications for compensation have not been lodged.

## **Clause 5**

We note the proposed introduction of Section 132B, permitting a person who wishes to seek damages as a dependant of a deceased worker and has not made an application for workers compensation, to apply for a certificate of dependency. The provisions at the proposed Section 132A are mirrored here in terms of the application, timeframe and right to review, but we note Section 237 already establishes the right for dependants to make claims. We are uncertain how this provision will impact the family of injured workers and are concerned that it may add an unnecessary layer of bureaucracy that complicates the processing of claims.

We understand insurers generally have their own rules and processes to recognise dependency. In noting this proposed amendment, it would be preferable if there was an assurance that certifying dependency under the scope of this legislation does not compromise or conflict with other areas of law, or create unnecessary confusion at an extremely difficult time in the life of an individual and their family.

## **Clause 6**

We note the intention to remove any threshold for common law damages claims. This is a significant amendment as it will allow people injured at work due to

employer negligence to be compensated equally to a personal injury suffered through the negligence of a party other than an employer. We support this amendment.

We would also support any amendment to ensure those claimants who lodged a claim on or after 15 October 2013 will be given equal consideration under the law. This would nullify the disadvantage resulting from the unfair provisions that have been in place since this date.

### **Clause 7, 8, 9 and 10**

The proposed amendments allow a worker to add subsequent consequential injuries to a common law claim, rather than needing to ensure all injuries to be considered are included at the point of assessment. These provisions also accommodate processes for those workers seeking permanent impairment assessments who have not submitted claims for workers compensation.

We understand that the proposed amendments generally reinstate the rights of injured workers prior to October 2013 in relation to damages, and we support the intent of these amendments.

### **Clause 11**

The introduction of Chapter 32 provides transitional arrangements for injured workers whose claims are lodged on or after 31 January 2015.

There is no provision in these transitional arrangements for recognition of the entitlement of claims from the period of 15 October 2013 to 30 January 2015. Any transitional arrangements should permit injured workers disadvantaged by the current provisions to have this corrected. Failure to redress the inequity of claims submitted in this time period is likely produce a legislative anomaly that the intent of these amendments is designed to avoid.

### **Clauses 12 and 13**

We support the insertion of a new Schedule 5 as necessary adjuncts to the intentions of Clause 9.

### **Clauses 14 to 22**

These clauses relate to changes affecting the specific occupation of Firefighters, which falls outside our occupational and industry coverage area. We are aware of submissions being prepared by the United Firefighters Union of Queensland and offer our support to these.

We also fully endorse the notion of presumptive legislation that ensures injured workers are compensated appropriately and their rights are protected.

### **Clauses 23 and 24**

Clauses 23 and 24 relate to workplace rehabilitation. Regulator accreditation of workplace rehabilitation systems, policies and procedures to date has ensured that employers offer a minimum standard of support and protection in their procedures for injured workers returning to work. Omission of the words “accredited by the Regulator” in Sections 43 and 44 of the Act has the capacity to weaken this support

and protection, impacting on the quality of workplace rehabilitation. Further, the proposed amendments are inconsistent with Section 327 (h) which provides that one of the functions of the regulator is to undertake workplace rehabilitation and return to work accreditation activities.

Insurers and medical practitioners consistently assert that a return to work as soon as practically and medically possible after injury assists significantly in shortening the length of time away from work and improving the quality of recovery for injured workers. Our own experience supports this view and the scheme relies on this to support its own efficiencies. If this is to be maintained, the scheme must continue to provide minimum standards for return to work provisions through recognised accreditation.

We do not support the removal of the requirement for workplace rehabilitation systems, policies and procedures to be accredited by the regulatory authority.

### **Clauses 25 and 26**

As these changes are administrative in nature and clarify the current intent, we have no comment.

### **Clause 27**

These provisions relate to the functions of the Regulator, and we have no comment on the majority of the proposed amendments.

In relation to Clause 27 (3) however, we understand the Regulator has taken on the title of “the Worker’s Compensation Regulator” under the 2013 amendments to the Act. It remains our view that the statutory authority known previously as QComp was an effective independent authority that remains well known to stakeholders. A statutory authority allows a degree of procedural independence that cannot be replicated by a departmental regulator.

We therefore recommend reestablishment of a statutory authority.

### **Clause 28**

This amendment proposes that injured workers will be given the opportunity to apply for one extension of time for submission of an Application for Review.

The proposed amendment to permit just one time extension to an applicant is an unnecessary administrative provision which will prevent the regulator from exercising justice to an injured worker in those circumstances that are appropriate. To restrict this provision is not in the public interest due to public cost associated with the likely pursuit of out-of-time applications at Appeal.

If each application is to be judged on its merits, the regulator should be afforded the authority to extend timeframes as deemed appropriate. The Appeals process provides capacity for out-of-time applications, and court precedent shows that where no prejudice to the respondent applies, and where due reason is demonstrated, appeals are generally allowed.

While employers can be applicants in the review process, any restriction on the authority to issue extensions is more likely to prejudice injured workers.

We are therefore unable to support this amendment.

#### **Clause 29**

As this amendment provides for appellants to request further time to Appeal, and appears consistent with our position in relation to Clause 28 (above) we have no comment.

#### **Clause 30**

This provision relates to an employer's access to a prospective employee's workers compensation history at Section 571D. We commend the proposal to remove this provision which will prevent any unnecessary discrimination or invasion of privacy.

#### **Clause 31**

These provisions refer to the transitional arrangements for existing applications for review or appeal and the effect on any existing applications for access to workers compensation histories.

As above, our concern in relation to the proposed amendments is that all existing unfair and unreasonable provisions must be reversed to ensure that our members will be treated fairly and equally.

We make particular comment in relation to the proposed Sections 715 and 716, permitting the decision to access a workers compensation history to be continued under the current provisions. It is our strong view that the effect of the 2013 amendments be nullified and no applications for information under Section 571D proceed. This will prevent any further possibility of discrimination or invasion of privacy for injured workers.

#### **Clause 32**

This amendment clarifies the notice required if an injured worker has an entitlement to additional lump sum compensation and we have no comment.

#### **Clauses 33, 34 and 35**

These clauses relate to the introduction of Section 193A to provide "additional lump sum compensation" for those applicants who have deferred offers of lump sum compensation.

While it is difficult to understand how these provisions will operate, they appear to offset the inability for some claimants to seek damages because of the 5% DPI threshold imposed in the 2013 amendments.

If this is the case, what is proposed is not sufficient to ensure that all injured workers have parity at law.

We support the full reinstatement of common law rights to all injured workers, and all measures to make retrospective applications to 15 October 2013.

## Clauses 36, 37, 38 and 39

These clauses seek to clarify the role of the Regulator under both the Electrical Safety Act 2002 and the Work Health and Safety Act 2011 and we have no comment other than those made in relation to the reinstatement of a statutory authority for workers compensation matters (Clause 27).

## Additional Comments

The commitment given to the Queensland electorate by the Australian Labor Party in the lead-up to the State Election was that it would redress unfairness brought about by the previous Government. This commitment included restoration of Queensland's workers' compensation scheme as the nation's leading scheme and reinstatement of the rights of injured workers to sue negligent employers if they are injured at work.

To achieve this, it is necessary for the Government to reverse all of the 2013 amendments that diminished injured worker's rights. In addition to what has been proposed, we believe this would require the following:

- The requirement to have rehabilitation and return to work coordinators in the workplace and assurance that their training will be appropriately accredited should be reinstated. This would ensure that adequate support and protection is provided to injured workers returning to the workplace.
- The pre-2013 definition of injury as it applied to psychological and psychiatric injuries should be reinstated, in respect of the employment being a *significant contributing factor*. The current increased burden of proof for these specific injuries has significantly diminished the rights of injured workers and has increased the rejection rate of claims that would otherwise have been accepted.
- The removal Sections 571B and 571C, requiring prospective workers to provide information about pre-existing injuries or medical conditions. In similar terms to requests for workers' compensation histories, employers in our sector have written this requirement into both applications for positions and contracts, making this a condition of appointment. The removal of these provisions supports the intent of the proposed removal of Section 571D and prevents deliberate and/or accidental breaches of confidentiality and discrimination.
- Reestablishment of a statutory authority rather than a departmental regulator to allow genuine independence from the department.

Unless all the provisions that diminished injured workers' rights are reversed, the current Government will not be fulfilling its election promises.

We look forward to an assurance that genuine consideration will be given to reversing all provisions that created division, unfairness and inequity for the purposes of restoring injured worker's rights.